



ExecPro[®]

Canadian Private Company
Management Liability Solution

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Great American Insurance Group – ELD CANADA
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THIS IS A CLAIMS MADE POLICY. READ IT CAREFULLY.

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the insurance company shown in the Declarations (a stock insurance company, hereinafter called the **Insurer**), including the statements made in the Proposal Form and subject to all terms, conditions and limitations of this Policy, the **Insured** and **Insurer** agree:

Section I. Insuring Agreements

- A. The **Insurer** shall pay on behalf of the **Insured Persons** all **Loss** arising from a **Claim** (including an **Employment Practices Claim** or a **Securities Claim**) first made against the **Insured Persons** during the **Policy Period** or the **Discovery Period** for a **Wrongful Act**, except for any **Loss** which the **Company** actually pays as indemnification.
- B. The **Insurer** shall pay on behalf of the **Company** all **Loss** arising from a **Claim** (including an **Employment Practices Claim** or a **Securities Claim**) first made against the **Insured Persons** during the **Policy Period** or the **Discovery Period** for a **Wrongful Act**, but only to the extent the **Company** is required or permitted by law to indemnify the **Insured Persons**.
- C. Other than a **Derivative Demand**, the **Insurer** shall pay on behalf of the **Insured Entity** all **Loss** which the **Insured Entity** shall be obligated to pay as a result of a **Claim** (including an **Employment Practices Claim** or a **Securities Claim**) first made against the **Insured Entity** during the **Policy Period** or the **Discovery Period** for a **Wrongful Act**.
- D. The **Insurer** shall pay on behalf of the **Insured Entity** all **Investigative Costs** which the **Insured Entity** is legally obligated to pay for a **Derivative Demand** first made during the **Policy Period** or the **Discovery Period**.

Section II. Discovery Period

- A. In the event the **Insurer** refuses to renew this Policy or the **Corporation** chooses to cancel or not renew this Policy, the **Corporation** shall have the right, upon payment of fifty percent (50%) of the annual premium, (or if the **Policy Period** is other than annual, fifty percent (50%) of the annualized premium), to an extension of the coverage provided by this Policy with respect to any **Claim** first made against any **Insured** during the period of twelve (12) months after the end of the **Policy Period**, but only with respect to any **Wrongful Act** committed or alleged to have been committed before the end of the **Policy Period**. This twelve (12) month period shall be referred to in this Policy as the **Discovery Period**.
- B. As a condition precedent to the right to purchase the **Discovery Period**, the total premium for this Policy must have been paid, and a written request together with payment of the appropriate premium for the **Discovery Period** must be provided to the **Insurer** no later than thirty (30) days after the end of the **Policy Period**.
- C. The fact that the coverage provided by this Policy may be extended by virtue of the purchase of the **Discovery Period** shall not in any way increase the Limit of Liability stated in Item 3 of the Declarations. For purposes of the Limit of Liability, the **Discovery Period** is considered to be part of, and not in addition to, the **Policy Period**.

Section III. Definitions

A. "Claim" shall mean:

- (1) a written demand for monetary, non-monetary or injunctive relief made against any **Insured**;
- (2) a civil, criminal, administrative, arbitration or regulatory proceeding, or any appeal therefrom, made against any **Insured** seeking monetary or non-monetary relief and commenced by the service of an originating proceeding, complaint or similar pleading, the return of an indictment, or the receipt or filing of notice of charges or similar document, including any proceeding initiated against any **Insured** before any provincial or federal human rights tribunal or any similar governmental body (including but not limited to the Equal Employment Opportunity Commission);
- (3) a civil, criminal, administrative or regulatory investigation (including a provincial securities commission or federal/provincial human rights tribunal or commission inquiry, a Securities and Exchange Commission, Equal Employment Opportunity Commission and grand jury investigation) of any **Insured Person** commencing:
 - (a) with the service of a subpoena upon such **Insured Person** in the case of an investigation by any provincial or territorial securities commission and/or the Securities and Exchange Commission or a similar state or foreign government authority; or
 - (b) on the date such **Insured Person** is identified in writing by an investigating authority, other than as stated in (3)(a) above, as a person against whom a proceeding described in clause A.(2) above may be commenced.

Claim shall not include a civil, criminal, administrative or regulatory investigation of the **Company**;

- (4) any proceeding brought by the Minister of National Revenue against a **Director** based upon, arising out of or attributable to the failure to deduct, withhold or remit tax from a payment of salary or wages of an employee pursuant to the Income Tax Act R.S.C. 1985, the Unemployment Insurance Act R.S.C. 1985, c.U-1, and The Canada Pension Plan R.S.C., c.8, the regulations promulgated thereunder and amendments thereto or any similar provisions of any provincial law;
- (5) a **Derivative Demand**; or
- (6) an **Inquiry**, if reported to the **Insurer** pursuant to Section VIII.C. of the Policy;

B. "Company" shall mean:

- (1) the **Corporation**;
- (2) any **Subsidiary**; and
- (3) in the event of **Financial Insolvency**, the resulting Debtor in Possession (or foreign equivalent status), if any.

C. "Complainant" has the meaning as defined in Section 238 of the Canada Business Corporations Act or similar provision of any Canadian provincial or territorial business corporations statute or the equivalent in any other jurisdiction.

- D.** "**Contract Employee**" shall mean any individual who is leased or is contracted to the **Company**, or is an independent contractor for the **Company**, but only if such individual performs work or services for or on behalf of the **Company**.
- E.** "**Corporation**" shall mean the entity named in Item 1 of the Declarations.
- F.** "**Costs of Defence**" shall mean reasonable and necessary legal fees, costs and expenses incurred in the investigation, defence or appeal of any **Claim** including the costs directly attributable to witness attendance and any premiums paid for insurance instruments or an appeal bond, attachment bond or similar bond (but without obligation on the part of the **Insurer** to apply for or furnish such bonds); provided, however, **Costs of Defence** shall not include salaries, wages, overhead or benefit expenses associated with any **Insured Persons**.
- G.** "**Derivative Demand**" shall mean a written demand by a **Complainant** upon the board of directors or similar management body of the **Company**, to commence a civil proceeding in a court of law against any individual **Director** or **Officer** for any actual or alleged **Wrongful Act** of such **Director** or **Officer**.
- H.** "**Directors**" and "**Officers**" shall mean all persons who were, now are, or shall be directors, officers, trustees, members of the board of managers, management committee members or advisory committee members of the **Company**, whether duly elected, appointed or de facto. In the event the **Company** is duly chartered as a Limited Liability Company with a provision in its bylaws that the managers of such Limited Liability Company shall be indemnified to the fullest extent permitted by applicable law, the terms "**Directors**" and "**Officers**" shall include individuals who serve as managers of such Limited Liability Companies.
- I.** "**Employment Practices Claim**" shall mean any **Claim** brought by or on behalf of any past, present or future employee of the **Company** or **Outside Entity**, any **Contract Employee** or any applicant for employment with the **Company** or **Outside Entity** alleging an **Employment Practices Wrongful Act**.
- J.** "**Employment Practices Wrongful Act**" shall mean any of the following acts related to employment:
- (1) wrongful dismissal, discharge or termination of employment, whether actual or constructive or breach of an implied employment contract;
 - (2) misrepresentation;
 - (3) violation of employment laws;
 - (4) sexual or workplace harassment;
 - (5) discrimination;
 - (6) wrongful failure to employ or promote;
 - (7) wrongful discipline;
 - (8) wrongful deprivation of career opportunity including a wrongful failure to hire or promote;
 - (9) failure to grant tenure;
 - (10) negligent employee evaluation;
 - (11) retaliation;
 - (12) failure to provide adequate workplace or employment policies or procedures;
 - (13) defamation (including libel and slander);
 - (14) invasion of privacy;
 - (15) wrongful demotion;
 - (16) negligent reassignment;
 - (17) violation of any provincial, territorial, federal, state or local civil rights laws;
 - (18) negligent hiring;
 - (19) negligent supervision;
 - (20) negligent training;
 - (21) negligent retention; or

(22) acts described in (1) through (21) above, arising from the use of the **Company's** internet, e-mail, telecommunication or similar systems, including the failure to provide and enforce adequate policies and procedures relating to such use of the **Company's** internet, e-mail, telecommunication or similar systems.

K. "Financial Insolvency" shall mean the **Company** becoming a debtor in possession, or the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Company**.

L. "Inquiry" shall mean:

(1) a request or demand for an **Insured Person** either to appear at a meeting, deposition or interview or to produce documents relating to the business of the **Company** or such **Insured Person's** capacity with the **Company**, where such request or demand is:

(a) by any provincial, territorial, federal, state, local or foreign law enforcement authority or other governmental investigative authority (including but not limited to a provincial securities commission, the U.S. Securities and Exchange Commission, U.S. Department of Justice or any attorney general);

(b) by the enforcement organization of any securities or commodities exchange or other self-regulatory entity; or

(c) by or on behalf of the **Company**, the **Company's** Board of Directors (or similar management body) or a committee thereof: (i) arising out of a request or demand set forth in subparagraphs (a) or (b) above; or (ii) which is part of the **Company's** investigation and evaluation of a **Derivative Demand**; or

(2) the arrest or confinement of an **Insured Person**, whether residential or custodial, by a law enforcement authority, relating to the business of the **Company** or the **Insured Person's** capacity with the **Company**;

provided, however, **Inquiry** shall not include any routine or regularly scheduled regulatory or internal supervision, inspection, compliance, review, examination, production or audit, including any request for mandatory information from a regulated entity, conducted in the normal review or compliance process of the **Company** by a law enforcement authority, governmental investigative authority or enforcement organization of a securities or commodities exchange or other self-regulatory entity.

M. "Insured(s)" shall mean the **Insured Entity** and all **Insured Persons**.

N. "Insured Capacity" shall mean the position or capacity of an **Insured Person** that causes him or her to meet the definition of **Insured Person** under the Policy. It does not include any position or capacity held by such **Insured Person** in any entity other than the **Company**, even if directed or requested by the **Company**.

O. "Insured Entity" shall mean the **Company**, but only with respect to coverage provided under Insuring Agreements I.C. and I.D.

P. "Insured Persons" shall mean **Directors** and **Officers** and all past, present and future employees of the **Company** other than **Directors** and **Officers**.

Q. "Investigative Costs" shall mean reasonable and necessary costs, charges, fees and expenses incurred by the **Company** in connection with the investigation or evaluation of any **Derivative Demand**. **Investigative Costs** shall not include any compensation or fees of **Insured Persons**.

R. "Loss" shall mean settlements, judgments, pre-judgment and post-judgment interest, compensatory damages, punitive, aggravated or exemplary damages or the multiple portion of any multiplied damage award, **Supplemental Payments, Investigative Costs** and **Costs of Defence**.

Loss shall not include:

- (1) criminal or civil fines or penalties imposed by law, or taxes;
- (2) any matter which may be deemed uninsurable under the law pursuant to which this Policy is construed;
- (3) costs incurred in connection with cleaning up, removing, eliminating, abating, containing, treating, detoxifying, neutralizing, assessing the effects of, testing for, or monitoring **Pollutants**;
- (4) any amount incurred by any **Insured** in a proceeding or investigation that is not at that time a **Claim**, even if such amount also benefits the defence of a **Claim** and even if such proceeding or investigation subsequently gives rise to a **Claim**; provided, however, that this subparagraph shall not apply to otherwise covered costs, charges, fees and expenses incurred by an **Insured Person** as a result of an **Inquiry**; or
- (5) any amounts related to any **Claim** for any **Wrongful Act** of any **Insured** in connection with any pension or welfare plans of the **Insured Entity**, unless it is determined that coverage is provided for such **Loss** pursuant to Fiduciary Liability Coverage specifically endorsed to this Policy;

Other than **Costs of Defence, Loss** shall not include:

- (6) any obligation of the **Insured Entity** pursuant to any federal, provincial, state or local statutory law governing employment or benefits including but not limited to the Canadian Labour Code 1985, the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, or any Canadian occupational health and safety laws or regulations;
- (7) any obligation of the **Insured Entity** as a result of a **Claim** seeking relief or redress in any form other than money damages, including but not limited to any obligation of the **Insured Entity** to modify any building or property; or
- (8) any obligation of the **Insured Entity** to pay salary, wages or other employment-related benefits to any employee under an express or implied contract unless such obligation would exist absent the contract;

Notwithstanding subparagraphs (1) and (2) above and solely with respect to coverage provided by Insuring Agreement I.A., "**Loss**" shall also mean:

- (9) taxes and related penalties and interest assessed against a **Director** based upon, arising out of or attributable to the failure to deduct, withhold or remit tax from a payment of salary or wages of an employee pursuant to the Income Tax Act R.S.C. 1985, the Unemployment Insurance Act R.S.C. 1985, c. U-1, and the Canada Pension Plan R.S.C., c.8, the regulations promulgated thereunder and amendments thereto or any similar provisions of any provincial law;
- (10) any amount constituting wages pursuant to the Canada Business Corporations Act R.S.C. 1985, c. C-44 and the Business Corporations Act, R.S.C. 1990, c.B.16, the regulations promulgated thereunder and amendments thereto or any similar provisions of any provincial law; or

- (11) unpaid tax liabilities of the **Company** arising under the laws of Canada, the laws of any province of Canada, or any municipality therein, which the **Company** is unable to pay due to **Financial Insolvency** and which **Directors** become legally obligated to pay;

It is understood and agreed that the enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for punitive or exemplary damages or the multiple portion of any multiplied damage award.

- S.** "**Original Policy**" shall mean the first policy purchased by the **Company** providing coverage of a similar nature to this Policy and which has continued through renewal or reinstatement on an uninterrupted basis since its inception. Each Insuring Agreement is considered separately.
- T.** "**Outside Entity**" shall mean:
- (1) any non-profit and/or eleemosynary organization; or
 - (2) any corporation or organization specifically scheduled as an **Outside Entity** by endorsement to this Policy.
- U.** "**Policy Period**" shall mean the period from the inception date of this Policy to the expiration date of this Policy as set forth in Item 2 of the Declarations, or its earlier termination if applicable.
- V.** "**Pollutants**" shall mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, asbestos, chemicals or waste of any kind, including any materials to be recycled, reconditioned or reclaimed.
- W.** "**Related Wrongful Acts**" shall mean **Wrongful Acts** which are causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event or decision.
- X.** "**Securities Claim**" shall mean any **Claim** (including a civil lawsuit or criminal proceeding brought by any provincial or territorial securities commission and/or the Securities and Exchange Commission) made against an **Insured** alleging a violation of any provincial, territorial, federal, state, local or foreign securities law, regulation, or rule, whether statutory or common law, which is:
- (1) brought by any person or entity arising out of, based upon or attributable to, in part or in whole, the: (a) purchase or sale of, or (b) offer or solicitation of an offer to purchase or sell, any securities of the **Company**, or
 - (2) brought by a security holder of the **Company**, with respect to such security holder's interest in such securities of the **Company**, whether directly, by class action, or derivatively on behalf of the **Company**.
- "**Securities Claim**" shall also include an administrative or regulatory proceeding alleging a violation of any provincial, territorial, federal, state, local or foreign securities law, regulation, or rule, whether statutory or common law against the **Company**, but only if and only during the time that such proceeding is also continuously maintained against an **Insured Person**.
- Y.** "**Subsidiary**" shall mean:
- (1) any entity in which the **Corporation** owns, directly or indirectly, more than fifty percent (50%) of the voting stock on or before the inception date of the Policy;
 - (2) any limited liability company in which the **Corporation** owns or controls, directly or indirectly, the right to elect, appoint or designate more than fifty percent (50%) of such entity's managers on or before the inception date of the Policy;

- (3) any Joint Venture, in which the **Corporation**, on or before the inception date of the Policy, directly or indirectly:
 - (a) owns interests representing more than fifty percent (50%) of the voting, appointment, or designation power for the selection of the management committee members of the Joint Venture; or
 - (b) has the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of the Joint Venture to elect, appoint or designate a majority of the management committee of the Joint Venture;
- (4) any entity defined above and created or acquired by the **Corporation** after the inception date of this Policy, if the entity's total assets do not exceed fifty percent (50%) of the total consolidated assets of the **Corporation** as of the inception date of this Policy; or
- (5) any entity created or acquired by the **Corporation**, after the inception date of this Policy, other than described in (4) above, if the **Corporation**, within ninety (90) days provides the **Insurer** with written notice thereof and agrees to any premium adjustment and/or coverage revision that may be required by the **Insurer**.

Z. "**Supplemental Payments**" shall mean any payments made by the **Insurer** pursuant to Section X.D. of the Policy.

AA. "**Wrongful Act**" shall mean:

- (1) any actual or alleged act, omission, error, misstatement, misleading statement, neglect or breach of duty, or **Employment Practices Wrongful Act**, by any **Insured Persons** in their capacity with the **Company**;
- (2) any actual or alleged act, omission, error, misstatement, misleading statement, neglect or breach of duty, or **Employment Practices Wrongful Act** by the **Insured Entity**, but only with respect to Insuring Agreement I.C;
- (3) any matter claimed against any **Insured Persons** by reason of their status with the **Company**; or
- (4) any matter claimed against any **Insured Persons** arising out of their service as a director, officer, trustee or governor of an **Outside Entity**, but only if such service is at the request of the **Company**.

Section IV. Exclusions

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

A. brought about or contributed to by:

- (1) any **Insureds** gaining any profit, advantage or remuneration to which they were not legally entitled; or
- (2) the deliberately fraudulent or criminal acts of any **Insureds**;

provided, however, this exclusion shall only apply if it is finally adjudicated that such conduct in fact occurred and this exclusion shall not apply to coverage provided under Insuring Agreement I.B.;

- B.** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Act** or **Related Wrongful Act** or any fact, circumstance or situation which has been the subject of any notice or **Claim** given under any other policy of which this Policy is a renewal or replacement;
- C.** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any prior and/or pending civil, criminal, administrative or investigative proceeding involving the **Company** and/or any **Insured Persons** and known to the **Company** or the **Insured Person** as of the date stated in Item 7 of the Declarations, or any fact, circumstance or situation underlying or alleged in such prior or pending proceeding;
- D.** for any actual or alleged:
- (1) bodily injury, sickness, disease, or death of any person;
 - (2) damage to or destruction of any tangible property or the loss of use thereof; or
 - (3) mental anguish, emotional distress, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, libel or slander;
- provided, however, part (1) of this exclusion shall not apply to **Costs of Defence** for any **Insured Persons** resulting from any **Claim** for alleged violations of Section 217.1 of the Criminal Code, as amended by Bill C-45, and part (3) of this exclusion shall not apply to any **Employment Practices Claim**;
- E.** for any **Wrongful Act** of any **Insureds** in connection with any pension or welfare plans of the **Company**;
- F.** for any **Wrongful Act** of any **Insured Persons** serving as a director, officer, trustee, regent, governor, member of the Board of Managers, or equivalent position of an entity other than the **Company** or **Outside Entity**, even if directed or requested to serve such other entity;
- G.** for any **Wrongful Act** of any **Insured Persons** serving as a director, officer, trustee, regent, governor, member of the Board of Managers, or equivalent position of an **Outside Entity** if such **Claim** is brought by the **Outside Entity** or by any director, officer, trustee, regent, governor, member of the Board of Managers, or equivalent position thereof; provided, however, this exclusion shall not apply to any **Employment Practices Claim**;
- H.** by or on behalf of the **Company**;
- provided, however, this exclusion shall not apply to:
- (1) **Costs of Defence** for such **Claim**; and
 - (2) solely with respect to any **Insured Person**, other **Loss**, if such **Claim**:
 - (a) is brought solely and entirely in a jurisdiction other than the United States of America, its territories and possessions or Canada;
 - (b) is in the event of **Financial Insolvency**;
 - (c) is a **Derivative Demand** or proceeding by a **Complainant**, other than a **Director** or **Officer**, and is initiated and continued totally independent of, and totally without the solicitation of, any assistance of, or active participation, or intervention of, any **Director** or **Officer** or the **Company**; or

- (d) is made against any **Insured Person** who is no longer acting in an **Insured Capacity**.
- I. for any **Wrongful Act** of any **Subsidiary** or the **Insured Persons** of such **Subsidiary** or any entity that merges with the **Company** or the **Insured Persons** of such entity that merges with the **Company** occurring:
- (1) prior to the date such entity became a **Subsidiary** or was merged with the **Company**;
 - (2) subsequent to the date such entity became a **Subsidiary** or was merged with the **Company** which, together with a **Wrongful Act** occurring prior to the date such entity became a **Subsidiary** or was merged with the **Company**, would constitute **Related Wrongful Acts**; or
 - (3) subsequent to the date the **Corporation** ceased to own, directly or indirectly, more than fifty percent (50%) of the voting stock of such **Subsidiary**;
- J. other than **Costs of Defence**, any amount owing by reason of the failure to afford an employee with reasonable notice of termination, except this exclusion shall not apply to that portion of **Loss** that is increased by reason of an **Insured** engaging in an **Employment Practices Wrongful Act**.

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against the **Insured Entity** other than a **Securities Claim**:

- K. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged breach by the **Insured Entity** of an express or implied contract or agreement; provided, however, this Exclusion shall not apply to **Costs of Defence** for any **Claim** against the **Insured Entity** for any actual or alleged breach of an express or implied employment contract;
- L. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving charges of price fixing, restraint of trade, monopolization or unfair trade, or any actual or alleged violation of the Federal Competition Act, R.S.C., the Federal Trade Commission Act, the Sherman Antitrust Act, the Clayton Act, or any other federal or provincial statutory provision involving antitrust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities, or any rules or regulations promulgated under or in connection with such statutes, or any similar provision of any state, federal, provincial or local statutory law or common law;
- M. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged plagiarism or infringement of copyright, patent, trademark or trade name, or misappropriation of ideas or trade secrets; or
- N. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged defect, deficiency, inadequacy or dangerous condition of any of the **Insured Entity's** products, including warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of such products.

With respect to Section IV. of the Policy, no fact pertaining to or conduct by any **Insured Person** shall be imputed to any other **Insured Person**; and only facts pertaining to or conduct by any past, present or future Chief Executive Officer, Chief Financial Officer or President of the **Corporation** shall be imputed to the **Company** to determine if coverage is available.

Section V. Limit of Liability

- A.** The **Insurer** shall be liable to pay one hundred percent (100%) of **Loss** in excess of the applicable Retention amount stated in Item 4 of the Declarations up to the Limit of Liability stated in Item 3 of the Declarations.
- B.** **Costs of Defence** shall be part of, and not in addition to, the Limit of Liability stated in Item 3 of the Declarations, and such **Costs of Defence** shall serve to reduce the Limit of Liability.
- C.** The **Insurer's** liability for all **Loss** shall be the amount shown in Item 3 of the Declarations which shall be the maximum aggregate Limit of Liability of the **Insurer** for the **Policy Period**, regardless of the time of payment or the number of **Claims**.
- D.** **Supplemental Payments** made pursuant to Section X.D. of this Policy are subject to the following aggregate sub-limits which are part of and not in addition to the Limit of Liability stated in Item 3 of the Declarations:
- (1) Investigation Costs for Canadian Occupational Health and Safety Violations shall be subject to an aggregate sub-limit of \$50,000;
 - (2) Public Relations Costs shall be subject to an aggregate sub-limit of \$100,000;
 - (3) Assets and Liberty Costs shall be subject to an aggregate sub-limit of \$50,000; and
 - (4) Civil Fines and Penalties shall be subject to an aggregate sub-limit of \$50,000.
- E.** **Investigative Costs** made pursuant to Insuring Agreement I.D. shall be subject to an aggregate sub-limit of \$500,000 which is part of and not in addition to the Limit of Liability stated in Item 3 of the Declarations.

Section VI. Retention

- A.** One Retention shall apply to each and every **Claim**. The **Company** shall be responsible for, and shall hold the **Insurer** harmless from, any amount within the Retention. For the purposes of the application of the Retention, **Loss** applicable to Insuring Agreement I.B. includes that for which indemnification is legally permissible, whether or not actual indemnification is granted. In the event the **Company** is unable to indemnify the **Insured Persons** solely by reason of its **Financial Insolvency**, the **Insurer** shall, pursuant to the terms and conditions of Section VII.E., advance **Costs of Defence** incurred by the **Insured Persons** without first requiring payment of the Retention applicable to **Claims** covered by Insuring Agreement I.B. The certificate of incorporation, charter or other organizational documents of the **Company**, including by-laws and resolutions, shall be deemed to require indemnification and advancement of **Loss** to the **Insured Persons** to the fullest extent permitted by the law of the jurisdiction of incorporation of the **Company**.
- B.** More than one **Claim** involving the same **Wrongful Act** or **Related Wrongful Acts** of one or more **Insureds** shall be considered a single **Claim**, and only one Retention shall be applicable to such single **Claim**. All such **Claims** constituting a single **Claim** shall be deemed to have been made on the earlier of the following dates: (1) the earliest date on which any such **Claim** was first made; or (2) the earliest date on which any such **Wrongful Act** or **Related Wrongful Act** was reported under this Policy or any other policy providing similar coverage.
- C.** With respect solely to any **Securities Claim**, the Retention shall apply only to **Costs of Defence**. The Retention shall be waived for any **Securities Claim** and the **Insurer** shall reimburse such **Costs of Defence** paid by the **Insured** if:
- (1) an adjudication with or without prejudice is obtained pursuant to a trial, motion to dismiss or motion for summary judgment in such **Claim**, or
 - (2) a complete and final settlement of such **Claim** with prejudice,

establishes that no **Insured** is liable for any **Loss** other than **Costs of Defence**; provided, however, subject to a written undertaking by the **Company** in a form acceptable to the **Insurer**, any **Costs of Defence** advanced by virtue of a waiver of the Retention shall be paid back by the **Company** to the **Insurer** in the event the **Securities Claim** is re-initiated or any **Claim** is initiated which is subject to the same Retention pursuant to Section VI.B.

- D. In the event a **Claim** triggers more than one Retention, only the highest Retention shall apply. In no event, however, shall there be a Retention for any **Claim** under Insuring Agreements I.A. or I.D. of the Policy unless such Retention is required pursuant to provincial or state law.

Section VII. Costs of Defence and Settlements

- A. The **Insureds** shall not incur **Costs of Defence**, or admit liability, offer to settle, or agree to any settlement in connection with any **Claim** without the express prior consent of the **Insurer**, which consent shall not be unreasonably withheld. The **Insureds** shall provide the **Insurer** with all information and particulars it may reasonably request in order to reach a decision as to such consent. Any **Loss** resulting from any admission of liability, agreement to settle, or **Costs of Defence** incurred prior to the **Insurer's** consent shall not be covered hereunder.
- B. The **Insureds**, and not the **Insurer**, have the duty to defend all **Claims**, provided that the **Insureds** shall only retain counsel as is mutually agreed upon with the **Insurer**, such consent not to be withheld unreasonably.
- C. The **Insurer** shall at all times have the right, but not the duty, to associate with the **Insureds** in the investigation, defence or settlement of any **Claim** to which coverage under this Policy may apply.
- D. If a **Claim** made against any **Insured** includes both covered and uncovered matters, or is made against any **Insured** and others, the **Insureds** and the **Insurer** recognize that there must be an allocation between insured and uninsured loss, therefore, **Insureds** and the **Insurer** shall allocate such amount as follows:
- (1) with respect to **Costs of Defence**, one hundred percent (100%) of all **Costs of Defence** which would otherwise be allocated as described above shall be allocated to the insured **Loss** and shall be advanced by the **Insurer** pursuant to Section VII.E. of the Policy. This **Costs of Defence** allocation shall be a final and binding allocation of such **Costs of Defence** and shall not apply with respect to the allocation of any other loss;
 - (2) with respect to any other loss, the **Insurer** and the **Insureds** shall use their best efforts to agree upon a fair and proper allocation of such amount between insured **Loss** and uninsured loss.
- E. The **Insurer** shall advance **Costs of Defence** prior to the final disposition of any **Claim**, provided such **Claim** is covered by this Policy. Such advancement shall be within sixty (60) days after receipt of written evidence that **Costs of Defence** have been incurred. Any advancement shall be on the condition that:
- (1) the appropriate Retention has been satisfied, provided, however, this condition shall not apply in the event of the **Financial Insolvency** of the **Company**;
 - (2) any amounts advanced by the **Insurer** shall serve to reduce the Limit of Liability stated in Item 3 of the Declarations to the extent they are not in fact repaid;

- (3) the **Company** and **Insured Persons** and the **Insurer** have agreed upon the portion of the **Costs of Defence** attributable to covered **Claims** against the **Insureds**; and
- (4) in the event it is finally established that the **Insurer** has no liability under the Policy for such **Claim**, the **Company** and **Insured Persons** will repay the **Insurer** upon demand all **Costs of Defence** advanced by virtue of this provision.

Section VIII. Notice of Claim

- A.** The **Insureds** shall, as a condition precedent to their rights under this Policy, give the **Insurer** notice in writing of any **Claim**, other than an **Inquiry**, which is made during the **Policy Period** or **Discovery Period**. Such notice shall be given as soon as practicable, from the date the General Counsel, Risk Manager, or person with equivalent responsibility has knowledge of the **Claim**, but in no event later than ninety (90) days after the end of the **Policy Period** or **Discovery Period**.
- B.** If, during the **Policy Period** or **Discovery Period**, any **Insured** first becomes aware of a specific **Wrongful Act** and gives notice to the **Insurer** of:
- (1) the specific **Wrongful Act**;
 - (2) the injury or damage which has or may result therefrom; and
 - (3) the circumstances by which the **Insured** first became aware thereof;

then any **Claim** arising out of such **Wrongful Act** which is subsequently made against the **Insured** shall be deemed to have been made at the time the **Insurer** received such written notice from the **Insured**.

- C.** If, during the **Policy Period**, the **Insureds** first become aware of an **Inquiry**, and if the **Insureds** give written notice to the **Insurer** as soon as practicable from the date the General Counsel, Risk Manager, or person with equivalent responsibility first has knowledge of the **Inquiry**, but in no event later than ninety (90) days after the end of the **Policy Period**, of:
- (1) the entity conducting the **Inquiry**;
 - (2) the circumstances by which the **Insureds** first became aware of the **Inquiry**; and
 - (3) the particulars as to dates and persons involved;

then the **Inquiry** shall be treated as a **Claim** under this Policy and the reasonable and necessary costs, charges, fees and expenses incurred by an **Insured Person** solely in connection with his or her preparation for and response to the **Inquiry** shall be covered, subject to all terms, conditions and limitations of this Policy. Any other **Claim** which arises out of such **Inquiry** shall be deemed to have been first made at the time such written notice of the **Inquiry** was received by the **Insurer**. However, if the **Insureds** elect not to report an **Inquiry**, then any subsequent **Claim** which arises out of the **Inquiry** shall be subject to the reporting requirements set forth in subparagraph A. above, and coverage for such subsequent **Claim** will not be denied because of the **Insureds'** failure to report the **Inquiry** pursuant to this section of the Policy.

- D.** In addition to furnishing the notice pursuant to this section of the Policy, the **Insureds** shall, as soon as practicable, furnish the **Insurer** with copies of reports, investigations, pleadings and other papers in connection therewith.

E. Notice to the **Insurer** pursuant to this Section of the Policy shall be given to:

ELDClaims@GAIC.com or
GREAT AMERICAN INSURANCE GROUP
ELD CANADA
CLAIMS DEPARTMENT
1515 WOODFIELD ROAD; SUITE 500
SCHAUMBURG, IL 60173

Section IX. General Conditions

A. Cancellation or Non-Renewal

- (1) This Policy may be canceled by the **Corporation** at any time by written notice to the **Insurer**. Upon cancellation, the **Insurer** shall retain the pro rata portion of the premium, unless this Policy is converted to Run-Off pursuant to Section IX. E. wherein the entire premium for this Policy shall be deemed earned.
- (2) This Policy may be canceled by the **Insurer** only if the **Corporation** does not pay the premium when due.
- (3) If the **Insurer** elects not to renew this Policy, the **Insurer** shall provide the **Corporation** with no less than sixty (60) days advance notice thereof.

B. Proposal Form

It is agreed by the **Company** and the **Insured Persons** that the particulars and statements contained in the Proposal Form(s), any information provided therewith, any public documents filed by the **Company** on the SEC's Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR"), or on the System for Electronic Document Analysis and Retrieval ("SEDAR") within the twelve (12) month period prior to the inception date of this Policy, the most recent Form 10k filed and the most recent annual report (which shall be on file with the **Insurer** and be deemed attached hereto as if physically attached hereto), are the basis of this Policy and are to be considered as incorporated in and constituting a part of the Policy. It is further understood and agreed by the **Company** and the **Directors** and **Officers** that the statements in the Proposal Form(s) or in any information provided therewith are their representations, and that this Policy is issued in reliance upon the truth of such representations. In the event any of the statements, representations or information in the Proposal Form(s) and/or any information provided therewith (hereafter referred to as "Facts"), are not true and accurate:

- (1) There shall be no coverage for any **Claims** made pursuant to Insuring Agreement I.A. of this Policy with respect to any **Insured Person** who had knowledge, as of the effective date of the **Policy Period**, of any Facts that were not truthfully and accurately disclosed in the Proposal Form(s), whether or not such **Insured Person** knew of such disclosure in the Proposal Form(s), but was aware such Facts were untruthful or inaccurate. The knowledge of any **Insured Person** shall not be imputed to any other **Insured Person** for the purposes of determining coverage under Insuring Agreement I.A.; and
- (2) There shall be no coverage for any **Claims** made pursuant to Insuring Agreement I.B. of this Policy to the extent the **Company** indemnifies any **Insured Person** who had knowledge, as of the effective date of this **Policy Period**, of any Facts that were not truthfully and accurately disclosed in the Proposal Form(s), whether or not such **Insured Person** knew of such disclosure in the Proposal Form(s), but was aware such Facts were untruthful or inaccurate. For purposes of this paragraph (2), knowledge of any **Insured Person** shall not be imputed to any other **Insured Person**; and

- (3) There shall be no coverage for any **Claims** made pursuant to Insuring Agreements I.C. and I.D. of this Policy if the person(s) who signed the Proposal Form(s) for this coverage or any **Insured Person** who is or was a past, present or future chief financial officer, or chief executive officer of the **Company** had knowledge, as of the effective date of the **Policy Period**, of any Facts that were not truthfully and accurately disclosed in the Proposal Form(s), whether or not such **Insured Person** knew of such disclosure in the Proposal Form(s); and
- (4) This Policy shall not be rescinded by the **Insurer**.

C. Action Against the Insurer

- (1) No action shall be taken against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this Policy, and until the **Insured's** obligation to pay shall have been finally determined by an adjudication against the **Insured** or by written agreement of the **Insured**, claimant and the **Insurer**.
- (2) No person or organization shall have any right under this Policy to join the **Insurer** as a party to any **Claim** against the **Insureds** nor shall the **Insurer** be impleaded or made a third party by any **Insured** or their legal representative in any such **Claim**.

D. Amalgamation, Merger or Acquisition

If, during the **Policy Period**, the **Company** acquires the assets of another entity, by amalgamation, merger or otherwise, and the acquired assets of such other entity exceed fifty percent (50%) of the assets of the **Company** as of the inception date of the Policy, written notice thereof shall be given to the **Insurer** as soon as practicable, but in no event later than ninety (90) days from the effective date of the transaction, together with such information as the **Insurer** may request. Premium adjustment and coverage revisions shall be effected as may be required by the **Insurer**.

If the **Company** fails to: (i) give written notice as required by this section within the time specified or (ii) pay the additional premium required by the **Insurer**, coverage for the acquired or created entity and its **Insured Persons** shall terminate with respect to any **Claim** first made more than ninety (90) days after such acquisition or creation. Coverage for any acquired or created entity described in this section and its **Insured Persons** shall be subject to such additional or different terms, conditions and limitations of coverage as the **Insurer** in its sole discretion may require.

E. Conversion to Run-Off Coverage

If, during the **Policy Period**, a transaction occurs wherein another entity gains control of the **Corporation** through the ownership of more than fifty percent (50%) of the voting stock of the **Corporation**, or the **Corporation** merges into another entity or consolidates with another entity such that the **Corporation** is not the surviving entity, then:

- (1) the **Corporation** must give written notice of such transaction to the **Insurer** within ninety (90) days after the effective date of such transaction and provide the **Insurer** with such information in connection therewith as the **Insurer** may deem necessary;
- (2) this Policy shall only apply to **Wrongful Acts** actually or allegedly committed on or before the effective date of such transaction; unless a waiver of this condition is requested by the **Corporation** and agreed to by the **Insurer**;
- (3) the entire premium for this Policy shall be deemed earned as of the date of such transaction; and

- (4) the **Corporation** shall have the right to request and be granted an extended **Discovery Period** of one (1) year upon payment of an additional premium equivalent to one hundred percent (100%) of the annualized premium.

In the event a transaction as described above occurs, the **Insureds** also shall have the right to request from the **Insurer** an extension of the coverage afforded by this Policy for an additional period of twelve (12) months to seventy-two (72) months after the end of the **Policy Period**, but solely with respect to any **Wrongful Act** committed or alleged to have been committed before the effective date of the transaction in question. Any such request must be made in writing and within ninety (90) days after the effective date of the transaction in question. The **Insurer** shall offer coverage based upon terms, conditions, exclusions and additional premium it deems appropriate and the **Insureds** agree to cooperate with the **Insurer** by submitting all information and particulars the **Insurer** may reasonably request.

F. **Outside Entity Provision**

In the event a **Claim** is made against any **Insured Persons** arising out of their service as a director, officer, trustee or governor of an **Outside Entity**, coverage as may be afforded under this Policy shall be excess of any indemnification provided by the **Outside Entity** and any insurance provided to the **Outside Entity** which covers its directors, officers, trustees or governors.

G. **Subrogation**

In the event of any payment under this Policy, the **Insurer** shall be subrogated to all of the **Insureds'** rights of recovery and the **Company** and **Insured Persons** shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents as may be necessary to enable the **Insurer** to effectively bring suit in the name of any **Insured Persons** or the **Company**. In no event, however, shall the **Insurer** exercise its right of subrogation against an **Insured Person** under this Policy unless such **Insured Person** has been convicted of a deliberate criminal act, or has been determined by a final adjudication adverse to the **Insured Person** to have committed a deliberate fraudulent act, or has been determined by a final adjudication adverse to the **Insured Person** to have obtained any profit or advantage to which such **Insured Person** was not legally entitled.

In the event the **Insurer** shall for any reason pay indemnifiable **Loss** on behalf of an **Insured Person**, the **Insurer** shall have the contractual right hereunder to recover from the **Company** the amount of such **Loss** equal to the amount of the Retention not satisfied by the **Company** and shall be subrogated to rights of the **Insured Persons** hereunder. The **Insurer** shall have the right to recover from the **Company** amounts the **Insurer** pays that are the result of any unsatisfied Retention arising from the failure of the **Company** to indemnify any **Insured Person** for **Loss** incurred by such **Insured Person**.

H. **Other Insurance**

This Policy shall apply only as excess over, and shall not contribute with, any other valid and collectible policy or policies (except with respect to any excess beyond the amount or amounts of coverage under such other policy or policies), whether such other policy or policies are stated to be primary, contributory, excess, contingent, or otherwise. This Policy is specifically excess of, and shall not contribute with, any insurance policy for pollution liability or environmental liability, including any general liability policy providing pollution coverage. This Policy will not be subject to the terms of any other insurance.

I. Notice of Public Offering

If, after the effective date of this policy, the **Company**:

- (1) files any Registration Statement and/or Prospectus with any provincial or territorial securities commission and/or the Securities and Exchange Commission or a similar state or foreign government authority for a public offering of securities and such filing becomes effective; or
- (2) files with any provincial or territorial securities commission and/or the Securities and Exchange Commission or a similar state or foreign government authority to qualify any of its securities for trading;

written notice thereof shall be given to the **Insurer** in care of Great American Insurance Group, ELD CANADA, 1515 Woodfield Road, Suite 500 Schaumburg, IL 60173, within thirty (30) days of such filing, together with such information as the **Insurer** may request. The **Insurer**, at its option, may make a premium adjustment or coverage revisions as may be required.

J. Order of Payments

In the event of **Loss** arising from a covered **Claim** for which payment is due under the provisions of this Policy, then the **Insurer** shall in all events:

- (1) first, pay **Loss** for which coverage is provided under Insuring Agreement I.A. of this Policy; then
- (2) only after payment of **Loss** has been made pursuant to Insuring Agreement I.A. of this Policy, with respect to whatever remaining amount of the Limit of Liability is available after such payment, the **Insurer** shall pay such other **Loss** for which coverage is provided under any other applicable Insuring Agreements in Section I. of this Policy.

The **Financial Insolvency** of any **Insured** shall not relieve the **Insurer** of any of its obligations to prioritize payment of covered **Loss** under this Policy.

K. Additional Limit of Liability Dedicated for Directors and Officers

Notwithstanding anything in this Policy to the contrary, the Additional Limit of Liability Dedicated for **Directors** and **Officers** will be an additional Limit of Liability in an amount not to exceed \$1,000,000, which amount is in addition to and not part of the Limit of Liability as set forth in Item 3 of the Declarations.

This Additional Limit of Liability Dedicated for **Directors** and **Officers** is available solely for **Loss** resulting from any **Claim** against any **Director** and/or **Officer** covered under Section I. A. of this Policy, and:

- (1) Any **Loss** resulting from any **Claim** against any **Director** and/or **Officer** covered under Section I. A. of this Policy shall first be paid under the Limit of Liability as set forth in Item 3 of the Declarations, and such Limit of Liability must be completely exhausted by payment of **Loss** under Section I.A., I.B., I.C. and/or I.D. of this Policy before **Loss** shall be paid under the Additional Limit of Liability Dedicated for **Directors** and **Officers**, and
- (2) The Additional Limit of Liability Dedicated for **Directors** and **Officers** shall be excess of any insurance available that is specifically excess of this Policy and such excess insurance must be completely exhausted by payment of **Loss** thereunder before the **Insurer** shall have any obligation to make any payment on account of the Additional Limit of Liability Dedicated for **Directors** and **Officers**.

L. Assignment

Assignment of interest under this Policy shall not bind the **Insurer** until its consent is endorsed hereon.

M. Conformity to Statute

Any terms of this Policy which are in conflict with the terms of any applicable laws are hereby amended to conform to such laws.

N. Entire Agreement

By acceptance of this Policy, the **Insureds** and the **Insurer** agree that this Policy (including the Declarations, Proposal Forms submitted to the **Insurer** and any information provided therewith) and any written endorsements attached hereto constitute the entire agreement between the parties. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement.

O. Corporation Represents Insured

By acceptance of this Policy, the **Corporation** shall be designated to act on behalf of the **Insureds** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence, the cancellation or non-renewal of this Policy, the payment of premiums, and the receipt of any return premiums that may be due under this Policy.

P. Representative of the Insurer

Great American Insurance Group, ELD CANADA, 1515 Woodfield Road, Suite 500, Schaumburg, IL 60173 shall act on behalf of the **Insurer** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence, provided, however, notice of **Claims** shall be given pursuant to Section VIII. of the Policy.

Q. Valuation and Currency

All amounts referenced under this Policy are expressed and payable in the currency of Canada. If any element of **Loss** under this Policy is stated in a currency other than Canadian dollars, payment under this Policy shall be made in Canadian dollars at the rate of exchange published in the The Globe and Mail on the date the element of **Loss** becomes due and payable by the **Insurer**.

Section X. Coverage Extensions

A. Spousal Provision

The coverage provided by this Policy shall also apply to the lawful spouse or common law partner of an **Insured Person**, but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of an **Insured Person** and seeking to recover damages from marital community property, property jointly held by such lawful spouse or common law partner and an **Insured Person** or property transferred from an **Insured Person** to such lawful spouse or common law partner.

B. Worldwide Provision

The coverage provided under this Policy shall apply worldwide except in those jurisdictions where prohibited by law. The term **Directors** and **Officers** is deemed to include individuals who serve in equivalent positions in foreign **Subsidiaries**.

C. Estates and Legal Representatives

The coverage provided by this Policy shall also apply to the estates, heirs, legal representatives or assigns of any **Insured Persons** in the event of their death, incapacity or bankruptcy, but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of any **Insured Persons**.

D. Supplemental Payments for Insured Persons

Any **Supplemental Payments** made pursuant to this section of the Policy are part of and not in addition to the aggregate Limit of Liability stated in Item 3 of the Declarations and are also subject to the respective Sub-limit of Liability stated in Section V.D. No Retention shall apply to the coverage extensions set forth below. Further, **Supplemental Payments** are limited to those reasonable and necessary fees, costs and expenses incurred by an **Insured Person** during the **Policy Period** stated in Item 2 of the Declarations and with the express prior consent of the **Insurer**.

(1) Investigation Costs for Canadian Occupational Health and Safety Violations

The **Insurer** shall pay on behalf of an **Insured Person** reasonable and necessary costs and expenses incurred in response to an investigation of any actual or alleged violations of any Canadian occupational health and safety laws or regulations, provided such investigation does not otherwise qualify as a **Claim** under this Policy. This coverage shall not include any salary, wages, overhead or benefit expenses associated with such **Insured Person**.

(2) Public Relations Costs

The **Insurer** shall pay on behalf of an **Insured Person** the reasonable and necessary costs and expenses incurred to reduce damage to reputation suffered by the **Insured Person** provided the actual or alleged damage to the **Insured Person's** reputation is caused by any information disclosed to any third party and is the direct result of a **Claim** which is covered under this Policy.

(3) Assets and Liberty Costs

The **Insurer** shall pay on behalf of an **Insured Person** the reasonable and necessary costs and expenses incurred to obtain the discharge or revocation of a judicial order entered during the **Policy Period** imposing:

- (a) a confiscation or suspension or freezing of rights of ownership of real property or personal assets of such **Insured Person**;
- (b) a charge over real property or personal assets of such **Insured Person**;
- (c) a temporary or permanent prohibition on such **Insured Person** from holding the office or performing the function of an **Insured Person**;
- (d) the restriction of the liberty of such **Insured Person** to a specified domestic residence or an official detention;
- (e) the deportation of any **Insured Person** following the revocation of the otherwise proper, current and valid immigration status for any reason other than the conviction of such **Insured Person** of a crime; or
- (f) the "**Extradition**" of any **Insured Person**.

"**Extradition**" shall mean any formal process by which an **Insured Person** located in any country is surrendered to any other country for trial or otherwise to answer any criminal accusation.

(4) Civil Fines and Civil Penalties

The **Insurer** shall pay on behalf of an **Insured Person** civil fines and penalties which the **Insured Person** is ordered to pay as a result of any **Wrongful Act** giving rise to a **Claim**, provided, however, this coverage extension does not apply to such civil fines and penalties:

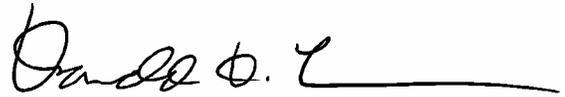
- (a) otherwise covered under the Policy;
- (b) otherwise recoverable from or payable by the **Company**; or
- (c) where payment by the **Insurer** is proven to be against public policy or in violation of any law, rule or regulation to which the **Insurer**, the **Insured Persons** or the **Company** are subject.

In witness whereof the **Insurer** has caused this Policy to be signed by its President and Secretary and countersigned, if required, on the Declarations page by a duly authorized agent of the **Insurer**.

GREAT AMERICAN INSURANCE COMPANY®



Secretary



President