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**Finding Individual  
Tort Liability for  
Board Members**

Presentation by:  
Adam Leitman Bailey



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# Finding Individual Tort Liability for Board Members

BY ADAM LEITMAN BAILEY AND JOHN DESIDERIO

Recently, the Appellate Division First Department, in *Fletcher v. Dakota, Inc.*,<sup>1</sup> held that the business judgment rule does not protect individual condo and co-op board members from personal tort liability where a board acting in its corporate capacity has acted in bad faith, but where it is not alleged that defendant board members have committed a tort independent of the tort committed by the board itself. As the court explained, “although participation in a breach of contract will typically not give rise to individual director liability, the participation of an individual director in a corporation’s tort is sufficient to give rise to individual liability.” In so deciding, the First Department expressly overruled its prior decision in *Pelton v. 77 Park Ave. Condominium*,<sup>2</sup> which had held to the contrary. The court said it wanted to “clear up an element of possible confusion in this area of law that may arise out of [the *Pelton* decision].”

In doing so, the First Department brought its interpretation of the business judgment rule, as applied to condo and co-op boards, into alignment with its rulings in cases involving business corporations. The court noted that “it has long been held by this Court that ‘a corporate officer who participates in the commission of a tort may be held individually liable,...regardless of whether the corporate veil is pierced,’<sup>3</sup> that “[i]n actions for fraud, corporate officers and



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directors may be held individually liable if they participated in or had knowledge of the fraud, even if they did not stand to gain personally,”<sup>4</sup> and that “officers, directors and agents of a corporation are jointly and severally liable for torts committed on behalf of a corporation and the fact that they also acted on behalf of the corporation does not relieve them from personal liability.”<sup>5</sup>

Interestingly, in *Stalker v. Stewart Tenants Corp.*,<sup>6</sup> a decision rendered just three months before *Fletcher*, a separate First Department panel held that the plaintiffs’ complaint stated causes of action for housing discrimination against the corporate defendant, but that the individual board members who had approved the discriminatory acts of the corporation were not themselves subject to personal liability. The *Stalker* court stated: “Although allegations of unequal treatment of shareholders may be sufficient to overcome the protection afforded directors under the business judgment rule [for purposes of “board” liability], individual directors may not be subject to liability absent allegations that they committed separate tortious acts.” Interestingly, since this decision was from a completely different group of Appel-

late Division judges, this decision could have an affect on how much credence the *Fletcher* decision receives.

### Impact of ‘Fletcher’

If *Fletcher* fails to be spurned by the Court of Appeals and its progeny of cases protecting board members by applying the business judgment rule, the decision will necessarily impact condo and co-op board membership in three ways: first, it will have a chilling effect on the willingness of qualified persons to volunteer to sit on these boards without compensation; second, it will permit individual board members to be personally liable for torts committed in their official capacity even though they believe they acted in good faith within the limits of their board authority; and, as discussed below, board members will have to serve at risk of incurring the costs to defend themselves, from charges of unlawful discriminatory acts or other bad faith conduct, without the protection of insurance.

The plaintiff in *Fletcher*, an African-American resident shareholder of The Dakota co-op in Manhattan, had applied for board approval to purchase an apartment adjacent to one he owns for the purpose of combining the two apartments. The board refused to approve the purchase, and the plaintiff alleged that, in refusing its approval, The Dakota and two of its directors had discriminated against him on the basis of race. The defendant directors contended that the discrimina-



tion claims should be dismissed against them because the complaint failed to allege that they had engaged in any acts separate and distinct from actions they took as board members. In response, the court stated that “there is no principle of corporate law that director liability arises only where the director commits a tort independent of the tort committed by the corporation itself.”

Although the *Fletcher* court intended to address the confusion it perceived in condo/co-op law, the decision raises new questions concerning the scope of board insurance coverage. Will carriers provide insurance protection to individual board members accused of wrongdoing when acting as “the board,” and will condo and co-op apartment owners readily volunteer to sit on boards whereby they will not only have increased exposure to potential personal tort liability, but whereby they may also incur personal responsibility for the legal costs of defending “board” action they honestly believed was rendered honestly and in good faith?

### Business Judgment Rule

Ever since the Court of Appeals decided *Matter of Levandusky v. One Fifth Avenue Apartment Corp.*,<sup>7</sup> New York courts have liberally applied the business judgment rule, originally developed in the context of commercial enterprises, to decisions made by condo and co-op boards in governing the buildings they control. As Levandusky explained, the business judgment rule “prohibits judicial inquiry into actions of corporate directors ‘taken in good faith and in the exercise of honest judgment in the lawful and legitimate furtherance of corporate purposes,’” and “[s]o long as the corporation’s directors have not breached their fiduciary obligation to the corporation, ‘the exercise of [their powers] for the common and general interests of the corporation may not be questioned, although the results show that what they did was unwise or inexpedient.’”

In adopting the business judgment rule as the standard for judicial review of the decisions of non-profit corporations, the Court of Appeals stated that “courts are ill equipped and infrequently called on to evaluate what are and must be essentially business judgments [and] by definition the responsibility for business judgments must rest with the corporate directors; their individual capabilities and experience peculiarly qualify them for the discharge of that responsibility.”

Levandusky further explained that “[t]he business judgment rule protects the board’s decisions and managerial authority from indiscriminate attack. *At the same time, it permits review of improper decisions, as when the challenger demonstrates that the board’s action has no legitimate relationship to the welfare of the cooperative, deliberately singles out individuals for harmful treatment, is taken without notice or consideration of the relevant facts, or is beyond the scope of the board’s authority.*” (Emphasis added). Nevertheless, the Court of Appeals held that “[s]o long as the board acts for the purposes of the cooperative, within the scope of its authority and in good faith, courts will not substitute their judgment for the board’s, [and] unless a resident challenging the board’s action is able to demonstrate a breach of this duty, judicial review is not available.”

Therefore, in *40 West 67th St. v. Pullman*,<sup>8</sup> the Court of Appeals further held that, in order to trigger judicial scrutiny of the actions of condo and co-op boards, “an aggrieved shareholder-tenant must make a showing that the board acted (1) outside the scope of its authority, (2) in a way that did not legitimately further the corporate purpose or (3) in bad faith.”

As a result, New York courts have generally insulated condo and co-op board members from personal tort liability for torts committed by “board” action, unless a board member could be said to have acted outside his or her official capacity and committed a tort separate and

independent of the tort for which he or she was responsible solely as a board member. Only then would piercing of the corporate veil be allowed.<sup>9</sup> As the *Pelton* court had held:

In bringing an action against the individual members of a cooperative or condominium board based on allegations of discrimination or similar wrongdoing, *plaintiffs were required to plead with specificity independent tortious acts by each individual defendant in order to overcome the public policy that supports the business judgment rule.* (Emphasis added).

However, the *Fletcher* court concluded (a) that “the *Levandusky* rule will not protect a board member where he engages in discriminatory conduct,” and (b) that “*Pelton* takes a rule that applies where a cooperative or condominium board is alleged to have breached a contractual obligation,<sup>10</sup> and incorrectly applies it where a board allegedly engaged in the intentional tort of discrimination.” In addition, the court stated that “*Pelton* failed to disentangle the principles of individual corporate director liability in the breach of contract context (understood to provide a shield against liability) from the principles applicable to tort cases (where there is no such shield).”

### D&O Policies

Accordingly, for tortious “board” action done in their official capacity, condo and co-op board members now face potential liability and attorney fee obligations from which they personally were previously immune. Directors & Officers (D&O) policies issued to condo and co-op boards by insurance carriers typically exclude from coverage “the willful violation of any law, statute or rule, committed by you or with your knowledge or consent.” This is in accord with New York public policy which precludes insuring a tortfeasor against liability for injury caused by an intentional

tort.<sup>11</sup>

Thus, D&O policies may not provide coverage for intentional torts, such as defamation (although negligent misrepresentation may be covered), or violations of statutory anti-discrimination laws in which intent is an element. "One who intentionally injures another may not be indemnified for any civil liability thus incurred. However, one whose intentional act causes an unintended injury may be so indemnified."<sup>12</sup> It is clear, therefore, that if the intent of the wrongful act is to cause the resultant injury (such as the harm caused by the invidious discrimination alleged in *Fletcher*), it cannot be indemnified as a matter of public policy.

The newfound exposure to potential personal liability facing condo and co-op board members is somewhat ameliorated by the fact, as the Court of Appeals stated in *Fitzpatrick v. American Honda Motor Co.*, that "an insurer's duty to defend is broader than its duty to indemnify."<sup>13</sup> The court explained that it "has repeatedly held that an insurer's duty to defend its insured arises whenever the allegations in a complaint state a cause of action that gives rise to the reasonable possibility of recovery under the policy." Consequently, the courts "have liberally construed an insurer's general duty to defend in order to ensure the adequate and timely investigation of a claim and defense of an insured, regardless of the insured's ultimate likelihood of success on the merits."<sup>14</sup> Moreover, the insurer is required to provide a defense, not only when the covered loss appears to lie within the "four corners of the complaint," but also when the insurer has "actual knowledge of facts establishing a reasonable possibility of coverage."<sup>15</sup>

Although the individual board member defendant is now at risk for his or her "board" actions, the insurance issues are similar to those which prevailed before *Fletcher* respecting the decisions made by insurers to defend allegedly tor-

tious "board" activity. Therefore, while board members cannot avoid the prospect of having to personally defend baseless law suits brought for actions they do in their official "board" capacity, they may still obtain the benefit of an insured defense with a reservation of rights by the carrier, so long as the complaint in the suit (and/or the insurer's actual knowledge of the facts underlying the suit) provides a reasonable possibility of coverage under the terms of the policy. However, although a board member may thus receive the benefit of a paid defense by an insurer, a board member found liable for the tort committed in his or her official board capacity will nevertheless be responsible for any monetary judgment rendered in the case.

Only time will tell the magnitude and long-ranging effect of the *Fletcher* decision, but every practitioner and board member must be aware of its existence.

**Adam Leitman Bailey** is the founding partner of Adam Leitman Bailey, P.C. **John M. Desiderio** is chair of the firm's Real Estate Litigation Group. **Colin E. Kaufman**, a partner at the firm, contributed to the preparation of this article.

#### Endnotes:

1. \_\_ AD3d \_\_, 948 NYS2d 263 (1st Dept. 2012).
2. 38 AD3d 1, 825 NYS2d 28 (1st Dept. 2006); see also *Brasseur v. Speranza*, 21 AD3d 297, 800 NYS2d 669 (1st Dept. 2005).
3. Citing *Peguero v. 601 Realty Corp.*, 58 AD3d 556, \_\_ NYS2d \_\_ (1st Dept. 2009).
4. Citing *Savannah T&T Co. v. Force One Express, Inc.*, 58 AD3d 409, \_\_ NYS2d \_\_ (1st Dept. 2009).
5. Citing *Marine Midland Bank v. Russo Produce Co.*, 50 NY2d 31 (1980); see also *Kleiner v. 245 East 87 Tenants Corp.*, 74 AD3d 448, 903 NYSd 356 (1st Dept. 2010); *Ackerman v. 305 East 40th Owners Corp.*, 1889 AD2d 665, 592 NYS2d 365 (1st Dept. 1993).
6. 93 AD3d 550, 940 NYS2d 600 (1st Dept. 2012) (Full disclosure: The authors' law firm represented the plaintiffs in *Stalker*. The ac-

tion has since been settled.)

7. 75 NY2d 530 (1990).

8. 100 NY2d 147 (2003).

9. See, e.g., *Peacock v. Herald Square Loft Corp.*, 67 AD3d 442, 889 NYS2d 22 (1st Dept. 2009); *Meadow Lane Equities Corp. v. Hill*, 63 AD3d 699, 880 NYS2d 338 (2d Dept. 2009); *Hill v. Murphy*, 63 AD3d 680, 881 NYS2d 133 (2d Dept. 2009); *Konrad v. 136 East 64th Street Corporation*, 246 AD2d 324, 667 NYS2d 354 (1st Dept. 1998); *DeCastro v. Bhokari*, 201 AD2d 382, 607 NYS2d 348 (1st Dept. 1994).

10. See *Murtha v. Yonkers Child Care Association, Inc.*, 45 NY2d 913 (1978).

11. See *Town of Massena v. Healthcare Underwriters Mutual Insurance Co.*, 98 NY2d 435 (2002).

12. *Public Service Mutual Insurance Co. v. Goldfarb*, 53 N.Y.2d 392, 399 (1981).

13. 78 NY2d 61, 65-66 (1991); see also *BP AC Corp. v. One Beacon Insurance Group*, 8 NY3d 708 (2007); *Fieldston Property Owners Assn. v. Hermitage Insurance Co.*, 16 NY3d 257 (2011).

14. *General Motors Acceptance Corp. v. Nationwide Insurance Co.*, 4 NY3d 451, 456 (2005); see also *Automobile Insurance Co. of Hartford v. Cook*, 7 NY3d 131, 137 (2006).

15. *Fitzpatrick v. American Honda Motor Co.*, supra, n. 13; see also *Technicon Electronics Co. v. American Home Assurance Co.* 74 NY2d 66, rearg. denied, 74 NY2d 893 (1989); *Meyers & Sons Corp. v. Zurich American Insurance Group*, 74 NY2d 298 (1989).

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## **Directors and Officers Discrimination Coverage**

Adam Leitman Bailey & Colin E. Kaufman

Adam Leitman Bailey, PC

The Appellate Division decision titled *Fletcher v. The Dakota Inc.* held that the business judgment rule does not protect individual condominium and cooperative board members from some personal tort liability. This alarming result has caused real estate and insurance attorneys to review directors and officers policies and the law to try determine whether their clients will be protected in the event of a claim of discrimination. This article answers the question in the negative and although the individual board members may receive a legal defense from the insurance carrier, any award against a board member may not be indemnified.

### **Insurance spreads the risk of loss from fortuitous events**

The purpose of insurance is to allow risk-spreading. A pool of insureds each contribute premiums. Each insured has a small but calculable likelihood of experiencing a substantial loss which is covered by the insurance contract. Upon the happening of a covered event which results in loss, the carrier is obliged to indemnify the insured for the covered portion of its loss. Because the events insured against must be dependent to a greater or lesser degree on chance, one cannot insure against a known predictable loss, such as normal wear and tear on one's machinery, or the near-certainty that known seepage will destroy the wallboard in one's cellar. See, generally Am Jur Insurance ¶ 2.

An obvious exception is that of life insurance, but while the death insured against is certain, its timing is not; life insurance proceeds on the theory that life spans in the population are statistically predictable and thus premiums, taken as a whole, will exceed dispensation of insurance awards. Carriers also predict that many term life insureds will drop their coverage after having paid in premiums and, obviously, not yet dying.

The types of insurance which may be written in New York are set forth generally in § 1113 of the Insurance Law. The insurance industry in New York (and throughout the US) is heavily regulated; see, generally, NY Insurance Law.

**Except for matters of public policy, insurance is totally a creature of contract**

An insurance contract is just that – a contract. No coverage exists unless it is specifically set forth in the policy. There are no rights arising by implication from the policy. The policy will define its terms (e.g., “insured”, “loss”), its coverage (i.e., that which it insures against), exclusions from coverage (e.g., pre-existing conditions), exclusions from coverage (too numerous even to start), duties of the parties in the event of a loss (e.g., notice to the carrier, protection of insured property), rights of the parties in the event of a loss (e.g. right of the carrier to inspect, right of the insured to contest carrier’s appraisal), the term of the policy and, in some instances, the geographic reach and limitations of the policy. The Courts are reluctant to intrude on the contract between a carrier and its insured: “...when statutes and Insurance Department regulations are silent, we are reluctant to inhibit freedom of contract by finding insurance policy clauses violative of public policy.” *Slayko v. Security Mutual Ins. Co.*, 98 N.Y.2d 289, 295, 774 N.E.2d 208, 212 (2002).

A failure to abide by the terms of the contract may well vitiate coverage (e.g., not allowing the carrier’s adjuster to inspect, failure to report a claim as soon as practicable resulting in prejudice to the carrier). As with any contract, an ambiguity is normally construed against the drafter (i.e. the carrier).

**As Determined by the Legislature and the Courts Some Events Cannot Be Insured Against As a Matter of Public Policy**

Public policy in New York does not permit insurance coverage against punitive damages. *Home Ins. Co. v Am. Home Prods. Corp.*, 75 N.Y.2d 196, 200, 551 N.Y.S.2d 481 (1990), and Circular Letter No. 6 (1994) of the Insurance Department.

In general, one cannot insure against intentional acts of the insured which bring about intended results (e.g. socking someone, causing injury or purposely

discriminating against a member of a protected class). The public policy in New York is that one cannot profit from its own wrongdoing and thus, for example, the well-known prohibition against killing one's spouse and collecting the life insurance proceeds. "As a matter of policy, conduct engaged in with the intent to cause injury is not covered by insurance." *Town of Massena v. Healthcare Underwriters Mutual Ins. Co.*, 98 N.Y.2d 435, 445, 779 N.E.2d 167, 171 (2002) [citations omitted].

Insurance companies cannot pay a judgment against an insured for punitive damages. The fact that punitive damages are sought in a lawsuit will not prevent an insured from receiving a legal defense paid by the insurer. However, if both actual and punitive damages are awarded, indemnification applies only to the actual damages awarded and not, as a matter of public policy (and generally as a matter of contract, also) to the punitive damages.

### **Department of Financial Services Anti-Discrimination Directive**

One area in which the public policy of the state is clear is that of discrimination liability. Circular Letter No. 6 (1994) of the Insurance Department (now the Department of Financial Services) which is binding on carriers for policies written in New York discusses liability for discriminatory acts. It permits coverage for acts of discrimination based solely on disparate impact (but not disparate treatment) or vicarious liability. However, it goes on to state that

Liability insurance coverage for intentional wrongs is, and has always been, prohibited on two related grounds: first, purposeful misconduct lacks the element of "fortuity" generally required of insurance contracts; and, second, indemnification of wrongful conduct that is intentional (and hence in theory may be deterred) is against public policy.

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Discrimination based upon disparate treatment is an intentional wrong whose resultant harm flows directly from the acts committed, and liability coverage for it is impermissible.



*See, American Mgmt. Ass'n v. Atlantic Ins. Co.*, 168 Misc.2d 971, 641 N.Y.S.2d 802 (N.Y.Sup.1996), *aff'd no op.*, 234 A.D.2d 112, 651 N.Y.S.2d 301 (1st Dept. 1996), *leave to appeal denied*, 90 N.Y.2d 888, 661 N.Y.S.2d 832, 684 N.E.2d 282 (1997).

### **The duty to defend is broader than the duty to indemnify**

If a claim is made against an insured under a liability policy, there are two issues to consider: whether the insured has a right to indemnification from the carrier and whether the insured has a right to a defense paid for by the carrier. The two issues are separable and as succinctly put by the Court of Appeals last year:

An insurer's duty to defend is liberally construed and is broader than the duty to indemnify, "in order to ensure [an] adequate ... defense of [the] insured," without regard to the insured's ultimate likelihood of prevailing on the merits of a claim. As we have explained on multiple occasions, the insurer's duty to defend its insured "arises whenever the allegations in a complaint state a cause of action that gives rise to the reasonable possibility of recovery under the policy". Moreover, if "any of the claims against an insured arguably arise from covered events, the insurer is required to defend the entire action". It is "immaterial that the complaint against the insured asserts additional claims which fall outside the policy's general coverage").

*Fieldston Property Owners Ass'n v. Hermitage Ins. Co.*, 16 N.Y.3d 257, 264–265, 920 N.Y.S.2d 763 (2011) [citations omitted].

As a practical matter, plaintiffs, including discrimination plaintiffs, nearly always allege or seek to allege facts or legal theories which bring the suit within coverage. As noted above in *Fieldston*, if one of the claims is arguably within coverage, the carrier is obliged to defend. Once the carrier is "at the table," settlement is much more likely; carriers have cash with which to settle and little interest in vindicating the acts or procedures of their insureds. See, e.g. *Bravo Realty Corp. v. Mt. Hawley Ins. Co.*, 33 A.D.3d 447, 823 N.Y.S.2d 360 (1<sup>st</sup>

Dept.2006) (“The record does not permit us to conclude, as a matter of law, that the damages claimed in the underlying action are barred by the policy's exclusions for known loss, expected or intended property damage, or discrimination...”).

### **Definitions and Exclusions**

Every policy contains definitions which may limit coverage for certain events or persons and exclusions which except certain events from coverage. In the attached exemplar Zurich policy, for instance, at the D & O coverage part, page 4 of 7, III H, the policy defines “Loss” in a manner which includes judgment and penalties only “...if such violation is not knowing or willful...” and goes on to say “Loss does not include “matters uninsurable under the law pursuant to which this policy is issued.”

In the Exclusions section pages 5-7 of 7 of the D & O coverage part, the policy excludes from coverage at IV E ERISA violations, at IV I an act “...based upon, arising out of or attributable to ... any willful violation of any statute or regulation committed by such Insured...”

It bears repeating that insurance is governed by contract. Even if the insured thought he, she or it was covered, if the loss is outside the definition of coverage in the policy, there is no coverage. If the loss is one which has been excluded, again there is no coverage.

One of the things we, as lawyers, should be doing is urging our clients to actually read their policies to see just what is covered and what is not. Except in very limited circumstances (e.g. *American Bldg. Supply Corp. v. Petrocelli Group, Inc.*, 19 N.Y.3d 730, --- N.E.2d ----, 2012 WL 5833969), policyholders will be conclusively presumed to have read and to know the contents of their policies, see *Metzger v. Aetna Ins. Co.*, 227 N.Y. 411, 125 N.E. 814 (1920).

## **Claims Made v Occurrence Policies**

Liability policies can be either “claims made” policies or “occurrence” policies. An occurrence policy covers a loss which occurred during the policy period, whether or not reported during the policy period. Thus, if a plaintiff sustained an injury in 2011, but did not make a claim or bring suit until 2012, the occurrence policy in effect in 2011 would cover since the occurrence happened during the policy period. If the same plaintiff sustained the same injury in 2011, but the insured had a claims made policy and the claim was not brought either in the policy period or the extended reporting period, the 2011 policy would not offer coverage and hopefully the client had a claims made policy in effect when the claim was made. See, *Segal Co. v. Certain Underwriters at Lloyds, London*, 21 A.D.3d 138, 142, 798 N.Y.S.2d 30, 32 (1<sup>st</sup> Dept. 2005).

Claims made policies are generally less expensive for the same amount of coverage since the carrier knows exactly when its period of liability ends.

### **How to Review an Insurance Policy to Determine Coverage and to File a Claim**

A lawyer consulted by a client who wants to make any insurance claim or against whom a claim is made or suit brought has to do several things.

You must review the policy (not just the declarations page, also known as the “dec sheet”). You have to ascertain coverage, i.e., was this policy in effect at the time of the loss, is this an arguably covered event, is there exclusionary language you have to consider. Review every policy which may potentially offer coverage, including excess or umbrella policies.

You (or the insured) have to notify the carrier(s) “as soon as reasonably practicable” – notice only to the client’s independent insurance broker is generally not notice to the carrier (the notice address is generally in the “Duties in the Event of Loss” section). The most effective method of giving notice is via the appropriate Acord (yes, it’s correctly spelled) form, see, [www.acord.org](http://www.acord.org). If you have a broker or agent give the actual notice, make sure you draft the events in the way most favorable to your client’s coverage position, given the facts known

to you and make sure you are copied on everything sent to the carrier. You must urge the client to document everything – pictures, receipts, correspondence, etc.

Generally, in a third-party claim (one brought by someone who is not the insured), the carrier will assign counsel to defend. As private counsel for your client, the client may wish you to monitor any litigation. If there is a question of whether coverage will be sufficient given the nature of the claim, it may be advisable for you to seek to be (or to engage) co-counsel to protect the client's assets in excess of coverage. In the event of a declination of coverage, you and your client should consider whether a declaratory judgment action to seek to secure coverage is warranted. If the carrier denies coverage both for indemnification and a defense, you will have to defend the action, while, at the same time seeking a declaratory judgment.

As a plaintiff's lawyer for someone who says he or she has been discriminated against, you must be aware of the myriad of City, state and federal statutes in the discrimination area (an area beyond the scope of this article). Assuming your factual investigation confirms the claim, you should draft so as to ensure that at least some of the claims fall within permissible coverage, if the facts permit. As private counsel for a discrimination defendant, you should seek to ensure that the carrier picks up the defense. You should also advise your client of their evidence preservation responsibilities.

### **Conclusion**

There is no good news in this article as far as coverage for board members who commit intentional torts and lose at trial as coverage will not be provided. Intentional discrimination cannot be covered as a matter of public policy, State Law and Departmental regulation.



CIRCULAR LETTER NO. 6 (1994)



STATE OF NEW YORK  
INSURANCE DEPARTMENT  
160 WEST BROADWAY  
NEW YORK, NEW YORK 10013

Circular Letter No. 6 (1994)  
May 31, 1994

TO: All Licensed Property/Casualty Insurers and Insurance Producer Organizations  
RE: Insurance Coverage for Discrimination Claims Based upon Disparate Impact and Vicarious

The Property & Casualty Insurance Bureau, in conjunction with the Office of General Counsel, has conducted a comprehensive analysis concerning the permissibility of coverage for acts of discrimination under liability insurance policies. Based on this analysis, the Department has concluded that liability coverage for acts of discrimination, when based solely on either disparate impact (as opposed to disparate treatment) or vicarious liability, would not be against public policy and therefore should be permitted.

Liability insurance coverage for intentional wrongs is, and has always been, prohibited on two related grounds: first, purposeful misconduct lacks the element of "fortuity" generally required of insurance contracts; and, second, indemnification of wrongful conduct that is intentional (and hence in theory may be deterred) is against public policy. In fact, court decisions suggest that the question of whether coverage is permissible or not turns most centrally upon the relationship between the wrongdoer's act and the resultant harm: if that relationship may be said to be sufficiently fortuitous, rather than intended, coverage is permitted. In other cases -- such as sexual battery against children -- where harm is so direct and inescapable a result of the act that no fortuity can reasonably or objectively be said to exist, coverage is impermissible.

Discrimination based upon disparate treatment is an intentional wrong whose resultant harm flows directly from the acts committed, and liability coverage for it is impermissible. The Department's longstanding prohibition against coverage for discrimination claims generally originated at a time, some thirty years ago, when virtually all discrimination claims were of this type.

In recent years, however, actions and recoveries under the various and evolving civil rights laws have increasingly been rooted in discrimination claims based upon disparate impact, rather than disparate treatment. In such cases, the discriminatory result does not directly proceed from specific discriminatory acts against individuals; in fact, such acts are not an element of the wrong and need play no part in the facts alleged. Rather, such suits are normally grounded upon statistical or other numerical profiles that reflect disparities between or among groups sufficient to support a finding of discrimination.

The basis for allowing employers coverage in actions alleging vicarious liability arising from the discriminatory acts of their employees is identical -- i.e., the lack of intentional conduct on the employer's part. An employer may be held vicariously liable for the discriminatory act of an employee even though it: (1) played no active role in the commission of the act; (2) did nothing whatever to aid or encourage its commission; and (3) may have done all that it possibly could to prevent it. In all situations except those involving discrimination, the Department permits coverage for claims of vicarious liability regardless of whether the underlying wrong is intentional or not. Therefore, this determination merely conforms the Department's treatment of discrimination with its treatment of all other kinds of vicarious liability claims.

Moreover, the Insurance Department concludes that the strong public policy against discrimination of any kind is, in fact, furthered by permitting coverage of the kinds described. By bringing to employers' attention practices that can potentially result in unlawful discrimination, insurers' loss prevention programs and underwriting standards should discourage such practices. Any employer who does not diligently attempt to modify employment procedures accordingly may well be denied insurance coverage. When unlawful acts of discrimination occur nonetheless, coverage will help ensure just compensation for victims.

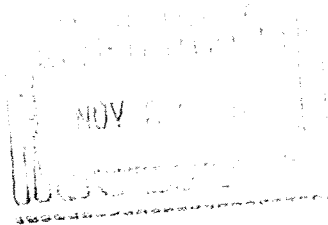
Finally, it should be noted that, in conformity with court decisions on the subject, it remains against public policy to provide insurance coverage for punitive damages.

In light of this Circular Letter, insurers may make appropriate form filings.

Very truly yours,

SALVATORE R. CURIALE  
SUPERINTENDENT OF INSURANCE

**EXEMPLAR POLICY**



**ZURICH®**

## **Not-For-Profit Select Liability Insurance Policy New York Declarations**

Insurance is provided by: **ZURICH AMERICAN INSURANCE COMPANY**  
1400 American Lane  
Schaumburg, Illinois 60196-1056

THE LIABILITY COVERAGE PARTS, IF PURCHASED, ARE ON A CLAIMS MADE AND REPORTED BASIS AND COVER ONLY CLAIMS FIRST MADE AGAINST THE INSUREDS DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD OR RUN-OFF COVERAGE PERIOD, IF EXERCISED, AND REPORTED TO THE UNDERWRITER AS REQUIRED BY THIS POLICY. THE LIMITS OF LIABILITY AND ANY RETENTION SHALL BE REDUCED AND MAY BE EXHAUSTED BY AMOUNTS INCURRED AS DEFENSE COSTS. PLEASE READ THIS POLICY CAREFULLY.

Policy Number: **MPL**

Item 1. **Policyholder** and Mailing Address: **Condominium Inc.**

**Bronx, NY 10467**

Item 2. Combined Aggregate Limit of Liability: **\$2,000,000 All Loss** under all Coverage Parts, combined, other than the Crime Coverage Part.

Item 3. **Policy Period:** From: **12:01 A.M. on 09/25/2011** To: **12:01 A.M. on 09/25/2012**  
Local time at the address shown in Item 1.

Item 4. **Extended Reporting Period:** **3-Year Additional Period for 100% of the Annual Premium**

Item 5. Notice to Underwriter:

A. Address for Notice of **Claim, Potential Claim or Coverage Event:**

Attn: **Zurich North America - Management Solutions Claims**  
P.O. Box 968041  
Schaumburg, IL 60196-8041

Fax: **(866) 255-2962**  
E-mail: **msgclms@zurichna.com**

B. Address for Notice of loss or situation under Crime Coverage Part:

Attn: **Zurich North America - Fidelity and Crime Bonds Claims**  
P.O. Box 968036  
Schaumburg, IL 60196

Fax: **(877) 812-5754**  
E-mail: **reportsfclaims@zurichna.com**

C. Address for All Other Notices:

Attn: **Zurich North America - Integrated Products**  
Financial Lines  
165 Broadway, 33rd Floor  
New York, NY 10006

Fax: **(866) 240-0155**  
E-mail: **usz\_zip@zurichna.com**

NYFTZ Class: **<BM756>** Class Code: **<BM760>**

**NOTICE: THESE POLICY FORMS AND THE APPLICABLE RATES ARE EXEMPT FROM THE FILING REQUIREMENTS OF THE NEW YORK STATE INSURANCE DEPARTMENT. HOWEVER, SUCH FORMS AND RATES MUST MEET THE MINIMUM STANDARD OF THE NEW YORK INSURANCE LAW AND REGULATIONS.**



Item 6. Coverage Schedule: This policy includes only those Coverage Parts or coverages designated below by "X" as purchased. If a Coverage Part or coverage is not expressly designated as purchased, this policy does not include such Coverage Part or coverage.

| Coverage Part |   | Purchased  | Coverage Part<br>Limit of Liability  | Retention   | Coinsurance   | Pending or<br>Prior Date     |
|---------------|---|--|--|---|---|------------------------------|
| A.            | Management and<br>Entity Liability  |  |  |   |   |                              |
|               | 1. Insuring Clause<br>A Insured<br>Person Liability                       | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No |  | \$5,000 Each Claim<br>per <b>Insured<br/>Person</b> , subject to<br>a maximum of<br>for <b>Loss</b><br>arising from all<br><b>Claims</b> alleging the<br>same <b>Wrongful<br/>Act or Interrelated<br/>Wrongful Acts</b> . | of the<br>first<br>\$1,000,000 of<br><b>Loss</b> per<br><b>Insured<br/>Person</b> . | 09/24/2010                   |
|               | 2. Insuring Clause<br>B Entity<br>Reimbursement                           |  | \$1,000,000 Aggregate<br>Limit of Liability  |   |   | 09/24/2010                   |
|               | 3. Insuring Clause<br>C Entity Liability                                  |  |  |   |   | 09/24/2010                   |
|               | 4. Insuring Clause<br>D Retired<br>Independent<br>Directors<br>Liability  | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | \$25,000 Separate<br>Limit of Liability Each<br><b>Retired Independent<br/>Director</b> for All<br><b>Claims</b> , subject to a<br>Separate Aggregate<br>Limit of Liability for All<br><b>Retired Independent<br/>Directors</b> All <b>Claims</b><br>\$250,000 |   |   | 09/24/2010                   |
| B.            | Employment<br>Practices and Third<br>Party<br>Discrimination<br>Liability | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | \$1,000,000 Aggregate<br>Limit of Liability<br><br>\$1,000,000 Aggregate<br>Sublimit for all <b>Third<br/>Party Discrimination<br/>Claims</b>  | \$5,000 Each<br><b>Employment<br/>Practices Claim</b><br><br>\$5,000 Each <b>Thrd<br/>Party<br/>Discrimination<br/>Claim</b>  |   | 09/24/2010<br><br>09/24/2010 |
| C.            | Fiduciary Liability   | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | Aggregate Limit<br>of Liability  | Each <b>Claim</b>   |   |                              |
| D.            | Crime   | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | See Crime Coverage Part Supplemental<br>Declarations   |   |   | None                         |

Item 6. Coverage Schedule (continued):

**Liability Coverage Parts** which share Limits of Liability:

- ☒ A. Management and Entity Liability (Except Insuring Clause D Separate Limits of Liability)
- ☒ B. Employment Practices and Third Party Discrimination Liability
- ☐ C. Fiduciary Liability
- ☐ D. None

Item 7. Additional Limit of Liability for **Defense Costs**: \$1,000,000

Item 8. Policy Premium: \$2,912

Item 9. Endorsements Effective at Inception: See attached Schedule



## Important Notice – In Witness Clause

In return for the payment of premium, and subject to the terms of this policy, coverage is provided as stated in this policy.

IN WITNESS WHEREOF, this Company has executed and attested these presents and, where required by law, has caused this policy to be countersigned by its duly Authorized Representative(s).

*Nancy D. Mueller*

President

*Dennis J. Kennedy*

Corporate Secretary

**QUESTIONS ABOUT YOUR INSURANCE?** Your agent or broker is best equipped to provide information about your insurance. Should you require additional information or assistance in resolving a complaint, call or write to the following (please have your policy or claim number ready):

Zurich in North America  
Customer Inquiry Center  
1400 American Lane  
Schaumburg, Illinois 60196-1056  
1-800-382-2150 (Business Hours: 8am - 4pm [CT])  
Email: [info.source@zurichna.com](mailto:info.source@zurichna.com)

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## Not-For-Profit Select Insurance Policy Form and Endorsement Schedule

| Policy No. | Eff. Date of Pol. | Exp. Date of Pol. | Eff. Date of End. | Add'l Prem. | Return Prem. |
|------------|-------------------|-------------------|-------------------|-------------|--------------|
|            | 09/25/2011        | 09/25/2012        | 09/25/2011        | N/A         | N/A          |

**Policyholder:** Toren Condominium Inc.

| Form Name  | Form Number      | Edition Date | Endorsement No. |
|--|------------------|--------------|-----------------|
| New York Free Trade Zone Notice  | U-GU-1029-A NY   | 04/2010      |                 |
| Disclosure of Important Information Relating to Terrorism Risk Insurance Act                                       | U-GU-630-C CW    | 12/2007      |                 |
| Cap On Losses From Certified Acts Of Terrorism   | U-GU-767-A CW    | 01/2008      |                 |
| Not-For-Profit Select Insurance Policy New York Declarations   | U-NPL-D-100-A NY | 05/2010      |                 |
| Important Notice - In Witness Clause   | U-GU-319-F CW    | 01/2009      |                 |
| Not-For-Profit Select Insurance Policy General Terms and Conditions  | U-NPL-110-B CW   | 06/2010      |                 |
| Not-For-Profit Select Insurance Policy Management and Entity Liability Coverage Part                               | U-NPL-120-B CW   | 06/2010      |                 |
| Not-For-Profit Select Insurance Policy Employment Practices and Third Party Discrimination Liability Coverage Part | U-NPL-130-A CW   | 04/2009      |                 |
| Not-For-Profit Select Insurance Policy Crime Coverage Part   | U-NPL-150-A CW   | 04/2009      |                 |
| Exclude Designated Persons or Classes of Persons Endorsement   | U-ML-1014-A CW   | 04/2010      | 1               |
| Excluded Entity(ies) and Wrongful Act(s)   | U-NPL-225-A CW   | 05/2010      | 2               |
| IRCA Claims Endorsement  | U-NPL-227-A CW   | 05/2010      | 3               |
| Homeowners Association-Property Manager Endorsement  | U-NPL-MAN-A CW   | 07/2011      | 4               |
| Regulatory Claim Sublimit Endorsement  | U-PCL-MAN-A CW   | 01/2011      | 5               |
|  |                  |              |                 |
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# Not-For-Profit Select Insurance Policy General Terms and Conditions

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## General Terms and Conditions

In consideration of payment of the premium and in reliance upon the statements made in the **Application**, which is made a part hereof, and subject to the Declarations and the definitions, exclusions, limitations, conditions, provisions and other terms of this policy (including any endorsements hereto), the Underwriter and the **Insureds** agree as follows:

### I. TERMS AND CONDITIONS

This policy is comprised of these General Terms and Conditions, the Declarations, various Coverage Parts and endorsements, if applicable, and the **Application**. Although various Coverage Parts may be referenced in this policy, a Coverage Part is included within this policy and affords coverage only if that Coverage Part is designated as being purchased in the Coverage Schedule in Item 6 of the Declarations.

Except for these General Terms and Conditions or unless stated to the contrary in any Coverage Part or endorsement, the terms and conditions of each Coverage Part of this policy apply only to that Coverage Part and shall not apply to any other Coverage Part of this policy. Any defined term referenced in the General Terms and Conditions but defined in a Coverage Part shall, for purposes of coverage under that Coverage Part, have the meaning set forth in that Coverage Part. If any provision in the General Terms and Conditions is inconsistent or in conflict with the terms and conditions of any Coverage Part, the terms and conditions of such Coverage Part shall control for purposes of that Coverage Part.

### II. GENERAL DEFINITIONS

When used in this policy, the following terms, whether in the singular or plural, are defined as follows:

#### A. **Application** means:

1. all materials and information, including all signed applications and any materials attached thereto or incorporated therein, submitted by or on behalf of the **Insureds** to the Underwriter in connection with the underwriting of this policy or any policy issued by the Underwriter of which this policy is a direct or indirect renewal or replacement; and
2. all publicly available documents prepared by the **Entity** which are reviewed by the Underwriter in connection with the underwriting of this policy or any policy issued by the Underwriter of which this policy is a direct or indirect renewal or replacement.

The **Application** is deemed attached to and incorporated into this policy.

- B. **Claim** means, with respect to any **Liability Coverage Part**, those demands, proceedings, investigations and other matters defined as a **Claim** in such Coverage Part.
- C. **Coverage Event** means, with respect to a **Non-Liability Coverage Part**, the event or loss which must occur or be sustained or discovered in order to invoke coverage under such Coverage Part.
- D. **Defense Costs** means that part of **Loss** consisting of reasonable costs, charges, fees (including but not limited to attorney's fees and expert's fees) and expenses (other than regular or overtime wages, salaries or fees of the directors, officers or employees of the **Entity**) incurred by the **Insureds** (i) in defending or investigating **Claims**, including costs assessed against the **Insureds** in a **Claim** or the premium for appeal, attachment or similar bonds, provided the Underwriter shall have no obligation to apply for or furnish such bonds, or (ii) at the Underwriter's request to assist the Underwriter in investigating a **Claim**.
- E. **Domestic Partner** means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Entity**.

- F. **Employee** means the following:
1. any natural persons in the regular service of the **Entity** in the ordinary course of the **Entity's** business and whom the **Entity** compensates by salary, wages and/or commissions and has the right to govern and direct in the performance of such service, including any such natural persons who are leased, temporary, part-time or seasonal employees of the **Entity**;
  2. any natural person independent contractors who are treated under applicable law as employees of the **Entity**; and
  3. any volunteers of the **Entity**;
- provided any coverage for any such leased employees or independent contractors shall be specifically excess of any indemnification or insurance otherwise available to such leased employees or independent contractors from the applicable leasing company or any other source.
- G. **Employment Practices Claim** means a **Claim** which is brought and maintained by or on behalf of any past, present, future or prospective **Employee(s)** of the **Entity** against any **Insured** for any **Wrongful Act** in connection with any actual or alleged:
1. breach of any express or implied employment contract;
  2. violation of any law or public policy concerning discrimination in employment whether based upon race, national origin, religion, sex, age, sexual preference, marital status, disability, medical leave or genetic predisposition;
  3. employment-related torts including without limitation wrongful termination, failure or refusal to hire or promote; wrongful discipline; wrongful reference, deprivation of a career opportunity, demotion or adverse change in terms, conditions or status of employment; wrongful failure to grant tenure; humiliation; retaliation for asserting a legal right; workplace harassment including without limitation offensive, intimidating, coercive or unwelcome conduct, advances, contact or communications; negligent hiring, retention, supervision, training or performance evaluation; and employment-related misrepresentation, defamation, invasion of privacy or infliction of emotional distress.
- H. **Entity** means, collectively, the **Policyholder** and its **Subsidiaries**, including any such organization as a debtor in possession under United States bankruptcy law or an equivalent status under the law of any other country.
- I. **Environmental Event** means:
1. the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of **Pollutants** or **Greenhouse Gases** into or on real or personal property, water or the atmosphere; or
  2. any direction or request that the **Entity** or the **Insured Persons** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants** or **Greenhouse Gases**, or any voluntary decision to do so,
- whether or not such **Greenhouse Gases** are **Pollutants**.
- J. **ERISA** means the Employee Retirement Income Security Act of 1974, as amended.
- K. **Executive Officers**, either in the singular or plural, means with respect to any **Entity** its chair, president, chief executive officer, chief financial officer, in-house general counsel, and solely with respect to the Employment Practices Liability Coverage Part, if purchased, the human resource manager, or, if an **Entity** does not have one of such positions, any equivalent executive position in such **Entity**.
- L. **Extended Reporting Period** means the period of the extended coverage under the **Liability Coverage Parts**, as described in Item 4.A of the Declarations.
- M. **Extradition** means any formal process by which an **Insured Person** located in any country is or is sought to be surrendered to any other country for trial, or otherwise to answer any criminal accusation, for a **Wrongful Act**.
- N. **Financial Impairment** means the status of the **Entity** resulting from the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Entity**, or the **Entity** becoming a debtor in possession.

- O. **Greenhouse Gases** means carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulphur hexafluoride (SF<sub>6</sub>), or any other emission or substance defined by applicable law as a Greenhouse Gas.
- P. **Insured Persons**, either in the singular or plural, means with respect to each Coverage Part the natural persons defined as **Insured Persons** in such Coverage Part.
- Q. **Insureds**, either in the singular or plural, means with respect to each Coverage Part the entities, plans and natural persons defined as **Insureds** in such Coverage Part.
- R. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.
- S. **IRC** means the Internal Revenue Code of 1986, as amended.
- T. **Liability Coverage Part** means any of the following: the Management and Entity Liability Coverage Part, the Employment Practices and Third Party Discrimination Liability Coverage Part and the Fiduciary Liability Coverage Part, if purchased as set forth in the Coverage Schedule in Item 6 of the Declarations.
- U. **Loss** means:
1. with respect to any **Liability Coverage Part**, the amounts defined as **Loss** in such Coverage Part; and
  2. with respect to any **Non-Liability Coverage Part**, the amounts covered under such Coverage Part.
- V. **Managers**, either in the singular or plural, means any natural person who was, now is or shall become (i) a manager, member of the Board of Managers or equivalent executive of an **Entity** that is a limited liability company, and (ii) a general partner, managing partner or equivalent executive of an **Entity** that is a partnership or joint venture.
- W. **Non-Liability Coverage Part** means the Crime Coverage Part, if purchased as set forth in the Coverage Schedule in Item 6 of the Declarations.
- X. **Plans**, either in the singular or plural, means the plans and programs defined as **Plans** in the Fiduciary Liability Coverage Part, if purchased.
- Y. **Policy Period** means the period set forth in Item 3 of the Declarations, subject to prior termination in accordance with Section XV of these General Terms and Conditions.
- Z. **Policyholder** means the organization designated in Item 1 of the Declarations.
- AA. **Pollutants** means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by, the United States Environmental Protection Agency or a state, county, municipality or locality counterpart thereof. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, silica, noise, fungus (including mold, mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi, but not any fungi intended by the **Insured** for consumption) and electric or magnetic or electromagnetic field. Such matters shall include, without limitation, solids, liquids, gaseous, thermal, biological, nuclear or radiological irritants, contaminants or smoke, soot, fumes, acids, alkalis, chemicals or waste materials.
- BB. **Run-Off Coverage Period** means the period of the extended coverage under the **Liability Coverage Parts**, as described in Subsection VI.B of these General Terms and Conditions.
- CC. **Subsidiary**, either in the singular or plural, means:
1. any non-profit organization in which more than fifty percent (50%) of the outstanding voting securities or voting rights representing the present right to vote for election of directors, trustees, **Managers** or equivalent executives is owned or controlled, directly or indirectly, in any combination, by one or more **Entities**;
  2. any non-profit organization in which one or more **Entities**, in any combination, directly or indirectly have the right, pursuant to a written contract with or the bylaws, charter, operating agreement or similar document of such organization, to elect or appoint a majority of the directors, trustees, **Managers** or equivalent executives of such organization;
  3. any foundation, charitable trust or political action committee controlled or exclusively sponsored by one or more **Entities**; and



4. any for-profit organization specifically included as a **Subsidiary** by endorsement to this policy.

DD. **Third Party Discrimination Claim** means a **Claim**, other than an **Employment Practices Claim**, which is brought and maintained by or on behalf of any natural person (including customers, vendors, service providers and other business invitees) other than an **Insured Person** for an actual or alleged violation of any law or public policy concerning discrimination or harassment.

EE. **Wrongful Acts** means, with respect to any **Liability Coverage Part**, the acts, errors, omissions and other matters defined as **Wrongful Acts** in such Coverage Part.

### III. LIMITS OF LIABILITY, RETENTION AND SINGLE CLAIMS

#### A. LIMITS OF LIABILITY FOR LIABILITY COVERAGE PARTS

##### 1. Combined Aggregate Limit of Liability

The amount set forth in Item 2 of the Declarations shall be the Underwriter's maximum aggregate liability for all **Loss** covered under all Coverage Parts, combined, other than the Crime Coverage Part.

##### 2. Liability Coverage Part Limit of Liability

The respective Limit of Liability for each **Liability Coverage Part**, as set forth in the Coverage Schedule in Item 6 of the Declarations, shall be the Underwriter's maximum aggregate liability for all **Loss** on account of all **Claims** under such **Liability Coverage Part**. The Limit of Liability for each **Liability Coverage Part** shall be part of and not in addition to the Combined Aggregate Limit of Liability as set forth in Item 2 of the Declarations.

##### 3. Shared Liability Coverage Part Limit of Liability

If a Limit of Liability for a **Liability Coverage Part** is designated in the Coverage Schedule in Item 6 of the Declarations as a shared Limit of Liability, then the Underwriter's maximum aggregate liability for all **Loss** covered under all such shared **Liability Coverage Parts** combined shall be the largest of such shared Limits of Liability. Such shared Limit of Liability shall be part of and not in addition to the Combined Aggregate Limit of Liability as set forth in Item 2 of the Declarations. This paragraph further limits the Underwriter's maximum liability under each such **Liability Coverage Part** and does not increase the respective separate Limit of Liability for each such **Liability Coverage Part**.

##### 4. Sublimit of Liability

Any Sublimit of Liability set forth in the Coverage Schedule in Item 6 of the Declarations shall be part of and not in addition to the Combined Aggregate Limit of Liability set forth in Item 2 of the Declarations and the applicable Coverage Part Limit of Liability.

##### 5. Defense Costs Within Limit of Liability

**Defense Costs** are part of and not in addition to the Limits of Liability applicable to the **Liability Coverage Parts**, and the payment by the Underwriter of **Defense Costs** reduces such Limits of Liability. If the applicable Limit of Liability is exhausted by payment of **Loss**, the Underwriter's obligations, including without limitation its duty to defend, shall be completely fulfilled and extinguished. Subject to Section XIV of these General Terms and Conditions, the Underwriter is entitled to pay **Loss** as it becomes due and payable by the **Insureds**, without consideration of other future payment obligations.

##### 6. Additional Limit of Liability for Defense Costs

If the Limit of Liability applicable to **Loss** covered under a **Liability Coverage Part** is exhausted by payments by the Underwriter, then the Underwriter's liability for any **Defense Costs** which are covered under such **Liability Coverage Part** and which are incurred thereafter on account of a **Claim** separate from the **Claim(s)** which exhausted such Limit of Liability shall be subject to an additional Limit of Liability in an amount set forth in Item 7 of the Declarations.

7. **Extended Reporting Period or Run-Off Coverage Period Limit of Liability**

The Limit of Liability for any **Extended Reporting Period** or **Run-Off Coverage Period** under the **Liability Coverage Parts** shall be part of and not in addition to the applicable Limits of Liability for the **Liability Coverage Parts** as set forth in Items 2 and 6 of the Declarations. If more than one individual **Extended Reporting Period** or **Run-Off Coverage Period** is elected pursuant to Subsection IV.C of these General Terms and Conditions, the Underwriter's maximum aggregate liability under all such individual **Extended Reporting Periods** or **Run-Off Coverage Periods**, combined, shall not exceed the Underwriter's maximum aggregate liability for any one individual **Extended Reporting Period** or **Run-Off Coverage Period**; provided, however, that if the Underwriter reasonably concludes when an **Insured Person** elects such an individual **Extended Reporting Period** or **Run-Off Coverage Period** that applicable law may prohibit the enforceability of this sentence, the Underwriter shall have the right to condition such election by the **Insured Person** upon the **Insured Person's** acceptance of an endorsement to this policy which creates a separate, but lower, limit of liability applicable only to such **Insured Person's** coverage under such **Extended Reporting Period** or **Run-Off Coverage Period**.

B. **RETENTION FOR LIABILITY COVERAGE PARTS**

The Underwriter's liability under the **Liability Coverage Parts** with respect to **Loss** on account of each **Claim** shall apply only to that part of **Loss** which is excess of the applicable Retention set forth in the Coverage Schedule in Item 6 of the Declarations, and such Retention shall be borne by the **Insureds** uninsured and at their own risk. No Retention shall apply to **Loss** incurred by an **Insured Person** for which the **Entity** is not permitted by common or statutory law to indemnify, or is not financially able to indemnify by reason of **Financial Impairment**.

C. **LIMITS OF LIABILITY AND DEDUCTIBLE FOR NON-LIABILITY COVERAGE PART**

The Underwriter's maximum liability and the applicable Deductible under the **Non-Liability Coverage Parts** shall be the respective Limits of Liability and Deductible amounts as set forth in either the Coverage Schedule in Item 6 of the Declarations or the respective Coverage Part Declarations, if any. Such Limits of Liability and Deductible amounts will be applied as described in the respective **Non-Liability Coverage Part**.

D. **SINGLE CLAIMS**

All **Claims** under the **Liability Coverage Parts** which arise out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of **Insureds** shall be deemed one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made against any **Insured**, regardless of whether such date is before or during the **Policy Period**.

E. **SINGLE CLAIM COVERED BY MULTIPLE LIABILITY COVERAGE PARTS**

If a single **Claim** (as described in Subsection III.D above) is covered in whole or in part under more than one **Liability Coverage Part**:

1. the applicable Retention under each such **Liability Coverage Part** shall be applied with respect to coverage for such **Claim** under such **Liability Coverage Part**, provided the sum of all applicable Retentions under all such **Liability Coverage Parts** shall not exceed the largest of such applicable Retentions; and
2. the remaining applicable Limits of Liability under each such **Liability Coverage Part** shall apply with respect to coverage for such **Claim** under such **Liability Coverage Part**, provided the Underwriter's maximum aggregate liability for all **Loss** covered under all such **Liability Coverage Parts**, combined, on account of such **Claim** shall not exceed the largest of such remaining applicable Limits of Liability. This paragraph 2 does not increase the Underwriter's maximum liability with respect to such **Claim**, which is also subject to the Combined Aggregate Limit of Liability as set forth in Item 2 of the Declarations and any Shared Limit of Liability described in Sub. III.A.3 above.

IV. **LIABILITY COVERAGE PART EXTENSIONS**

A. **ESTATES, LEGAL REPRESENTATIVES, SPOUSES AND DOMESTIC PARTNERS**

The estates, heirs, legal representatives, assigns, spouses and **Domestic Partners** of **Insured Persons** shall be considered an **Insured Person** under the **Liability Coverage Parts** but only for a **Claim** arising solely out of their status as such and, in the case of a spouse or **Domestic Partner**, where such **Claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured Person** to the spouse

or **Domestic Partner**. No coverage is provided for any wrongful act or omission of an estate, heir, legal representative, assign, spouse or **Domestic Partner**. All provisions in these General Terms and Conditions and the respective **Liability Coverage Part** applicable to **Loss** incurred by the **Insured Person** shall also apply to loss incurred by such estates, heirs, legal representatives, assigns, spouses and **Domestic Partners**.

#### B. EXTENDED REPORTING PERIOD

If the Underwriter or **Policyholder** terminates or refuses to renew this policy other than for nonpayment of premium, the **Insureds** shall have the right, upon payment of the additional premium set forth in Item 4.A.1 of the Declarations, to an extension of the coverage granted by the **Liability Coverage Parts** for the **Extended Reporting Period** set forth in Item 4.A.2 of the Declarations following the effective date of termination or nonrenewal, but only with respect to any **Wrongful Act** taking place prior to the effective date of such termination or nonrenewal. This right of extension shall lapse unless written notice of such election, together with payment of the additional premium due, is given by the **Insureds** to the Underwriter within thirty (30) days following the effective date of termination or nonrenewal.

The offer of renewal terms and conditions or premiums different from those in effect prior to renewal shall not constitute refusal to renew.

The entire additional premium for the **Extended Reporting Period** shall be deemed fully earned at the inception of the **Extended Reporting Period**.

The **Insureds** shall not be entitled to elect the **Extended Reporting Period** if a **Run-Off Coverage Period** is purchased.

#### C. INDIVIDUAL INSURED PERSON EXTENDED COVERAGE

If with respect to the Management and Entity Liability Coverage Part or the Fiduciary Liability Coverage Part the **Insureds** are entitled to but do not exercise the **Extended Reporting Period** or the **Run-Off Coverage Period**, any **Insured Person** shall have the right to elect an **Extended Reporting Period** or **Run-Off Coverage Period** under such Coverage Part for only such **Insured Person**, subject to the provisions of this policy. The extension of coverage pursuant to any such individual **Extended Reporting Period** or **Run-Off Coverage Period** shall apply only with respect to coverage under such Coverage Part for **Loss** which is incurred by the **Insured Person** who elected such extension of coverage and which is not indemnified by the **Entity**, and shall not apply to any other coverage afforded under this policy.

This right of extension shall lapse unless written notice of such election is given by the **Insured Person** to the Underwriter within thirty (30) days after the **Policyholder's** right to exercise the **Extended Reporting Period** has expired, or with respect to the **Run-Off Coverage Period**, within thirty (30) days after the end of the **Policy Period**. If one or more **Insured Persons** give such written notice within such thirty (30) day period, then promptly after expiration of such thirty (30) day period the Underwriter shall notify all the **Insured Persons** who elected such individual **Extended Reporting Period** or **Run-Off Coverage Period** of the additional premium payable by each such **Insured Person** for such extension. This extension of coverage for any such **Insured Person** is conditioned upon such **Insured Person** paying such additional premium within fifteen (15) days after being notified of the amount of the additional premium.

#### V. ALLOCATION

If in any **Claim** under the **Liability Coverage Parts** the **Insureds** incur both **Loss** covered by this policy and loss not covered by this policy either because the **Claim** against the **Insureds** includes both covered and uncovered matters or because the **Claim** is made against both **Insureds** who are afforded coverage for such **Claim** and others, including **Insureds**, who are not afforded coverage for such **Claim**, the **Insureds** and the Underwriter shall use their best efforts to allocate such amount between covered **Loss** and uncovered loss based upon the relative legal and financial exposures of the parties to covered and uncovered matters; provided however that one hundred percent (100%) of any such **Defense Costs** shall be allocated to covered **Loss** if and to the extent such **Defense Costs** are incurred by covered **Insureds** and are in part covered and in part not covered by this policy solely because the **Claim** against the **Insureds** includes both covered and uncovered matters.

Nothing in this Section V. shall limit, waive or remove the rights of any **Insured** or the Underwriter to assert claims for indemnity or contribution against third parties pursuant to any statutory or common law or any provision of this policy.

In any arbitration, suit or other proceeding among the Underwriter and the **Insureds** or the **Entity**, no presumption shall exist concerning what is a fair and proper allocation between covered **Loss** and uncovered loss.

## VI. CHANGES IN EXPOSURE

### A. NEW ORGANIZATIONS

If before or during the **Policy Period** the **Entity** acquires or creates a new non-profit **Subsidiary** or acquires a non-profit entity by merger or consolidation, coverage under any **Liability Coverage Part** automatically shall apply to the new organization and its **Insureds**, provided such coverage shall apply only with respect to **Claims** for **Wrongful Acts** taking place after such acquisition or creation.

### B. ACQUISITION OF POLICYHOLDER

If during the **Policy Period** the **Policyholder** merges into or consolidates with another organization such that the **Policyholder** is not the surviving entity, or another organization or person or group of organizations and/or persons acting in concert acquires securities or voting rights which result in ownership or voting control by the other organization(s) or person(s) of more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of directors, trustees or equivalent executives of the **Policyholder**, then coverage under any **Liability Coverage Part** shall continue until the termination of this policy or, if the **Run-Off Coverage Period** is purchased with respect to the **Liability Coverage Part**, the expiration of the **Run-Off Coverage Period**, provided such coverage shall apply only with respect to **Claims** for **Wrongful Acts** taking place prior to such merger, consolidation or acquisition.

The right to exercise the **Run-Off Coverage Period** with respect to the **Liability Coverage Parts** shall lapse unless the **Policyholder** gives written notice of such exercise to the Underwriter prior to expiration of the **Policy Period**, including the requested length of the **Run-Off Coverage Period** which shall not exceed six (6) years after such merger, consolidation or acquisition. If the **Policyholder** requests a **Run-Off Coverage Period** as described in Item 4.B.2 of the Declarations, then the additional premium for such **Run-Off Coverage Period** shall be as described in Item 4.B.1 of the Declarations. If the **Policyholder** requests another **Run-Off Coverage Period**, the Underwriter shall then notify the **Policyholder** of the additional premium for the requested **Run-Off Coverage Period**. The **Policyholder** shall promptly pay such additional premium as a condition precedent to commencement of the **Run-Off Coverage Period**.

The entire additional premium for the **Run-Off Coverage Period** shall be deemed fully earned at the inception of the **Run-Off Coverage Period**.

The **Policyholder** shall not be entitled to elect the **Run-Off Coverage Period** if the **Extended Reporting Period** is elected pursuant to Subsection IV.B.

### C. CESSATION OF SUBSIDIARIES

If before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage with respect to such **Subsidiary** and its **Insureds** shall continue until termination of this policy, provided such coverage shall apply (i) with respect to any **Liability Coverage Parts**, only with respect to **Claims** for **Wrongful Acts** taking place prior to the date such organization ceased to be a **Subsidiary**, and (ii) with respect to any **Non-Liability Coverage Part**, only with respect to **Coverage Events** taking place prior to the date such organization ceased to be a **Subsidiary**.

### D. CESSATION OF PLANS

If before or during the **Policy Period** a **Plan** is terminated, coverage for such **Plan** and its **Insureds** under the Fiduciary Liability Coverage Part, if purchased, shall continue until termination of such Coverage Part with respect to **Wrongful Acts** taking place before or after such termination.

## VII. DEFENSE AND SETTLEMENT

### A. LIABILITY COVERAGE PART DEFENSE AND SETTLEMENT

1. The Underwriter shall have the right and duty to defend any **Claim** which is against the **Insureds** and which is covered by the **Liability Coverage Parts**. Coverage shall apply even if any of the allegations are groundless, false or fraudulent. The Underwriter's duty to defend any **Claim** shall cease upon exhaustion of the applicable Limit of Liability.

2. Without limiting the Underwriter's right to defend any **Claim**:

- a. The **Insureds** agree not to offer to settle or to settle any **Claim**, incur any **Defense Costs** or otherwise assume any contractual obligation, admit any liability or stipulate to any judgment with respect to any **Claim** without the Underwriter's written consent, which shall not be unreasonably withheld. The Underwriter shall not be liable for or as a result of any offer to settle, settlement, **Defense Costs**, assumed obligation, admission or stipulated judgment to which it has not given its prior consent.
- b. The Underwriter shall have the right and shall be given the opportunity to make any investigation it deems necessary and to effectively associate with the **Insureds** in the investigation, defense and settlement, including but not limited to the negotiation of a settlement, of any **Claim** that is or reasonably could be covered in whole or in part by the **Liability Coverage Parts**.

3. The Underwriter may, with the consent of the **Insured**, make any settlement of any **Claim** covered under a **Liability Coverage Part** which the Underwriter deems expedient. Solely with respect to the Employment Practices and Third Party Discrimination Liability Coverage Part, if purchased, if the **Insured** against whom the **Claim** is made withholds consent to any settlement acceptable to the claimant and recommended by the Underwriter (a "Proposed Settlement"), the Underwriter's liability for all **Loss**, including **Defense Costs**, incurred by such **Insured** on account of such **Claim** shall not exceed:

- a. the amount of the Proposed Settlement plus **Defense Costs** incurred up to the date of the **Insured's** refusal to consent to Proposed Settlement of such **Claim**; and
- b. eighty percent (80%) of any **Loss**, including **Defense Costs**, in excess of the amount referenced in paragraph a above, incurred in connection with such **Claim**; subject in all events to the applicable Retention and Limit of Liability. The remaining twenty percent (20%) of any **Loss**, including **Defense Costs**, in excess of the amount referenced in paragraph a above will be borne by the **Insured** uninsured and at its own risk, notwithstanding anything to the contrary contained in Section V, Allocation.

B. COOPERATION

With respect to all Coverage Parts, the **Insureds** agree to provide the Underwriter with all information, assistance and cooperation which the Underwriter reasonably requests and agree that in the event of a **Claim** or **Coverage Event**, the **Insureds** will do nothing that shall prejudice the Underwriter's position or its potential or actual rights of recovery.

VIII. REPORTING AND NOTICE

A. Solely with respect to any **Liability Coverage Part**:

1. As a condition precedent to their rights under any **Liability Coverage Part**, the **Insureds** shall give to the Underwriter written notice of any **Claim** made against the **Insureds** as soon as practicable after an **Executive Officer** or an employee of the **Entity's** office of general counsel, risk management or functionally equivalent departments, if any, first learns of such **Claim**, but in no event later than (i) ninety (90) days after expiration of the **Policy Period**, or (ii) the expiration of the **Extended Reporting Period** or **Run-Off Coverage Period**, if exercised.
2. If during the **Policy Period** or the **Extended Reporting Period** or **Run-Off Coverage Period**, if exercised, the **Insureds** become aware of circumstances that could give rise to a **Claim** against the **Insureds** and give written notice of such circumstances to the Underwriter during the **Policy Period** or the **Extended Reporting Period** or **Run-Off Coverage Period**, if exercised, then any **Claims** subsequently arising from such circumstances shall be considered to have been made during the **Policy Period**. No coverage is afforded under any **Liability Coverage Part** for fees, expenses or other loss incurred in connection with such potential **Claim** prior to the time such notice results in a **Claim**.
3. As a condition precedent to exercising their rights under any **Liability Coverage Part**, the **Insureds** shall (i) include within any notice of **Claim** or circumstance a description of the **Claim** or circumstances, the nature of the alleged **Wrongful Act**, the nature of the alleged or potential damage, the names of actual or potential claimants, and the manner in which the **Insureds** first became aware of the **Claim** or circumstances; and (ii) give to the Underwriter such information and cooperation as it may reasonably require.



- B. Solely with respect to any **Non-Liability Coverage Part**, as a condition precedent to their rights under such Coverage Part, the **Insureds** shall give to the Underwriter written notice of any **Coverage Event** pursuant to the applicable notice provision in such **Non-Liability Coverage Part**.
- C. Except as otherwise provided in this policy, all notices under any provision of this policy shall be in writing and given by prepaid express courier, certified mail, email or fax properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Policyholder** at the address as shown in Item 1 of the Declarations. Notice to the Underwriter shall be given to the respective address shown in Item 5 of the Declarations. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is sent, whichever is earlier, subject to proof of transmittal.

#### IX. REPRESENTATIONS, SEVERABILITY AND NON-RESCINDABLE COVERAGES

##### A. REPRESENTATIONS

The **Insureds** represent and acknowledge that the statements and information contained in the **Application** are true and complete, are the basis of this policy and are to be considered as incorporated into and constituting a part of this policy. This policy is issued in reliance upon the truth and completeness of such representations.

##### B. SEVERABILITY

The **Application** shall be construed as a separate application for coverage by each of the **Insured Persons**. In the event the **Application** contains any misrepresentation or omission (i) made with the intent to deceive, or (ii) which materially affects either the acceptance of the risk or the hazard assumed by the Underwriter under a **Liability Coverage Part**, then such **Liability Coverage Part** shall be void *ab initio* as to:

1. any **Entity** to the extent such **Entity** indemnifies an **Insured Person** who knew the facts that were not truthfully disclosed in the **Application**; and
2. any **Entity** and its **Subsidiaries** and **Plans** if an **Executive Officer** of such **Entity** knew the facts that were not truthfully disclosed in the **Application**;

whether or not such **Executive Officer** or **Insured Person** knew the **Application** contained such misrepresentation or omission. No knowledge of one **Insured Person** shall be imputed to any other **Insured Persons** for purposes of this Section IX.

##### C. NON-RESCINDABLE COVERAGES

The Underwriter shall not have the right to rescind or void, in whole or in part, the coverage provided under any **Liability Coverage Part** for any **Loss** incurred by the **Insured Persons** which is not indemnified by the **Entity**.

#### X. TERRITORY AND VALUATION

Coverage under any **Liability Coverage Part** shall extend to **Wrongful Acts** taking place, **Loss** incurred, or **Claims** made anywhere in the world, to the extent legally permitted.

All premiums, limits, retentions, **Loss** and other amounts under this policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Loss** under this policy is stated in a currency other than United States dollars, payment under this policy shall be made in United States dollars at the rate of exchange on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively.

#### XI. OTHER INSURANCE

Solely with respect to any **Liability Coverage Part**, if any **Loss** is insured under any other valid and collectible policy(ies) issued to any **Insured**, then this policy shall cover such **Loss**, subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such **Loss** is in excess of the amount of such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided in this policy.

#### XII. SUBROGATION

Solely with respect to any **Liability Coverage Part**, in the event of any payment under this policy, the Underwriter shall be subrogated to the extent of such payment to all the **Insureds'** rights of recovery, including without limitation any right of recovery from the **Entity** for **Loss** incurred by **Insured Persons** which is indemnifiable by the **Entity**. The **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights,

including the execution of such documents necessary to enable the Underwriter effectively to bring suit in the name of the **Insureds**. In any subrogation claim against the **Entity** to enforce the **Insured Persons'** right of indemnification, the shareholder and board of director resolutions of the **Entity** shall be deemed to provide indemnification to the fullest extent permitted by law, and the Underwriter's recovery from the **Entity** for such **Loss** shall not exceed the Retention applicable to the **Entity** for such **Loss**. The Underwriter shall not exercise its right of subrogation against an **Insured Person** with respect to payments under any **Liability Coverage Part** unless and to the extent one of the following respective exclusions in such **Liability Coverage Part** applies to such **Insured Person**:

| <u>Liability Coverage Part</u>                                   | <u>Exclusions</u>   |
|--|---------------------|
| Management and Entity Liability                                  | Sections IV.I and J |
| Employment Practices and-Third Party<br>Discrimination Liability | Sections IV.G and H |
| Fiduciary Liability  | Section III.E       |

### XIII. ALTERATION, ASSIGNMENT AND HEADINGS

No change in, modification of, or assignment of interest under this policy shall be effective except when made by a written endorsement to this policy which is issued by the Underwriter.

The titles and headings to the various sections, subsections and endorsements of this policy, as well as the schedule of endorsements attached to this policy, are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions or existence of such sections, subsections or endorsements.

### XIV. PAYMENT PRIORITY

If the **Loss** due and owing by the Underwriter under a **Liability Coverage Part** exceeds the then-remaining Limit of Liability applicable to such **Loss**, the Underwriter shall pay such **Loss**, subject to the applicable Limits of Liability, in the following priority:

- A. First, the Underwriter shall pay such **Loss** which is incurred by **Insured Persons** and which is not indemnified by the **Entity**;
- B. Second, the Underwriter shall pay all other **Loss** covered under the **Liability Coverage Part**.

Subject to the foregoing paragraph, the Underwriter shall, upon receipt of a written request from the **Policyholder**, delay any payment of **Loss** due and owing to the **Entity** until such time as the **Policyholder** designates, provided the Underwriter's liability with respect to any such delayed **Loss** payment shall not be increased, and shall not include any interest, on account of such delay.

### XV. POLICY TERMINATION AND NONRENEWAL

This policy shall terminate at the earliest of the effective date of nonrenewal of the **Policy Period** shown in Item 3 of the Declarations or the effective date of cancellation, as described below.

#### A. CANCELLATION

1. The **Policyholder** may cancel this policy by surrender of this policy to the Underwriter or by giving prior written notice to the Underwriter stating when such cancellation shall take effect.
2. The Underwriter may cancel this policy only for nonpayment of premium. In such event, the Underwriter shall mail written notice of cancellation for nonpayment of premium to the **Policyholder**. Such notice shall state the effective date of cancellation, which shall not be less than fifteen (15) days after mailing such notice.
3. In the event of cancellation, the Underwriter shall refund the unearned premium computed pro rata.

#### B. NONRENEWAL

If the Underwriter elects not to renew this policy, the Underwriter shall mail to the **Policyholder** written notice thereof at least sixty (60) days prior to the expiration of the **Policy Period**. The Underwriter's offer of renewal terms and conditions or premiums different from those in effect prior to renewal shall not constitute an election not to renew this policy.

#### C. NOTICE

The Underwriter shall send all notices required under this Section XV by certified mail to the **Policyholder** at the address in Item 1 of the Declarations, and by mail or electronic mail to the **Policyholder's** authorized agent, if any. Proof of mailing will be sufficient proof of notice.

#### XVI. AUTHORIZATION CLAUSE

By acceptance of this policy, the **Policyholder** agrees to act on behalf of the **Insureds** with respect to giving and receiving notices of **Claim** or termination, paying premiums and receiving any return premiums that may become due under this policy, agreeing to endorsements, and giving or receiving notices provided for in this policy (except notices to apply for the **Extended Reporting Period** or **Run-Off Coverage Period**), and the **Insureds** agree that the **Policyholder** shall act on their behalf.

#### XVII. BANKRUPTCY

Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured** shall not relieve the Underwriter of its obligations nor deprive the Underwriter of its rights or defenses under this policy.

In the event a liquidation or reorganization proceeding is commenced by or against an **Entity** pursuant to the United States Bankruptcy Code, as amended, or any similar foreign, state or local law, the **Entity** and the **Insureds** hereby (i) waive and release any automatic stay or injunction which may apply in such proceeding to this policy or its proceeds under such bankruptcy law, and (ii) agree not to oppose or object to any efforts by the Underwriter, the **Entity** or any **Insured** to obtain relief from any such stay or injunction.

#### XVIII. ALTERNATIVE DISPUTE RESOLUTION

The **Insureds** and the Underwriter shall submit any dispute or controversy arising out of or relating to this policy to non-binding mediation. Unless otherwise agreed by the parties, such non-binding mediation shall be administered by the American Arbitration Association in accordance with its then-prevailing Commercial Mediation Rules.

If the dispute is not resolved in the mediation, then either party to the mediation may thereafter commence a judicial proceeding against the other party with respect to such dispute, provided that neither party may commence such a judicial proceeding prior to ninety (90) days following termination of the mediation.

The parties to the mediation shall share equally the fees and expenses of the mediator as well as other common expenses of the mediation process.



# Not-For-Profit Select Insurance Policy Management and Entity Liability Coverage Part

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**ZURICH**<sup>®</sup>

## **Management and Entity Liability Coverage Part**

### **I. INSURING CLAUSES**

#### **A. INSURED PERSON LIABILITY COVERAGE**

The Underwriter shall pay on behalf of the **Insured Persons** all **Loss** for which the **Insured Persons** are not indemnified by the **Entity** and which the **Insured Persons** become legally obligated to pay on account of any **Claim** first made against them, individually or otherwise, during the **Policy Period** or the **Extended Reporting Period** or **Run-Off Coverage Period**, if exercised, for a **Wrongful Act** taking place before or during the **Policy Period**, subject to the applicable Limits of Liability set forth in Items 2 and 6 of the Declarations.

#### **B. ENTITY REIMBURSEMENT COVERAGE**

The Underwriter shall pay on behalf of the **Entity** all **Loss** for which the **Entity** grants indemnification to the **Insured Persons**, as permitted or required by law, and which the **Insured Persons** have become legally obligated to pay on account of any **Claim** first made against them, individually or otherwise, during the **Policy Period** or the **Extended Reporting Period** or **Run-Off Coverage Period**, if exercised, for a **Wrongful Act** taking place before or during the **Policy Period**, subject to the applicable Limits of Liability set forth in Items 2 and 6 of the Declarations.

#### **C. ENTITY LIABILITY COVERAGE**

The Underwriter shall pay on behalf of the **Entity** all **Loss** for which the **Entity** becomes legally obligated to pay on account of a **Claim** first made against the **Entity** during the **Policy Period** or the **Extended Reporting Period** or **Run-Off Coverage Period**, if exercised, for a **Wrongful Act** taking place before or during the **Policy Period**, subject to the applicable Limits of Liability set forth in Items 2 and 6 of the Declarations.

#### **D. RETIRED INDEPENDENT DIRECTORS LIABILITY COVERAGE**

If this Insuring Clause is granted pursuant to the Coverage Schedule in Item 6 of the Declarations, the Underwriter shall pay on behalf of the **Retired Independent Directors** all **Loss** for which the **Retired Independent Directors** are not indemnified by the **Entity** and which the **Retired Independent Directors** become legally obligated to pay on account of any **Claim** first made against them, individually or otherwise, during the **Policy Period** or the **Extended Reporting Period** or **Run-Off Coverage Period**, if exercised, for a **Wrongful Act** taking place before or during the **Policy Period**, subject to the respective Limit of Liability set forth in the Coverage Schedule in Item 6 of the Declarations for such coverage. Such Limit of Liability shall be in addition to the Limits of Liability set forth in Item 2 and in Item 6 of the Declarations for this entire Coverage Part. Coverage under this Insuring Clause D shall apply only if (i) the **Retired Independent Director** is a **Retired Independent Director** when the **Claim** is first made, and (ii) the Limit of Liability otherwise applicable to this Coverage Part is exhausted by reason of payment by the Underwriter of **Loss**. Such coverage shall then be excess of all other insurance specifically excess of this policy as well as all other insurance described in Section XI of the General Terms and Conditions. If **Loss** is due and owing by the Underwriter under both Insuring Clause A and this Insuring Clause D, then such **Loss** shall be allocated to and paid by the Underwriter under the respective Limits of Liability in whatever portions will maximize the total amount of such **Loss** being paid under this Coverage Part.

### **II. EXTENSIONS**

#### **A. ENVIRONMENTAL MISMANAGEMENT COVERAGE**

Subject to this policy's other terms and conditions, coverage under Insuring Clauses A, B and D for **Claims** against **Insured Persons** includes coverage for any **Environmental Mismanagement Claim**.

## B. OUTSIDE POSITION COVERAGE

Subject to the other terms and conditions applicable to this Coverage Part, Insuring Clause A and Insuring Clause B include coverage for **Insured Persons** while serving in an **Outside Position**. Such coverage shall be specifically excess of any indemnification and insurance available from or provided by the **Outside Entity** in which the **Insured Person** serves in the **Outside Position**. Payment by the Underwriter or any affiliate of the Underwriter under another policy as a result of a **Claim** against an **Insured Person** in an **Outside Position** shall reduce, by the amount of such payment, the Underwriter's Limit of Liability under this policy with respect to such **Claim**.

## III. DEFINITIONS

When used in this Coverage Part, the following terms, whether in the singular or plural, are defined as follows:

- A. **Anti-Trust Violation** means violation of the Sherman Anti-Trust Act, the Clayton Act, the Federal Trade Commission Act, or any other federal, state, local, common or foreign laws involving anti-trust, monopoly, price fixing, price discrimination, predatory pricing, restraint of trade or unfair trade practices, as amended.
- B. **Claim** means:
  - 1. a written demand against any **Insured** for monetary damages or non-monetary or injunctive relief commenced by the **Insured's** receipt of such demand, including a written demand that the **Insured** toll or waive a statute of limitations;
  - 2. a civil proceeding against any **Insured** commenced by the service of a complaint or similar pleading;
  - 3. a criminal proceeding against any **Insured** commenced by a return of an indictment, information or similar document;
  - 4. an administrative or regulatory proceeding against any **Insured** commenced by the filing of a notice of charges or similar document;
  - 5. a civil, criminal, administrative or regulatory investigation of any **Insured Person** commenced by the service upon or other receipt by the **Insured Person** of a target letter or other written notice from the investigating authority identifying by name the **Insured Person** as an individual against whom a proceeding may be commenced;
  - 6. an official request for the **Extradition** of any **Insured Person** or the execution of a warrant for the arrest of any **Insured Person** where such execution is an element of **Extradition**; or
  - 7. an arbitration or mediation proceeding against any **Insured**;  
for a **Wrongful Act**, including any appeal therefrom; or
  - 8. solely with respect to Insuring Clause A and Insuring Clause D, any request, demand or subpoena by a regulatory, administrative, governmental or similar authority to interview or depose an **Insured Person**, or for the production of documents by an **Insured Person**, in his or her capacity as such.
- C. **Disqualified Person** means a "disqualified person" as that term is defined in Section 4958 of the IRC.
- D. **Environmental Mismanagement Claim** means any **Claim** based upon, arising out of or attributable to an **Environmental Event** if and to the extent such **Claim**: (i) is against an **Insured Person** for **Wrongful Acts** in connection with misrepresenting or failing to disclose information related to **Greenhouse Gases** or actual or alleged global warming or climate changes, or (ii) results in **Loss** incurred by **Insured Persons** for which the **Entity** does not indemnify the **Insured Persons** either because the **Entity** is neither permitted nor required to grant such indemnification or because of **Financial Impairment**.
- E. **Excess Benefit Transaction Tax** means any excise tax imposed by the Internal Revenue Service on an **Insured Person** who is an "organizational manager," as defined in Section 4958 of the IRC, as a result of such **Insured Person's** participation in an "excess benefit transaction," as defined in Section 4958 of the IRC; provided **Excess Benefit Transaction Tax** does not include the twenty-five percent (25%) excise tax assessed against a **Disqualified Person** or the two hundred percent (200%) tax assessed for failure to correct such an excess benefit transaction, pursuant to Section 4958 of the IRC.

F. **Insured Persons** means:

1. any one or more natural persons who were, now are or shall become a duly elected or appointed director, trustee, governor, **Manager**, officer, advisory director, or member of a duly constituted committee or board of the **Entity** or their functional equivalent;
2. any one or more natural persons not described in Subsection 1 above who were, now are or shall become **Employees** (including employed lawyers solely in their capacity as an **Employee**) of the **Entity**; and
3. any one or more natural persons described in Subsection 1 above while serving in an **Outside Position**;

provided that **Employees** described in Subsection 2 above shall not be considered **Insured Persons** for purposes of Subsection II.B and Exclusions C or D in Section IV of this Coverage Part.

G. **Insureds** means the **Insured Persons** and, solely with respect to Insuring Clause B and Insuring Clause C, the **Entity**.

H. **Loss** means the total amount the **Insureds** become legally obligated to pay on account of **Claims** made against them for **Wrongful Acts** for which coverage applies, including, but not limited to, damages (including punitive, exemplary or multiple damages), judgments, any award of pre-judgment and post-judgment interest with respect to covered damages, settlements, **Defense Costs**, civil money penalties assessed against an **Insured** for a violation of any federal, state, local or foreign election law if such violation is not knowing or willful, and any **Excess Benefit Transaction Tax** that an **Insured Person** is obligated to pay as a result of a **Claim**; provided that the Underwriter's maximum liability for all **Excess Benefit Transaction Taxes** as a result of a single **Claim** shall be \$10,000.

The insurability of such punitive, exemplary or multiple damages, civil money penalties and **Excess Benefit Transaction Taxes** shall be determined under the internal laws of any applicable jurisdiction most favorable to the **Insureds**, including without limitation the jurisdiction in which the **Entity**, the **Insured Persons**, the Underwriter, this policy or such **Claim** is located.

**Loss** does not include any of the following:

1. any amount not indemnified by the **Entity** for which the **Insureds** are absolved from payment by reason of any covenant, agreement or court order;
2. taxes, fines or penalties imposed by law, other than civil money penalties and **Excess Benefit Transaction Taxes** expressly referenced above;
3. any amount incurred by the **Entity** that represents or is substantially equivalent to an increase in the consideration paid or proposed to be paid by an **Entity** in connection with its purchase of any securities or assets;
4. any amount incurred by the **Entity** to comply with any injunctive or other equitable relief or any agreement to provide such relief; or
5. matters uninsurable under the law pursuant to which this policy is construed.

provided Subsection. 1 through 5 above do not apply to **Defense Costs**.

I. **Outside Entity** means:

1. any organization chartered and operated as a not-for-profit organization, provided such organization is not a financial institution; or
  2. any other organization specifically included as an **Outside Entity** by endorsement to this policy;
- provided such organization is not included in the definition of **Entity**.

J. **Outside Position** means the position of director, officer, manager, trustee, governor or other equivalent executive position in an **Outside Entity** held by an **Insured Person**, if service in such position is with the knowledge and consent of, at the direction or request of, or part of the duties regularly assigned to the **Insured Person** by, the **Entity**.

K. **Personal Injury** means false arrest, wrongful detention or imprisonment, malicious prosecution, defamation including libel and slander, invasion of privacy or wrongful entry or eviction.

- L. **Publishers Wrongdoing** means infringement of copyright or trademark, unauthorized use of title, plagiarism or misappropriation of ideas.
- M. **Retired Independent Director** means any **Insured Person** who (i) formerly served but no longer serves as a duly elected or appointed director, trustee, governor or functional equivalent executive of the **Policyholder**, (ii) never has been an officer or **Employee** of any **Entity**, and (iii) no longer serves any **Entity** or **Plan** in an insured capacity under this policy.
- N. **Wrongful Act** means:
1. any error, misstatement, misleading statement, act, omission, neglect, or breach of duty actually or allegedly committed or attempted by any of the **Insured Persons**, individually or otherwise, in their capacity as such, or in an **Outside Position**, or with respect to Insuring Clause C, by the **Entity**; or
  2. any matter claimed against the **Insured Persons** solely by reason of their serving in such capacity or in an **Outside Position**;
- including without limitation an **Anti-Trust Violation**, **Publishers Wrongdoing**, and, solely with respect to Insuring Clauses A, B and D, **Personal Injury**.

#### IV. EXCLUSIONS

The Underwriter shall not be liable under this Coverage Part for **Loss** on account of, and shall not be obligated to defend, any **Claim** made against any **Insured**:

- A. based upon, arising out of, or attributable to any fact, circumstance or situation which has been the subject of any written notice given prior to inception of this policy under any prior directors and officers liability or comparable insurance policy or coverage part;
- B. based upon, arising out of, or attributable to any written demand, suit or proceeding pending, or order, decree or judgment entered against the **Entity** or any **Insured Person** on or prior to the respective Pending or Prior Date set forth in the Coverage Schedule in Item 6 of the Declarations, or the same or substantially the same **Wrongful Act**, **Interrelated Wrongful Acts**, fact, circumstance or situation underlying or alleged therein;
- C. brought or maintained by or on behalf of the **Entity** or any **Insured Person** in any capacity, provided this exclusion shall not apply to:
  1. a **Claim** that is a derivative action brought or maintained on behalf of the **Entity** by one or more persons who are not **Insured Persons** if the **Claim** is brought and maintained without the solicitation or active assistance or participation of the **Entity** or any **Insured Person** or if the only such solicitation, assistance or participation by the **Entity** and **Insured Persons** is (i) solely pursuant to, or in compliance with, a subpoena or similar legal process, or (ii) protected pursuant to any whistleblower statute;
  2. a **Claim** brought or maintained by any **Insured Person** for contribution or indemnity, if the **Claim** directly results from another **Claim** covered under this Coverage Part;
  3. a **Claim** brought by an **Insured Person** who has not served as an **Insured Person** for at least three (3) years prior to the date such **Claim** is first made and who brings and maintains such **Claim** without the solicitation or active assistance or participation of the **Entity** or any other **Insured Person** who is serving or has served as an **Insured Person** within such three (3) year period;
  4. a **Claim** brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, receiver, similar official or creditors committee for such **Entity**, or any assignee of such trustee, examiner, receiver, or similar official or creditors committee; or
  5. a **Claim** by or on behalf of the **Entity** brought and maintained in any non-common law jurisdiction outside the United States;
- D. for a **Wrongful Act** by an **Insured Person** in an **Outside Position** if such **Claim** is brought or maintained by or on behalf of the **Outside Entity** in which the **Insured Person** serves, or by or on behalf of any past, present or future director, officer, manager, governor or trustee of such entity, except:
  1. a **Claim** that is a derivative action brought or maintained on behalf of such **Outside Entity** by one or more persons who are not directors, officers, managers or trustees of the **Outside Entity** if the **Claim** is brought and maintained without the solicitation or active assistance or participation of the **Entity**, any **Insured Person**, the **Outside Entity** or any director, officer, manager or trustee of the **Outside Entity** or if the only



- such solicitation, assistance or participation by the **Entity**, any **Insured Person**, the **Outside Entity** or any director, officer, manager or trustee of the **Outside Entity** is (i) solely pursuant to or in compliance with a subpoena or similar legal process, or (ii) protected pursuant to any whistleblower statute;
2. a **Claim** for an employment-related **Wrongful Act** brought or maintained by a director, officer, manager, governor or trustee of such **Outside Entity**;
  3. a **Claim** brought by a director, officer, manager, governor or trustee of such **Outside Entity** who has not served as such for at least three (3) years prior to the date such **Claim** is first made and who brings and maintains such **Claim** without the solicitation by, or active assistance or participation of, such **Outside Entity** or any other director, officer, manager, governor or trustee of such **Outside Entity** who is serving or has served as such within such three (3) year period;
  4. a **Claim** brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, receiver, similar official or creditors committee for such **Outside Entity**, or any assignee of such trustee, examiner, receiver, similar official or creditors committee; or
  5. a **Claim** by or on behalf of the **Outside Entity** brought and maintained in any non-common law jurisdiction outside the United States;
- E. for an actual or alleged violation of the responsibilities, obligations or duties imposed by **ERISA** or similar provisions of any federal, state or local statutory law or common law with respect to any pension, profit sharing, health and welfare or other employee benefit plan or trust established or maintained for the purpose of providing benefits to employees of the **Entity**;
- F. for bodily injury, mental anguish, emotional distress, sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof; provided this exclusion shall not apply to any allegations of mental anguish or emotional distress in a **Claim** against **Insured Persons** for **Personal Injury**;
- G. based upon, arising out of or attributable to an **Environmental Event**, provided this exclusion shall not apply to **Environmental Mismanagement Claims**;
- H. for service by the **Insured Person** in any position or capacity, or for service by the **Entity** as a general partner, in any organization other than the **Entity** even if the **Entity** directed or requested the **Insured Person** to serve in such other position or capacity, provided this exclusion shall not apply to service by the **Insured Person** in an **Outside Position**;
- I. based upon, arising out of or attributable to any deliberately fraudulent act or omission or any willful violation of any statute or regulation committed by such **Insured**, if a final and non-appealable adjudication adverse to such **Insured** in any proceeding not brought by the Underwriter establishes such a deliberately fraudulent act or omission or willful violation; provided this exclusion shall not apply to **Defense Costs**;
- J. based upon, arising out of or attributable to such **Insured Person** gaining any profit, remuneration or financial advantage to which such **Insured** was not legally entitled, if a final and non-appealable adjudication adverse to such **Insured** in any proceeding not brought by the Underwriter establishes such **Insured** in fact gained any such profit, remuneration or advantage; provided this exclusion shall not apply to **Defense Costs**;
- K. based upon, arising out of or attributable to (i) the actual, alleged or attempted purchase or sale, or offer or solicitation of an offer to purchase or sell, any debt or equity securities, or (ii) the actual or alleged violation of any federal, state, local or common or foreign law relating to debt or equity securities;
- L. solely with respect to Insuring Clause C:
1. for any actual or alleged liability of the **Entity** under any written contract or agreement, except to the extent that the **Entity** would have been liable in the absence of such contract or agreement;
  2. for **Personal Injury**;
  3. for taxes, provided this exclusion shall not apply to **Excess Benefit Transaction Taxes**; or
  4. for the rendering of or failure to render professional services;
- M. which constitutes an **Employment Practices Claim** or **Third Party Discrimination Claim**; or
- N. based upon, arising out of or attributable to any actual or alleged violation of any labor or employment-related law, rule, or regulation.

For the purpose of determining the applicability of any Exclusion set forth in this Section IV, the **Wrongful Act** or knowledge of any **Insured Person** shall not be imputed to any other **Insured Person**, and under Insuring Clause C only the **Wrongful Act** or knowledge of an **Executive Officer** of an **Entity** shall be imputed to such **Entity** and its **Subsidiaries**.



**Not-For-Profit Select Insurance Policy  
Employment Practices and Third Party  
Discrimination Liability Coverage Part**

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**ZURICH**

## **Employment Practices and Third Party Discrimination Liability Coverage Part**

### **I. INSURING CLAUSES**

#### **A. EMPLOYMENT PRACTICES LIABILITY COVERAGE**

The Underwriter shall pay on behalf of the **Insureds** all **Loss** for which the **Insureds** become legally obligated to pay on account of any **Employment Practices Claim** first made against the **Insureds** during the **Policy Period** or during the **Extended Reporting Period** or **Run-Off Coverage Period**, if exercised, for a **Wrongful Act** taking place before or during the **Policy Period**.

#### **B. THIRD PARTY DISCRIMINATION LIABILITY COVERAGE**

The Underwriter shall pay on behalf of the **Insureds** all **Loss** for which the **Insureds** become legally obligated to pay on account of any **Third Party Discrimination Claim** first made against the **Insureds** during the **Policy Period** or during the **Extended Reporting Period** or **Run-Off Coverage Period**, if exercised, for a **Wrongful Act** taking place before or during the **Policy Period**.

### **II. ENVIRONMENTAL MISMANAGEMENT COVERAGE EXTENSION**

Subject to this policy's other terms and conditions, coverage under Insuring Clause A for **Claims** against **Insured Persons** includes coverage for any **Environmental Mismanagement Claim**.

### **III. DEFINITIONS**

When used in this Coverage Part, the following terms, whether in the singular or plural, are defined as follows:

#### **A. Claim**, for purposes of the definitions of **Employment Practices Claim** and **Third Party Discrimination Claim** in the General Terms and Conditions, means:

1. a written demand against any **Insured** for monetary damages or non-monetary or injunctive relief commenced by the **Insured's** receipt of such demand, including a written demand that the **Insured** toll or waive a statute of limitations;
2. a civil proceeding against any **Insured** commenced by the service of a complaint or similar pleading;
3. an administrative or regulatory proceeding against any **Insured**, including a proceeding before the Equal Employment Opportunity Commission or a similar state or local governmental body, commenced by the filing of a notice of charges or similar document;
4. a civil, administrative or regulatory investigation of any **Insured** commenced by the service upon or other receipt by the **Insured Person** of a target letter or other written notice from the investigating authority identifying by name the **Insured Person** as an individual against whom a proceeding may be commenced;
5. an official request for the **Extradition** of any **Insured Person** or the execution of a warrant for the arrest of any **Insured Person** where such execution is an element of **Extradition**; or
6. an arbitration or mediation proceeding against any **Insured**;

for a **Wrongful Act**, including any appeal therefrom; provided **Claim** does not include a labor or grievance proceeding pursuant to a collective bargaining agreement.

#### **B. Environmental Mismanagement Claim** means any **Employment Practices Claim** based upon, arising out of or attributable to an **Environmental Event** if and to the extent such **Claim**: (i) is against an **Insured Person** for retaliatory treatment, or (ii) results in **Loss** incurred by **Insured Persons** for which the **Entity** does not indemnify the **Insured Persons** either because the **Entity** is neither permitted nor required to grant such indemnification or because of **Financial Impairment**.

C. **Independent Contractor** means any natural person who is not an **Employee** and who is working for an **Entity** in the capacity of an independent contractor pursuant to an express contract or agreement with the **Entity** which governs the nature of such person's engagement.

D. **Insured Persons** means:

1. any one or more natural persons who were, now are or shall become a duly elected or appointed director, trustee, governor, **Manager**, officer, **Employee** (including employed lawyers solely in their capacity as an **Employee**), advisory director, or member of a duly constituted committee or board of the **Entity**, or their functional equivalent;
2. any **Independent Contractor**, but only if the **Entity** agrees in writing within thirty (30) days after the **Claim** is made to provide indemnification to such **Independent Contractor** for any **Loss** arising out of such **Claim**; provided any coverage under this Coverage Part for any such **Independent Contractor** shall be specifically excess of any indemnification or insurance otherwise available to such **Independent Contractor** from any other source.

E. **Insureds** means the **Insured Persons** and the **Entity**.

F. **Loss** means the total amount the **Insureds** become legally obligated to pay on account of **Claims** made against them for **Wrongful Acts** for which coverage applies, including, but not limited to, damages (including back pay, front pay and punitive, exemplary or multiple damages), judgments, any award of pre-judgment and post-judgment interest with respect to covered damages, settlements, **Defense Costs**, prevailing plaintiff attorney's fees awarded pursuant to Section 1988 of the Civil Rights Act, and liquidated damages awarded under the Age Discrimination in Employment Act, the Equal Pay Act or the Family Medical Leave Act. The insurability of such punitive, exemplary, liquidated and multiple damages or attorney's fees shall be determined under the internal laws of any applicable jurisdiction most favorable to the **Insureds**, including without limitation the jurisdiction in which the **Entity**, the **Insured Persons**, the Underwriter, this policy or such **Claim** is located.

**Loss** does not include any of the following:

1. any amount not indemnified by the **Entity** for which the **Insureds** are absolved from payment by reason of any covenant, agreement or court order;
  2. taxes, fines or penalties imposed by law; or
  3. matters uninsurable under the law pursuant to which this policy is construed.
- provided sub. 1 through 3 above do not apply to **Defense Costs**.

G. **Wrongful Act** means:

1. any error, misstatement, misleading statement, act, omission, neglect, or breach of duty actually or allegedly committed or attempted by any of the **Insured Persons**, individually or otherwise, in their capacity as such, or by the **Entity**; or
2. any matter claimed against the **Insured Persons** solely by reason of their serving in such capacity.

#### IV. EXCLUSIONS

The Underwriter shall not be liable under this Coverage Part for **Loss** on account of, and shall not be obligated to defend, any **Claim** made against any **Insured**:

- A. based upon, arising out of, or attributable to any fact, circumstance or situation which has been the subject of any written notice given prior to inception of this policy under any prior employment practices liability or comparable insurance policy or coverage part;
- B. based upon, arising out of, or attributable to any written demand, suit or proceeding pending, or order, decree or judgment entered against the **Insureds** on or prior to the respective Pending or Prior Date set forth in the Coverage Schedule in Item 6 of the Declarations, or the same or substantially the same **Wrongful Act**, **Interrelated Wrongful Acts**, fact, circumstance or situation underlying or alleged therein;

C. for an actual or alleged violation of the responsibilities, obligations or duties imposed by:

1. any law governing workers' compensation, unemployment insurance, social security, disability benefits or similar law,
2. **ERISA** (except Section 510 thereof),
3. the Fair Labor Standards Act (except the Equal Pay Act) and any other law concerning wage and hour practices, including, but not limited to any **Claim** for off-the-clock work, failure to provide rest or meal periods, failure to reimburse expenses, improper classification of employees as exempt or non-exempt, failure to timely pay wages, conversions, unjust enrichment, or unfair business practices,
4. the National Labor Relations Act,
5. the Worker Adjustment and Retraining Notification Act,
6. the Consolidated Omnibus Budget Reconciliation Act of 1985,
7. the Occupational Safety and Health Act,
8. the Racketeer Influenced and Corrupt Organizations Act,
9. the Federal False Claims Act, or
10. rules or regulations promulgated under any of such statutes or laws, amendments thereto or similar provisions of any federal, state, local or foreign statutory law or common law;

but this exclusion shall not apply to any **Claim** for any actual or alleged retaliatory treatment of the claimant by the **Insured** on account of the claimant's exercise of rights pursuant to any such law, rule or regulation or for any other actual or alleged violation of any whistleblower statute or law;

- D. for bodily injury, sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof; provided this exclusion shall not apply to any **Claim** for emotional distress, mental anguish or humiliation;
- E. based upon, arising out of, or attributable to an **Environmental Event**, provided this exclusion shall not apply to any **Environmental Mismanagement Claim**;
- F. based upon, arising out of, or attributable to any actual or alleged breach of any contract or agreement which specifies the terms of the **Entity's** engagement of an **Independent Contractor**;
- G. based upon, arising out of, or attributable to any deliberately fraudulent or deliberately criminal act or omission committed by such **Insured**, if a final and non-appealable adjudication adverse to such **Insured** in any proceeding not brought by the Underwriter establishes such a deliberately fraudulent act or omission; provided this exclusion shall not apply to **Defense Costs**;
- H. based upon, arising out of, or attributable to such **Insured** gaining any profit, remuneration or financial advantage to which such **Insured** was not legally entitled, if a final and non-appealable adjudication adverse to such **Insured** in any proceeding not brought by the Underwriter establishes such **Insured** in fact gained any such profit, remuneration or advantage; provided this exclusion shall not apply to **Defense Costs**;
- I. based upon, arising out of, or attributable to the employment reinstatement or continued employment of the claimant by the **Entity** or, if the **Entity** has the option pursuant to an adjudication or settlement to reinstate the claimant as an **Employee** but fails to do so, any **Loss** constituting front pay, future damages or other future economic relief or the equivalent thereof with respect to such claimant; or
- J. if such **Loss** constitutes:
1. the cost of any non-monetary relief, including without limitation (i) any costs associated with compliance with any injunctive relief of any kind or nature imposed by any judgment or settlement, or (ii) any costs associated with providing any reasonable accommodations required by, made as a result of, or to conform with the requirements of, the Americans with Disabilities Act and any amendments thereto or any similar federal, state, local or foreign statute, regulation, or common laws;
  2. compensation earned by the claimant in the course of employment but not paid by the **Entity**, including any unpaid salary, bonus, hourly pay, overtime pay, severance pay, retirement benefits, vacation days, sick days, prerequisites, stock options or similar rights; provided this exclusion shall not apply to any back pay or front

pay or any additional compensation allegedly due as a result of alleged discrimination or wrongful dismissal, discharge or termination of employment;

3. amounts owing under or assumed by the **Insured** pursuant to a written contract with or written severance obligation of the **Entity**; but this exclusion shall not apply if and to the extent that liability would have attached to the **Insureds** in the absence of the written contract with or obligation of the **Entity**; or
4. medical, insurance or other benefits (or the equivalent value thereof) to which the claimant allegedly was entitled or would have been entitled had the **Entity** provided the claimant with a continuation or conversion of insurance;

provided this exclusion shall not apply to **Defense Costs**.

For the purpose of determining the applicability of any Exclusion set forth in this Section IV, the **Wrongful Act** or knowledge of any **Insured Person** shall not be imputed to any other **Insured Person**, and only the **Wrongful Act** or knowledge of an **Executive Officer** of an **Entity** shall be imputed to such **Entity** and its **Subsidiaries**.



# Not-For-Profit Select Insurance Policy Crime Coverage Part

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# **Crime Coverage Part Supplemental Declarations**

| Insuring Clauses |  | Limit of Liability | Deductible |
|------------------|--|--------------------|------------|
| A.               | Employee Theft   | \$250,000          | \$1,000    |
| B.               | Client's Property                                      | \$250,000          | \$1,000    |
| C.               | Forgery or Alteration                                  |                    |            |
|                  | 1. Checks Forgery                                      | \$250,000          | \$1,000    |
|                  | 2. Credit, Debit or Charge Card Forgery                | \$250,000          | \$1,000    |
| D.               | On Premises  | \$250,000          | \$1,000    |
| E.               | In Transit   | \$250,000          | \$1,000    |
| F.               | Computer Fraud   | \$250,000          | \$1,000    |
| G.               | Funds Transfer Fraud                                   | \$250,000          | \$1,000    |
| H.               | Money Orders and Counterfeit Money                     | \$250,000          | \$1,000    |
| I.               | Electronic Data or Computer Programs Restoration Costs | \$250,000          | \$1,000    |
| J.               | Investigative Expenses                                 | \$250,000          | \$1,000    |

This Crime Coverage Part Supplemental Declarations shall be part of the Not-For-Profit Select Insurance Policy Declarations.



## Crime Coverage Part

### I. INSURING CLAUSES

Coverage is provided under Insuring Clauses A through H for loss sustained, or under Insuring Clause I and J for costs incurred, by the **Insured** resulting directly from an **Occurrence** taking place during the **Policy Period**, except as provided in Sub. V.A.13 and V.A.14, that is **Discovered** during the **Policy Period** or the Extended Period To Discover Loss as provided under Sub. V.A.5.

#### A. EMPLOYEE THEFT

The Underwriter will pay for loss of or damage to **Money**, **Securities** or **Property** sustained by the **Insured** resulting directly from **Theft** or **Forgery** committed by an **Employee** acting alone or in collusion with other persons.

#### B. CLIENT'S PROPERTY

The Underwriter will pay for loss of or damage to **Money**, **Securities** or **Property** sustained by a **Client** of the **Insured** resulting directly from **Theft** or **Forgery** committed by an **Employee** not in collusion with such **Client's** employees.

#### C. FORGERY OR ALTERATION

The Underwriter will pay for loss resulting directly from **Forgery** or alteration of:

1. checks (including substitute checks defined in the Check Clearing for the 21st Century Act), drafts, promissory notes or similar written promises, orders or directions to pay a sum certain in **Money** that are made or drawn by or drawn upon the **Insured**; or made or drawn by one acting as the **Insured's** agent; or that are purported to have been so made or drawn.

If the **Insured** is sued for refusing to pay any such instrument on the basis that it has been forged or altered, and the **Insured** has the Underwriter's written consent to defend against the suit, the Underwriter will pay any reasonable legal expenses that the **Insured** incurs and pays in that defense. The amount that the Underwriter will pay is in addition to the Limit of Liability applicable to this Insuring Clause; or

2. any written instrument required in conjunction with any credit, debit or charge card issued to the **Insured** or any **Employee** for business purposes;

#### D. ON PREMISES

##### 1. Theft of Money or Securities

- a. The Underwriter will pay for loss resulting directly from the **Theft of Money** or **Securities** inside the **Premises** or **Banking Premises** committed by a person present inside such premises, or the actual disappearance or destruction of **Money** or **Securities**.
- b. The Underwriter will pay for loss from damage to the **Premises** or its exterior resulting directly from an actual or attempted **Theft of Money** or **Securities**, if the **Insured** is the owner of the **Premises** or is liable for damage to it.
- c. The Underwriter will pay for loss of or damage to a locked safe, vault, cash register, cash box or cash drawer located inside the **Premises** resulting directly from an actual or attempted **Theft** of or unlawful entry into those containers.

##### 2. Robbery or Safe Burglary of Property

- a. The Underwriter will pay for loss of or damage to **Property** inside the **Premises**, resulting directly from an actual or attempted **Robbery** of a **Custodian** or which is in a safe or vault resulting directly from an actual or attempted **Safe Burglary**.

- b. The Underwriter will pay for loss from damage to the **Premises** or its exterior resulting directly from an actual or attempted **Robbery** or **Safe Burglary of Property** if the **Insured** is the owner of the **Premises** or is liable for damage to it.
- c. The Underwriter will pay for loss of or damage to a locked safe or vault located inside the **Premises** resulting directly from an actual or attempted **Robbery** or **Safe Burglary**.

#### E. IN TRANSIT

- 1. The Underwriter will pay for loss of **Money** or **Securities** while in transit outside the **Premises** in the care and custody of a **Messenger** or an armored motor vehicle company, resulting directly from **Theft**, disappearance or destruction.
- 2. The Underwriter will pay for loss of or damage to **Property** outside the **Premises** while in transit in the care and custody of a **Messenger** or an armored motor vehicle company, resulting directly from an actual or attempted **Robbery**.

#### F. COMPUTER FRAUD

The Underwriter will pay for loss of or damage to **Money**, **Securities** or **Property** sustained by the **Insured** resulting directly from the use of any computer to fraudulently cause a transfer of **Money**, **Securities** or **Property** from inside the **Premises** or **Banking Premises** to either a person (other than a **Messenger**) or a place outside those **Premises**.

#### G. FUNDS TRANSFER FRAUD

The Underwriter will pay for loss of **Money** or **Securities** resulting directly from a **Funds Transfer Fraud** directing a **Financial Institution** to transfer, pay or deliver such **Money** or **Securities** from the **Insured's Transfer Account**.

#### H. MONEY ORDERS AND COUNTERFEIT MONEY

The Underwriter will pay for loss resulting directly from the **Insured's** good faith acceptance, in exchange for merchandise, **Money** or services, of money orders issued by any post office, express company or bank that are not paid upon presentation or **Counterfeit Money** acquired during the regular course of business.

#### I. ELECTRONIC DATA OR COMPUTER PROGRAMS RESTORATION COST

The Underwriter will pay for costs that the **Insured** incurs to restore or replace damaged or destroyed **Electronic Data** or **Computer Programs** stored within the **Insured's Computer System** resulting directly from:

- 1. a virus designed to damage or destroy **Electronic Data** or **Computer Programs**; or
- 2. vandalism by a person who has gained unauthorized access to the **Insured's Computer System**.

Such costs shall include reasonable costs to restore the **Insured's Computer System** to the level of operational capability that existed before the virus or vandalism occurred.

#### J. INVESTIGATIVE EXPENSES

The Underwriter will pay **Investigative Expenses** incurred and paid by the **Insured** to determine the amount of loss covered under this Coverage Part; subject to the following:

- 1. The Underwriter will have no liability to pay any **Investigative Expenses** if the amount of the covered loss does not exceed the Deductible of the applicable Insuring Clause;
- 2. The amount that the Underwriter pays is part of, not in addition to, the Limit of Liability for the applicable Insuring Clause; and
- 3. The Underwriter will pay such reasonable costs, fees or other expenses after settlement of covered loss.

## II. DEFINITIONS

When used in this Coverage Part, the following terms, whether in the singular or plural, are defined as follows:

- A. **Application** means the written application for this Coverage Part and all attachments and materials submitted to the Underwriter in connection therewith or incorporated therein.

- B. **Banking Premises** means the interior of that portion of any building occupied by a banking institution or similar safe depository.
- C. **Client** means any person or entity for which the **Insured** performs services under a written contract.
- D. **Computer Program** means a set of related electronic instructions that direct the operations and functions of a computer and computer devices connected to it and enable the computer or devices to receive, process, store, retrieve or send **Electronic Data**.
- E. **Computer System** means computers and related peripheral components; systems and applications software; terminal devices; and related communications networks; by which **Electronic Data** is received, processed, stored, retrieved or sent.
- F. **Counterfeit Money** means an imitation of **Money** that is intended to deceive and to be taken as genuine.
- G. **Custodian** means the **Insured**, its partners, **Members** or **Employees** while having care and custody of **Property** inside the **Premises**, excluding any person while acting as a **Watchperson** or janitor.
- H. **Discover, Discovery or Discovered** means as soon as the **Insured's** partner, **Member**, **Manager**, officer, director, Risk Manager, in-house General Counsel or persons serving in functionally equivalent positions not in collusion with the perpetrator of the loss:
1. first becomes aware of facts which would cause a reasonable person to assume that a loss of a type covered by this Coverage Part has been or will be incurred, regardless of when the act or acts causing or contributing to such loss occurred, even though the exact amount or details of loss may not then be known; or
  2. first receives notice of an actual or potential claim in which it is alleged that the **Insured** is liable to a third party under circumstances which, if true, would constitute a loss under this Coverage Part.
- I. **Electronic Data** means information, facts or **Computer Programs** stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment.
- J. **Employee** means any natural person:
1. while in the **Insured's** service and who the **Insured** compensates directly by salary, wages or commissions and has the right to direct and control while performing services for the **Insured**;
  2. furnished to the **Insured** temporarily to substitute for a permanent **Employee** as defined in Sub. II.J.1 who is on leave or to meet seasonal or short-term workload conditions but only while such person is subject to the **Insured's** direction and control and performing services for the **Insured**, excluding, however, any such person while having care and custody of property outside the **Premises**;
  3. who is leased to the **Insured** under a written agreement between the **Insured** and a labor leasing firm, to perform duties related to the conduct of the **Insured's** business, but does not mean a temporary employee as defined in Sub. II.J.2;
  4. who is a volunteer while in the regular service of the **Insured** and in the ordinary course of its business, which the **Insured** has the right to govern and direct in the performance of such service;
  5. who is a trustee, fiduciary, officer, employee, administrator or other plan official while in the regular service of an **Employee Benefit Plan**;
  6. who is a former or retired **Employee**, partner, **Member**, **Manager** or trustee retained as a consultant while performing services for the **Insured**;
  7. who is a guest student or intern pursuing studies or duties, excluding, however, any such person while having care and custody of property outside the **Premises**;
  8. who is an **Employee** while on leave for military service; or
  9. who is a **Manager**, trustee or non-compensated officer of the **Insured** while performing acts within the scope of the usual duties of an **Employee** or while acting as a member of any committee duly elected or appointed by resolution of the **Insured's** board of directors or board of trustees to perform specific, as distinguished from general, directorial acts on the **Insured's** behalf.

**Employee** does not mean any agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character not specified in the definition of **Employee**.

- K. **Employee Benefit Plan** means any welfare or pension benefit plan sponsored by the **Insured** for the benefit of its **Employees** which is subject to **ERISA** or the Pension Protection Act of 2006 and any amendments thereto.
- L. **Financial Institution** means any bank including any merchant or investment bank, finance company, insurance or reinsurance company, mortgage bank, savings and loan association, building society, credit union, stockbroker, investment trust, asset management company, fund manager or any entity established principally to engage in commodities, futures or foreign exchange trading or any other similar entity.
- M. **Forgery** means the signing of the name of another person or organization with intent to deceive; it does not mean a signature that consists in whole or in part of one's own name signed with or without authority, in any capacity, for any purpose.
- N. **Funds Transfer Fraud** means:
1. fraudulent electronic, telegraphic, cable, teletype, telefacsimile or telephone instruction which purports to have been transmitted by the **Insured**, but which was in fact fraudulently transmitted by someone else without the **Insured's** knowledge or consent;
  2. a written instruction (other than those described in Insuring Clause C) issued by the **Insured**, which was forged or altered by someone other than the **Insured** which purports to have been issued by the **Insured**, but was in fact fraudulently issued without the **Insured's** knowledge or consent; or
  3. an electronic, telegraphic, cable, teletype, telefacsimile, telephone or written instruction initially received by the **Insured** which purports to have been transmitted by an **Employee** but which was in fact fraudulently transmitted by someone else without the **Insured's** or the **Employee's** knowledge or consent.
- O. **Insured** means the **Policyholder** and any **Subsidiary** or, solely with respect to Insuring Clause A, any **Employee Benefit Plan**.
- P. **Investigative Expenses** means reasonable and necessary expenses (other than internal corporate fees, costs or obligations or **Employee** wages and salaries) incurred by the **Insured** to establish the existence and amount of a covered loss, with the prior written consent of the Underwriter, in connection with a loss to be paid under this Coverage Part. The reasonableness of such expenses shall be determined by the Underwriter. **Investigative Expenses** shall not include expenses incurred by any **Client**.
- Q. **Member** means an owner of a limited liability company represented by its membership interest, who also may serve as a **Manager**.
- R. **Messenger** means the **Insured**, its partners, **Members**, **Employees** or any relative of an **Employee**, while having care and custody of property outside the **Premises**.
- S. **Money** means currency, coins and bank notes in current use and having a face value, bullion, traveler's checks, register checks and money orders held for sale to the public.
- T. **Occurrence** means the following:
1. Under Insuring Clause A and Insuring Clause B, all loss or losses caused by, or involving, one or more **Employees**, whether the result of a single act or series of related acts.
  2. Under Insuring Clause C, all loss or losses caused by any person or in which that person is involved, whether the loss involves one or more instruments.
  3. Under Insuring Clause I.1, all covered costs incurred by the **Insured** between the time the damage or destruction is **Discovered** and the time the **Insured's Computer System** is restored to the level of operational capacity that existed before the virus occurred. Recurrence of the same virus after the **Insured's Computer System** has been restored shall constitute a separate occurrence.
  4. Under all other Insuring Clauses, all loss or losses caused by an act or series of related acts, involving one or more persons; or an act or event or a series of related acts or events not involving any person.
- U. **Premises** means the interior of that portion of any building the **Insured** occupies in conducting its business.

- V. **Property** means any tangible property other than **Money** and **Securities** that has intrinsic value. **Property** does not include **Computer Programs** or **Electronic Data** or any property specifically excluded under this Coverage Part.
- W. **Robbery** means the unlawful taking of **Money**, **Securities** or **Property** from the care and custody of a person by one who has caused or threatened to cause that person bodily harm or committed an obviously unlawful act witnessed by that person.
- X. **Safe Burglary** means the unlawful taking of:
1. **Money**, **Securities** or **Property** from within a locked safe or vault within the **Premises** by a person unlawfully entering the safe or vault as evidenced by marks of forcible entry upon its exterior; or
  2. a safe or vault from inside the **Premises**.
- Y. **Securities** means negotiable and nonnegotiable instruments or contracts representing either **Money** or property and includes tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use and evidences of debt issued in connection with credit or charge cards, which cards are not issued by the **Insured**, but does not include **Money**.
- Z. **Theft** means the unlawful taking of **Money**, **Securities** or **Property** to the deprivation of the **Insured**, or solely for the purpose of Insuring Clause B, of a **Client**.
- AA. **Transfer Account** means an account maintained by the **Insured** at a **Financial Institution** from which the **Insured** can initiate the transfer, payment or delivery of **Money** or **Securities** by means of electronic, telegraphic, cable, teletype, telefacsimile or telephone instructions communicated directly through an electronic funds transfer system; or written instructions (other than those described in Insuring Clause C) establishing the conditions under which such transfers are to be initiated by such **Financial Institution** through an electronic funds transfer system.
- BB. **Watchperson** means any person the **Insured** retains specifically to have care and custody of **Money**, **Securities** or **Property** inside the **Premises** and who has no other duties.

### III. EXCLUSIONS

A. This Coverage Part does not cover:

1. loss resulting from **Theft**, **Forgery** or any other dishonest act committed by the **Insured** or its partners or **Members**, whether acting alone or in collusion with other persons;
2. loss resulting from **Theft**, **Forgery** or any other dishonest act committed by any **Employee**, **Manager** or any trustee or authorized representative of the **Insured**, while performing services for the **Insured** or otherwise, whether acting alone or in collusion with other persons, except when covered under Insuring Clause A or Insuring Clause B;
3. loss resulting from unauthorized disclosure of the **Insured's** confidential information including, but not limited to, patents, trade secrets, processing methods or customer lists or unauthorized use or disclosure of confidential information of another person or entity which is held by the **Insured** including, but not limited to, financial, personal, credit card or similar non-public information;
4. loss resulting from seizure or destruction of **Money**, **Securities** or **Property** by order of governmental authority;
5. loss that is an indirect result of an **Occurrence** covered by this Coverage Part including, but not limited to, loss resulting from:
  - a. the **Insured's** inability to realize income, including but not limited to interest, dividends and profits that the **Insured** would have realized had there been no loss of or damage to **Money**, **Securities** or **Property**;
  - b. payment of damages of any type for which the **Insured** is legally liable, except the Underwriter will pay compensatory damages arising directly from a loss covered under this Coverage Part; or
  - c. payment of costs, fees or other expenses the **Insured** incurs in establishing either the existence or the amount of loss under this Coverage Part, except when covered under Insuring Clause J.;
6. loss constituting fees, costs and expenses incurred by the **Insured**, which are related to any legal action, except when covered under Insuring Clause C.1;

7. loss or damage resulting from nuclear reaction or radiation, or radioactive contamination, however caused;
  8. loss or damage caused by or resulting from an **Environmental Event**;
  9. loss or damage resulting from war, including undeclared or civil war; warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these; or
  10. loss of any intangible property, including intellectual property, except when covered under Insuring Clause I.
- B. Insuring Clause A and Insuring Clause B do not cover:
1. loss or that part of any loss, the proof of which as to its existence or amount is dependent upon an inventory computation or a profit and loss computation. However, where the **Insured** establishes wholly apart from such computations that it has sustained a loss, then the **Insured** may offer its inventory records and actual physical count of inventory in support of the amount of loss claimed;
  2. loss resulting directly or indirectly from trading, whether in the **Insured's** name or in a genuine or fictitious account; provided that this exclusion shall not apply to otherwise covered loss which results in improper financial gain to an **Employee**; and provided further that such loss shall mean only the amount of such improper financial gain and shall not include salary, commissions, fees or other compensation, including but not limited to promotions and raises associated with employment, paid by the **Insured** to such **Employee**; or
  3. loss resulting from the fraudulent or dishonest signing, issuing, canceling or failing to cancel, a warehouse receipt or any papers connected with it.
- C. Insuring Clause C.2 does not cover loss arising from any credit, debit, or charge card if the **Insured** has not complied fully with the provisions, conditions, or other terms under which the card was issued.
- D. Insuring Clause D and Insuring Clause E do not cover:
1. loss resulting from accounting or arithmetical errors or omissions;
  2. loss resulting from giving or surrendering **Money, Securities or Property** in any exchange or purchase;
  3. loss or damage resulting from fire, however caused, except loss of or damage to **Money or Securities** or loss from damage to a safe or vault;
  4. loss of **Money, Securities or Property** contained in any money operated device unless the amount of **Money** deposited in it is recorded by a continuous recording instrument in the device;
  5. loss of or damage to motor vehicles, trailers or semi-trailers or equipment and accessories attached thereto;
  6. loss of or damage to **Money, Securities or Property** after it has been transferred or surrendered to a person or place outside the **Premises or Banking Premises** on the basis of unauthorized instructions or as a result of a threat:
    - a. to do bodily harm to any person or damage to any property;
    - b. to introduce a denial of service or attack into the **Insured's Computer System** or virus or other malicious instruction into the **Insured's Computer System** that is designed to damage, destroy or corrupt data or **Computer Programs** stored within the **Insured's Computer System**;
    - c. to contaminate, pollute or render substandard the **Insured's** products or goods; or
    - d. to disseminate, divulge or utilize the **Insured's** confidential information or weaknesses in the source code within the **Insured's Computer System**;

provided this exclusion does not apply under Insuring Clause E to loss of **Money, Securities or Property** while outside the **Premises** in the care and custody of a **Messenger** if the **Insured** had no knowledge of any threat at the time the conveyance began or had knowledge of a threat at the time the conveyance began, but the loss was not related to the threat;
  7. loss from damage to the **Premises** or its exterior, or to any safe, vault, cash register, cash box, cash drawer or **Property** by vandalism or malicious mischief; or

8. loss resulting from the **Insured** or anyone acting on the **Insured's** express or implied authority being induced by any dishonest act to voluntarily part with title to or possession of any **Money, Securities or Property**.
- E. Insuring Clause F does not cover:
1. loss resulting from the use or purported use of credit, debit, charge, access, convenience, identification, stored-value or other cards or the information contained on such cards;
  2. loss resulting from a **Funds Transfer Fraud** directing a **Financial Institution** to transfer, pay or deliver **Funds** from the **Insured's Transfer Account**;
  3. loss or that part of any loss, the proof of which as to its existence or amount is dependent upon an inventory computation or a profit and loss computation;
- F. Insuring Clause G does not cover loss resulting from the use of any computer to fraudulently cause a transfer of **Money, Securities or Property**;
- G. Insuring Clause I does not cover loss resulting from the fraudulent preparation or input of **Electronic Data** or **Computer Programs** or from errors or omissions in the design of **Computer Programs** or in the programming or processing of **Electronic Data**.

#### IV. LIMITS OF LIABILITY AND DEDUCTIBLE

##### A. LIMITS OF LIABILITY

The most the Underwriter will pay under this Coverage Part for all loss resulting directly from an **Occurrence** is the applicable Limit of Liability set forth in the Declarations for this Coverage Part.

If any loss is covered under more than one Insuring Clause, the most the Underwriter will pay for such loss shall not exceed the largest applicable Limit of Liability available under any one of those Insuring Clauses.

##### B. DEDUCTIBLE

The Underwriter will not pay for loss resulting directly from an **Occurrence** unless the amount of loss exceeds the Deductible shown in the Declarations for this Coverage Part. The Underwriter will then pay the amount of loss in excess of the Deductible, up to the applicable Limit of Liability. In the event more than one Deductible could apply to the loss, only the highest Deductible may be applied.

#### V. CONDITIONS

##### A. CONDITIONS APPLICABLE TO ALL INSURING CLAUSES

###### 1. Concealment, Misrepresentation or Fraud

This Coverage Part is void in any case of fraud by the **Policyholder** as it relates to this Coverage Part at any time. It is also void if any **Insured**, at any time, intentionally conceals or misrepresents a material fact concerning this Coverage Part, any **Money, Securities or Property** covered under this Coverage Part, the **Insured's** interest in the property covered under this Coverage Part or a claim under this Coverage Part.

###### 2. Changes in Exposure

###### a. Additional Premises or Employees

If during the **Policy Period**, the **Insured** establishes any additional **Premises** or hires additional **Employees** other than through consolidation or merger with or purchase or acquisition of assets or liabilities of another entity, such **Premises** and **Employees** shall automatically be covered under this Coverage Part.

###### b. New Organizations or Subsidiaries

Any non-profit organization, whether acquired or created, that becomes a **Subsidiary** or is merged or consolidated into the **Insured** during the **Policy Period** shall automatically be covered under this Coverage Part for **Occurrences** taking place after the effective date of such acquisition or creation.



c. Acquisition of the Policyholder

If during the **Policy Period**

- (1) the **Policyholder** merges into or consolidates with another organization and such organization is the surviving entity;
- (2) another organization or person or group of organizations or persons or both acting in concert acquires rights that, when combined with existing rights, enable such organizations(s) or person(s) to elect more than fifty percent (50%) of the directors of the **Policyholder**; or
- (3) a receiver, conservator, trustee, liquidator or rehabilitator, or any similar official is appointed with respect to the **Policyholder**;

then coverage under this Coverage Part shall continue until the later of termination of this Coverage Part or any subsequent date to which the Underwriter may agree by endorsement, but only if all **Occurrences** contributing to loss covered under this Coverage Part take place prior to such merger, consolidation, acquisition or appointment.

3. Duties in the Event of Loss

After the **Insured's** partner, **Member**, **Manager**, Risk Manager, in-house General Counsel or persons serving in functionally equivalent positions not in collusion with the perpetrator of a loss or situation **Discovers** a loss or a situation that may result in loss of a type covered by this Coverage Part:

- a. the **Policyholder** must notify the Underwriter as soon as practicable if the amount of loss is expected to exceed fifty percent (50%) of the Deductible; and
- b. the **Insured** must:
  - (1) submit to examination under oath at the Underwriter's request and give the Underwriter a signed statement of the **Insured's** answers regarding the loss;
  - (2) produce for the Underwriter's examination all pertinent records;
  - (3) give the Underwriter a detailed, sworn proof of loss as soon as practicable but in no event later than six (6) months after such **Discovery**; and
  - (4) cooperate with the Underwriter in the investigation, settlement and recovery of any claim.

4. Employee Benefit Plans

- a. The **Policyholder** must select a Limit of Liability under Insuring Clause A for each **Employee Benefit Plan** that is at least equal to that required if each **Employee Benefit Plan** was separately incurred.
- b. With respect to loss sustained or **Discovered** by any such **Employee Benefit Plan**, Insuring Clause A of this Coverage Part is replaced by the following:

The Underwriter will pay for loss of or damage to **Money**, **Securities** or **Property** resulting directly from fraudulent or dishonest acts committed by an **Employee**, acting alone or in collusion with other persons.
- c. Any payment the Underwriter makes for loss sustained by any **Employee Benefit Plan** will be made to the **Employee Benefit Plan** sustaining the loss.
- d. Any payment the Underwriter makes for loss sustained by, or for loss of commingled **Money**, **Securities** or **Property** of, two (2) or more **Employee Benefit Plans** resulting directly from an **Occurrence** will be made to each **Employee Benefit Plan** sustaining the loss in proportion that the Limit of Liability required for each **Employee Benefit Plan** bears to the total Limit of Liability of all **Employee Benefit Plans** sustaining the loss.
- e. No Deductible applies to loss sustained by any **Employee Benefit Plan**.

5. Extended Period to Discover Loss

The Underwriter will pay for loss that the **Policyholder** sustained prior to the effective date of cancellation of this Coverage Part and **Discovered**:

a. no later than sixty (60) days from the date of cancellation; provided that this extended period to **Discover** loss terminates immediately upon the effective date of any other insurance obtained by the **Policyholder**, whether from the Underwriter or another insurer, that replaces, in whole or in part, the coverage afforded under this Coverage Part, whether or not such other insurance provides coverage for loss sustained prior to its effective date; or

b. no later than one (1) year from the date of that cancellation with regard to any **Employee Benefit Plans**.

6. Joint Insured

a. If any **Insured's** partner, **Member**, Risk Manager or in-house General Counsel or other persons serving in functionally equivalent positions has knowledge of any information relevant to this Coverage Part, that knowledge is considered knowledge of every **Insured**.

b. If this Coverage Part or any of its coverages is cancelled as to any **Insured**, loss sustained by that **Insured** is covered only if it is **Discovered** during the time provided in Sub. V.A.5.

c. The Underwriter will not pay more for loss sustained by more than one **Insured** than the amount the Underwriter would pay if all such loss had been sustained by one **Insured**.

d. Payment by the Underwriter to the **Policyholder** for loss sustained by any **Insured** or payment by the Underwriter to the **Employee Benefit Plan**, shall fully release the Underwriter on account of such loss.

7. Other Insurance

If the **Insured** or any other party in interest in any loss covered by this Coverage Part has other valid and collectible insurance, which would cover such loss in whole or in part in the absence of this Coverage Part, then this Coverage Part shall act as an excess insurance policy and will cover such loss, subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such loss is in excess of the amount recoverable or received under such other insurance, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise.

8. Ownership of Property; Interests Covered

a. The property covered under all Insuring Clauses, except Insuring Clause B and Insuring Clause J, is limited to property that the **Insured** owns or leases or that the **Insured** holds for others whether or not it is legally liable for the loss of such property.

b. The property covered under Insuring Clause B is limited to **Money**, **Securities** or **Property** that the **Insured's Client** owns or leases or that the **Insured's Client** holds for others whether or not such **Client** is legally liable for the loss of such property.

However, this Coverage Part is for the **Insured's** benefit only. It provides no rights or benefits to any other person or organization, including the **Insured's Client**. Any claim for loss that is covered under this Coverage Part must be presented by the **Policyholder**.

9. Records

The **Insured** must keep records of all **Money**, **Securities** and **Property** covered under this Coverage Part so the Underwriter can verify the amount of any loss.

10. Recoveries

Any recoveries, whether effected before or after any payment under this Coverage Part, whether made by the Underwriter or the **Policyholder**, shall be applied net of the expense of such recovery:

a. first, to the **Policyholder** in satisfaction of its covered loss in excess of the amount paid under this Coverage Part;

b. second, to the Underwriter in satisfaction of amounts paid in settlement of the **Policyholder's** claim;

c. third, to the **Policyholder** in satisfaction of any Deductible; and

d. fourth, to the **Policyholder** in satisfaction of any loss not covered under this Coverage Part.

Recoveries do not include any recovery from insurance, suretyship, reinsurance, security or indemnity taken for the Underwriter's benefit or recovery of original **Securities** after duplicates of them have been issued.

## 11. Territory

To the extent legally permissible, this Coverage Part covers loss sustained by the **Insured** resulting directly from **Occurrences** taking place anywhere in the world and all payments of loss by the Underwriter shall be made to the **Policyholder**.

## 12. Valuation – Settlement

### a. Loss of **Money**

The Underwriter shall pay for loss of **Money**, but only up to and including its face value, and, at the Underwriter's option, pay for loss of **Money** issued by any country other than the United States of America at face value in the **Money** issued by that country, or in the United States dollar equivalent as determined by the rate of exchange published in *The Wall Street Journal* on the day the loss was **Discovered**.

### b. Loss of **Securities**

The Underwriter shall pay for loss of **Securities** but only up to their value at the close of business on the day the loss was **Discovered**, subject to the applicable Limit of Liability. At the Underwriter's option, the Underwriter shall pay for such loss by paying the market value of such **Securities** or replacing them in kind, in which event the **Policyholder** must assign to the Underwriter all its rights, title and interest in and to those **Securities** or paying the cost of an indemnity bond required to issue duplicates of the **Securities**. However, the Underwriter will be liable only for the payment of so much of the cost of the bond as would be charged for a bond having a penalty not exceeding the lesser of the market value of the **Securities** at the close of business on the day the loss was **Discovered** or the Limit of Liability applicable to the **Securities**.

### c. Loss of or Damage to **Property** or Loss from Damage to the **Premises**

The Underwriter shall pay for loss of or damage to **Property** or loss from damage to the **Premises** in an amount not to exceed the lesser of:

- (1) the cost to replace the lost or damaged property with property of comparable material and quality and used for the same purpose;
- (2) the amount the **Insured** actually spends that is necessary to repair or replace the lost or damaged property; or
- (3) the Limit of Liability applicable to the lost or damaged property;

provided, the Underwriter will not pay the amounts under Subsection. (1), (2) or (3). above unless such property is actually repaired or replaced within a reasonable time after the loss or damage.

If the lost or damaged property is not repaired or replaced, the Underwriter will pay on an actual cash value basis.

- d. The Underwriter shall, at the **Policyholder's** option, settle loss or damage to property other than **Money** in the **Money** of the country in which the loss or damage occurred or in the United States of America dollar equivalent thereof, determined by the rate of exchange published in *The Wall Street Journal* on the day the loss was **Discovered**.

- e. Any property that Underwriter pays for or replaces becomes the Underwriter's property.

## 13. Loss Sustained During Prior Insurance issued by the Underwriter or any Affiliate of The Underwriter

### a. Loss Sustained Partly During This Coverage Part And Partly During Prior Insurance

If the **Insured Discovers** loss during the **Policy Period**, resulting directly from an **Occurrence** taking place:

- (1) partly during the **Policy Period**; and
- (2) partly during the policy period(s) of any prior cancelled insurance that the Underwriter or any the Underwriter's affiliates issued to the **Insured** or any predecessor in interest;

and this Coverage Part became effective at the time of cancellation of the prior insurance, the Underwriter will first settle the amount of loss that the **Policyholder** sustained during this **Policy Period**. The

Underwriter will then settle the remaining amount of loss that the **Policyholder** sustained during the policy period(s) of the prior insurance.

b. **Loss Sustained Entirely During Prior Insurance**

If the **Insured Discovers** loss during the **Policy Period** resulting directly from an **Occurrence** taking place entirely during the policy period(s) of any prior cancelled insurance issued to the **Insured** by the Underwriter or any affiliate or predecessor in interest thereof, the Underwriter will pay for the loss, provided that this Coverage Part became effective at the time of cancellation of the prior insurance and the loss would have been covered under this Coverage Part had it been in effect at the time of the **Occurrence**.

The Underwriter will first settle the amount of loss that the **Insured** sustained during the most recent prior insurance. The Underwriter will then settle any remaining amount of loss that the **Insured** sustained during the policy period(s) of any other prior insurance.

c. **In settling loss subject to this condition:**

(1) The most the Underwriter will pay for the entire loss is the highest single Limit of Liability applicable during the period of loss, whether such limit was written under this Coverage Part or was written under the prior insurance issued by the Underwriter.

(2) The Underwriter will apply the applicable Deductible shown in the Declarations to the amount of loss sustained under this Coverage Part.

If no loss was sustained under this Coverage Part, the Underwriter will apply the Deductible shown in the Declarations to the amount of loss sustained under the most recent prior insurance.

If the Deductible is larger than the amount of loss sustained under this Coverage Part, or the most recent prior insurance, the Underwriter will apply the remaining Deductible to the remaining amount of loss sustained during the prior insurance.

The Underwriter will not apply any other Deductible that may have been applicable to the loss.

14. **Loss Sustained During Prior Insurance not issued by the Underwriter or any Affiliate of the Underwriter**

a. If the **Insured Discovers** loss during the **Policy Period** resulting directly from an **Occurrence** taking place during the policy period of any prior cancelled insurance that was issued to the **Insured** or a predecessor in interest by another company, and the period of time to discover loss under that insurance had expired, the Underwriter will pay for the loss under this Coverage Part, provided this Coverage Part became effective at the time of cancellation of the prior insurance; and the loss would have been covered under this Coverage Part had it been in effect at the time of the **Occurrence**.

b. **In settling loss subject to this condition:**

(1) The most the Underwriter will pay for the entire loss is the lesser of the Limits of Liability applicable during the period of loss, whether such limit was written under this Coverage Part or was written under the prior cancelled insurance.

(2) The Underwriter will apply the applicable Deductible shown in the Declarations to the amount of loss sustained under the prior cancelled insurance.

c. **The insurance provided under this condition is subject to the following:**

(1) If loss covered under this condition is also partially covered under Sub. V.A.13., the amount recoverable under this condition is part of, not in addition to, the amount recoverable under Sub. V.A.13.

(2) For loss covered under this condition that is not subject to Sub. V.A.14.c.(1), the amount recoverable under this condition is part of, not in addition to, the Limit of Liability applicable to the loss covered under this Coverage Part and is limited to the lesser of the amount recoverable under this Coverage Part as of its effective date or the prior cancelled insurance had it remained in effect.

15. Transfer to the Underwriter of the **Insureds'** Rights of Recovery Against Others

The **Insured** must transfer to the Underwriter all the **Insureds'** rights of recovery against any person or organization for any loss the **Insureds** sustained and for which the Underwriter has paid or settled. The **Insured** must also do everything necessary to secure those rights and do nothing after loss to impair them.

B. CONDITIONS APPLICABLE TO INSURING CLAUSE A AND INSURING CLAUSE B

Termination as to any **Employee**

The coverage provided under this Coverage Part terminates as to any **Employee**:

1. as soon as the **Insured's** partner, **Member, Manager, Risk Manager, in-house General Counsel** or persons serving in functionally equivalent positions not in collusion with the perpetrator of a loss or situation becomes aware of a **Theft, Forgery** or any other dishonest or criminal act committed by such **Employee** while employed with or in the service of the **Insured**;
2. as soon as the **Insured's** partner, **Member, Manager, Risk Manager, in-house General Counsel** or persons serving in functionally equivalent positions becomes aware of a **Theft, Forgery** or any other dishonest or criminal act, involving **Money, Securities** or **Property** valued at twenty-five thousand dollars (\$25,000) or more, committed by such **Employee** prior to employment or services with an **Insured**; or
3. ninety (90) days immediately after the **Employee** is no longer in the services of the **Insured**.

C. CONDITIONS APPLICABLE TO INSURING CLAUSE C.1

1. Deductible

The Deductible does not apply to legal expenses paid under Insuring Clause C.1 of this Coverage Part.

2. Electronic and Mechanical Signatures

The Underwriter will treat signatures that are produced or reproduced electronically, mechanically or by other means as handwritten signatures.

3. Proof of Loss

The **Policyholder** must include with its proof of loss any instrument involved in that loss or, if that is not possible, an affidavit setting forth the amount and cause of loss.

D. CONDITIONS APPLICABLE TO INSURING CLAUSE D.2 AND INSURING CLAUSE E

1. Armored Motor Vehicle Companies

Under Insuring Clause E, the Underwriter will only pay for that part of loss, which the **Insured** cannot recover under the **Insured's** contract with the armored motor vehicle company and from any insurance or indemnity carried by, or for the benefit of customers of, the armored motor vehicle company.

2. Special Limit of Liability for Specified Property

The Underwriter will only pay up to five thousand dollars (\$5,000) for any one **Occurrence** of loss of or damage to precious metals, precious or semi-precious stones, pearls, furs, or completed or partially completed articles made of or containing such materials that constitute the principal value of such articles; or manuscripts, drawings, or records of any kind, or the cost of reconstructing them or reproducing any information contained in them.

E. CONDITIONS APPLICABLE TO INSURING CLAUSE F

Special Limit of Liability for Specified Property

The Underwriter will only pay up to five thousand dollars (\$5,000) for any one **Occurrence** of loss of or damage to manuscripts, drawings, or records of any kind, or the cost of reconstructing them or reproducing any information contained in them.

Endorsement # 1



## Exclude Designated Persons or Classes of Persons Endorsement

| Policy No.     | Eff. Date of Pol. | Exp. Date of Pol. | Eff. Date of End. | Add'l Prem. | Return Prem. |
|----------------|-------------------|-------------------|-------------------|-------------|--------------|
| MPL 5969759 01 | 09/25/2011        | 09/25/2012        | 09/25/2011        | N/A         | N/A          |

**Policyholder:** Toren Condominium Inc.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the:

Not-For-Profit Select - Crime Coverage Part

It is agreed that this endorsement applies only to the Employee Theft Insuring Clause.

### SCHEDULE

|                                   |                 |
|-----------------------------------|-----------------|
| Person(s) or Class(es) of Persons | Brandon Baron   |
|                                   | Donald Cappocia |
|                                   |                 |

Subsection II.J - **Employee** is amended to exclude any Person or Class of Persons shown in the SCHEDULE listed above.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

Endorsement # 2



## Excluded Entity(ies) and Wrongful Act(s)

| Policy No.     | Eff. Date of Pol. | Exp. Date of Pol. | Eff. Date of End. | Add'l Prem. | Return Prem. |
|----------------|-------------------|-------------------|-------------------|-------------|--------------|
| MPL 5969759 01 | 09/25/2011        | 09/25/2012        | 09/25/2011        | N/A         | N/A          |

**Policyholder:** Toren Condominium Inc.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under:

**Not-For-Profit Select Insurance Policy**

- ☒ General Terms and Conditions
- ☒ Management and Entity Liability Coverage Part
- ☒ Employment Practices and Third Party Discrimination Coverage Part
- ☒ Fiduciary Liability Coverage Part

It is agreed that solely with respect to the **Liability Coverage Part(s)** purchased and selected above

The entity(ies) listed below is (are) deleted from Subsections II.Q. **Insureds**, II.H. **Entity** and II.CC. **Subsidiary** of the General Terms and Conditions.

| Excluded Entity(ies) |
|----------------------|
| Myrtle Owner LLC     |
|                      |
|                      |
|                      |
|                      |

The following is added to the EXCLUSIONS for the respective Coverage Parts:

The Underwriter shall not be liable for **Loss** on account of any **Claims** based upon, arising out of or attributable to the **Wrongful Act(s)** of such entity(ies).

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.



## IRCA Claims Endorsement

| Policy No.     | Eff. Date of Pol. | Exp. Date of Pol. | Eff. Date of End. | Add'l Prem. | Return Prem. |
|----------------|-------------------|-------------------|-------------------|-------------|--------------|
| MPL 5969759 01 | 09/25/2011        | 09/25/2012        | 09/25/2011        | N/A         | N/A          |

Policyholder: Toren Condominium Inc.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under:

### Not-For-Profit Select Insurance Policy

- ☒ Declarations
- ☒ General Terms and Conditions
- ☒ Employment Practices and Third Party Discrimination Liability Coverage Part

It is agreed that solely for coverage afforded pursuant to this endorsement the sections selected above are amended as follows:

- I. The following is added to Item 6.B of the Declarations:
  - \$50,000 Aggregate Sub-limit of Liability under Insuring Clause for IRCA CLAIM DEFENSE COSTS
  - 09/25/2011 Pending or Prior Date for IRCA CLAIM DEFENSE COSTS
- II. The Employment Practices and Third Party Discrimination Liability Coverage Part is amended as follows:

- A. Section I. INSURING CLAUSES is amended to add the following:

#### IRCA CLAIM DEFENSE COSTS

The Underwriter shall pay on behalf of the **Entity** all **Defense Costs** resulting from an **IRCA Claim** first made against the **Entity** during the **Policy Period** or the **Extended Reporting Period** or **Run-Off Coverage Period**, if exercised, for a **Wrongful Act** taking place before or during the **Policy Period**, subject to the applicable Limits of Liability set forth in Items 2 and 6.B. of the Declarations.

- B. Section III. DEFINITIONS is amended as follows:

1. The following Definition is added:

**IRCA Claim** means an administrative proceeding against the **Entity** pursuant to Section 274A.(e)(3) of the Immigration Reform and Control Act of 1986 (8 U.S.C Sec. 1324a, et set) (IRCA) including any appeal thereof pursuant to Section 274A.(e)(7) or Section 274A.(e)(8) of IRCA.

2. Subsection III.A. – DEFINITIONS is deleted and replaced with the following:

- A. **Claim**, for purposes of the definitions of **Employment Practices Claim** and **Third Party Discrimination Claim** in the General Terms and Conditions, means:

1. a written demand against any **Insured** for monetary damages or non-monetary or injunctive relief commenced by the **Insured's** receipt of such demand, including a written demand that the **Insured** toll or waive a statute of limitations;
2. a civil proceeding against any **Insured** commenced by the service of a complaint or similar pleading;



3. an administrative or regulatory proceeding against any **Insured**, including a proceeding before the Equal Employment Opportunity Commission or a similar state or local governmental body, commenced by the filing of a notice of charges or similar document;
4. a civil, administrative or regulatory investigation of any **Insured** commenced by the service upon or other receipt by the **Insured Person** of a target letter or other written notice from the investigating authority identifying by name the **Insured Person** as an individual against whom a proceeding may be commenced;
5. an official request for the **Extradition** of any **Insured Person** or the execution of a warrant for the arrest of any **Insured Person** where such execution is an element of **Extradition**; or
6. an arbitration or mediation proceeding against any **Insured**;  
for a **Wrongful Act**, including any appeal therefrom; provided **Claim** does not include a labor or grievance proceeding pursuant to a collective bargaining agreement.

**Claim** also means an **IRCA Claim**.

2. Subparagraph 2 in the second paragraph in the Definition of **Loss** in Section F is replaced with the following:

2. taxes, fines or penalties imposed by law; provided that **Loss** includes penalties for an **IRCA Claim**; or

- III. Section IV. – EXCLUSIONS of the Employment Practices and Third Party Discrimination Liability Coverage Part is amended to add the following:

for any demand, suit proceeding, or investigation pending against any **Insured** on or prior to the date in Item 6.B. of the Declarations that alleges a **Wage and Hour Violation**, or substantially the same fact, circumstance, or situation underlying or alleged therein.

- IV. General Terms and Conditions – Subsection III.B. – RETENTION FOR LIABILITY COVERAGE PARTS is amended as follows:

No Retention shall apply to **Defense Costs** incurred by the **Entity** for **IRCA Claims**.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

Endorsement # 4

## Homeowner Association Property Manager Endorsement



| Policy No.     | Eff. Date of Pol. | Exp. Date of Pol. | Eff. Date of End. | Add'l Prem. | Return Prem. |
|----------------|-------------------|-------------------|-------------------|-------------|--------------|
| MPL 5969759 01 | 09/25/2011        | 09/25/2012        | 09/25/2011        | N/A         | N/A          |

Policyholder: Toren Condominium Inc.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under:

**Not-For-Profit Select Insurance Policy**

- ☒ Management and Entity Liability Coverage Part
- ☒ Employment Practices and Third Party Discrimination Coverage Part

It is agreed that:

The following is agreed solely with respect to the **Liability Coverage Parts** if purchased as selected above:

I. Solely with respect to the Management and Entity Liability Coverage Part:

A. Section III. DEFINITIONS is amended as follows:

1. Subsection F.1. of **Insured Persons** is replaced with the following:

1. any one or more natural persons who were, now are or shall become a duly elected or appointed director, trustee, governor, **Manager, Property Manager**, officer, advisory director, or member of a duly constituted committee or board of the **Entity** or their functional equivalent;

2. The following is added to Subsection N. in **Wrongful Acts**:

3. any error, misstatement, misleading statement, act, omission, neglect, or breach of duty actually or allegedly committed or attempted by a **Property Manager** or any **Insured Person** for whose acts the **Property Manager** is legally liable in rendering or failing to render **Property Management Services**.

3. The following Definitions are added:

**Construction Defect** means any alleged or actual defective, faulty or delayed construction or other matter recognized as a construction defect under applicable law, whether or not a result of (1) faulty or incorrect design or architectural plans; (2) improper soil testing; (3) inadequate or insufficient protection from subsoil, ground water or earth movement or subsidence; (4) the construction, manufacture or assembly of any tangible property; (5) the failure to provide construction related goods or services as represented or to pay for such goods or services; and (6) the supervision of such activities.

**Fungi** means any type or form of fungus, including mold or mildew and any mycotoxins, **Spores**, scents or byproducts produced or released by fungi;

**Property Manager** means a person or organization that provides **Property Management Services** for the **Policyholder** for a fee.

**Property Management Services** means the following services performed in connection with the **Policyholder** commercial or residential property: developing, implementing or managing loss control and risk management plans and budgets; soliciting and securing tenants and oversight and maintenance of tenant relations including collecting rents and processing evictions; soliciting and securing contracts for

maintenance, repairs, renovations and alterations (except any architectural services); and personnel administration and record keeping with regard to the foregoing.

**Specified Peril** means aircraft or self propelled missiles; explosion, fire; lightening; flood; surface water; waves; tidal water; overflow of a body of water or spray from any of the foregoing, even if driven by wind; hail; leakage from fire equipment; mechanical breakdown; smoke; soil; subsoil or earth movement or subsidence; whether by earthquake, landslide, mudslide, volcanic eruption or other natural or man-made causes; or wind.

**Spores** means reproductive bodies produced by or arising out of **Fungi**.

B. Section IV. EXCLUSIONS: is amended as follows:

1. Subsection G. is replaced with the following:

1. based upon, arising out of or attributable to an **Environmental Event**;
2. the actual, alleged or threatened inhalation or ingestion of, contact with, exposure to or existence or presence of any:
  - a. **Fungi** or bacteria; or
  - b. Substance, vapor or gas produced by or arising out of any **Fungi** or bacteria; or
3. any **Loss** arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, **Fungi** or bacteria, by any insured or by any other person or entity;

Provided this exclusion shall not apply to **Environmental Mismanagement Claims**;

2. The following Exclusions are added before the last paragraph:

The Underwriter shall not be liable for **Loss**, on account of any **Claim** made against a **Property Manager** based upon, arising out of, attributable to or in any way directly or indirectly related to:

- a. the actual or alleged breach of any oral or written contract or agreement; provided this exclusion shall not apply to the extent the **Property Manager** would have been liable in the absence of such contract or agreement;
- b. damage to tangible property; loss of use or destruction or deterioration of any tangible property; failure to supervise, repair or maintain tangible property; or decisions relating to the execution or quality of any physical changes to tangible property; provided however, this exclusion shall not apply to **Defense Costs** for **Claims** arising out of decisions by the **Property Manager** to impose assessments upon residents, unit owners or **Insured Persons** or to approve or reject a request to make physical changes to the **Policyholder's** tangible property,
- d. the **Property Manager's** capacity as a sponsor, builder, or developer of any property;
- e. modifying any building or property to make it more accessible or accommodating to any person with a disability or making any other accommodations for any person with a disability or to comply with the Americans with Disabilities Act, any amendments thereto or any similar federal, state, or local statute, regulation, or common law;
- f. commingling, misappropriation or improper use of or failure to pay collect or safeguard funds;
- g. advice regarding property value;
- h. the transfer of or failure to transfer funds;
- i. notarization, certification or acknowledgment of a signature;
- j. **Construction Defect**; or
- f. **Specified Peril**.

II. Solely with respect to the Employment Practices and Third Party Discrimination Liability Coverage Part:

Subsection III.D.1. of **Insured Persons** is replaced with the following:

1. any one or more natural persons who were, now are or shall become a duly elected or appointed director, trustee, governor, **Manager, Property Manager**, officer, **Employee** (including employed lawyers solely in their capacity as an **Employee**) advisory director, or member of a duly constituted committee or board of the **Entity** or their functional equivalent;

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.



# Regulatory Claim Sublimit Endorsement

| Policy No.     | Eff. Date of Pol. | Exp. Date of Pol. | Eff. Date of End. | Add'l Prem. | Return Prem. |
|----------------|-------------------|-------------------|-------------------|-------------|--------------|
| MPL 5969759 01 | 09/25/2011        | 09/25/2012        | 09/25/2011        | N/A         | N/A          |

Policyholder: Toren Condominium Inc.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under:

**Private Company Select Insurance Policy**

- ☒ Declarations
- ☒ General Terms and Conditions
- ☒ Management and Entity Liability Coverage Part

It is agreed that:

I. Item 6.A. of the Declarations is amended to add the following:

Sublimits of Liability: \$100,000 Each **Loss** for Each **Regulatory Proceeding**  
\$100,000 Each **Policy Period** for all **Regulatory Proceeding**

Insuring Clauses A, B, C and D, (if granted) for Each **Regulatory Proceeding** Retention: \$50,000

II. Section III. – DEFINITIONS of the Management and Entity Liability Coverage Part is amended to as follows:

A. The following Definition is added:

**Regulatory Proceeding** means any proceeding made against any **Insured** by or on behalf of, or in the right of, or at the behest of, or with the participation of any federal, state, or local government, regulatory or administrative agency or entity, including any foreign equivalent thereof, whether such proceeding is brought in the name of such agency or entity or in the name of any other individual or entity.

B. Subsection A.4 is replaced by the following:

- 4. an administrative proceeding or **Regulatory Proceeding** commenced by the filing of a notice or charges or similar document;

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

## Disclosure Statement



It is our pleasure to present the enclosed policy to you  
for presentation to your customer.

### INSTRUCTION TO AGENT OR BROKER:

WE REQUIRE THAT YOU TRANSMIT THE ATTACHED/ENCLOSED DISCLOSURE STATEMENT TO THE CUSTOMER  
WITH THE POLICY.

Once again, thank you for your interest, and we look forward to meeting your needs and those of your customers.



Dear Policyholder,

Thank you for choosing Zurich for your Management Liability Product(s). We truly appreciate your business and welcome the opportunity to work with you.

We wanted to inform you that under the terms of this transaction you are entitled to online services and resources that are designed just for management solutions customers. These resources are available at no additional cost to you and include loss mitigation tips and techniques, industry-related articles and more. Here are just some examples of what is available to you:

- **eDiscovery website** – a real-time information tool, including a readiness assessment for this rapidly growing phenomena
- **Thought leadership materials** – dedicated to your top-of-mind needs, including timely webinars and engaging white papers, even specific to your industry segment
- **Security & Privacy readiness self assessment** – this exposure makes headlines daily. How ready is your organization for this fast-growing threat?
- **Strategic Risk Services and Enterprise Risk Management** – on-line information source for related hot topics and ERM videos to minimize barriers to achieving expected business outcomes

To access this information and all other resources, simply visit [www.ZurichMgmtSolutions.com](http://www.ZurichMgmtSolutions.com). Please be sure to have your policy number handy.

***Deliver for our customers when it matters most.*** At Zurich, that's the promise we make every day. I thank you again for choosing Zurich.

Sincerely,

Mike Karmilowicz

Executive Vice President, Specialty Products

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## Disclosure Statement



### NOTICE OF DISCLOSURE FOR AGENT & BROKER COMPENSATION

If you want to learn more about the compensation Zurich pays agents and brokers visit:

<http://www.zurichproducercompensation.com>

or call the following toll-free number: (866) 903-1192.

This Notice is provided on behalf of Zurich American Insurance Company  
and its underwriting subsidiaries.



## New York Free Trade Zone Notice



NYFTZ Class:

Class Code:

NOTICE: THESE POLICY FORMS AND THE APPLICABLE RATES ARE EXEMPT FROM THE FILING REQUIREMENTS OF THE NEW YORK STATE INSURANCE DEPARTMENT. HOWEVER, SUCH FORMS AND RATES MUST MEET THE MINIMUM STANDARD OF THE NEW YORK INSURANCE LAW AND REGULATIONS.



**ZURICH**

## **Advisory notice to policyholders regarding the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") regulations**

No coverage is provided by this policyholder notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your declarations page for complete information on the coverages you are provided.

This notice provides information concerning possible impact on your insurance coverage due to directives issued by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC").

**Please read this Notice carefully.**

OFAC administers and enforces sanctions policy based on Presidential declarations of "national emergency". OFAC has identified and listed numerous:

- Foreign agents;
- Front organizations;
- Terrorists;
- Terrorist organizations; and
- Narcotics traffickers;

as "Specially Designated Nationals and Blocked Persons." This list can be located on the United States Treasury's web site – <http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>.

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance are immediately subject to OFAC restrictions. When an insurance policy is considered to be such a blocked or frozen contract, no payments or premium refunds may be made without authorization from OFAC. Other limitations on premiums and payments also apply.

Insured Name: Toren Condominium Inc.

Reference Number: MPL 5969759 01

Effective Date: 09/25/2011



THIS DISCLOSURE DOES NOT GRANT ANY COVERAGE OR CHANGE THE TERMS AND CONDITIONS OF ANY COVERAGE UNDER ANY POLICY.

## DISCLOSURE OF IMPORTANT INFORMATION RELATING TO TERRORISM RISK INSURANCE ACT SCHEDULE\*

Premium attributable to risk of loss from certified acts of terrorism for lines of insurance subject to TRIA:

Included

\*Any information required to complete this Schedule, if not shown above, will be shown in the Declarations.

### A. Disclosure of Premium

In accordance with the federal Terrorism Risk Insurance Act ("TRIA"), as amended, we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to the risk of loss from terrorist acts certified under that Act for lines subject to TRIA. That portion of premium attributable is shown in the Schedule above. The premium shown in the Schedule above is subject to adjustment upon premium audit, if applicable.

### B. Disclosure of Federal Participation in Payment of Terrorism Losses

The United States Government may pay a share of insured losses resulting from an act of terrorism. The federal share equals 85% of that portion of the amount of such insured losses that exceeds the insurer retention. The insurer retention equals 20% of the insurer's prior calendar year direct earned premium associated with lines of insurance subject to TRIA. TRIA is scheduled to expire on December 31, 2014.

### C. Disclosure of \$100 Billion Cap on All Insurer and Federal Obligations

If aggregate insured losses attributable to terrorist acts certified under TRIA exceed \$100 billion in a Program Year (January 1 through December 31) and an insurer has met its deductible under the program, that insurer shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of Treasury.

### D. Availability

As required by TRIA, we have made available to you for lines subject to TRIA coverage for losses resulting from acts of terrorism certified under TRIA with terms, amounts and limitations that do not differ materially from those for losses arising from events other than acts of terrorism.

### E. Definition of Act of Terrorism under TRIA

TRIA defines "act of terrorism" as any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States:

1. to be an act of terrorism;
2. to be a violent act or an act that is dangerous to human life, property or infrastructure;
3. to have resulted in damage within the United States, or outside of the United States in the case of an air carrier (as defined in section 40102 of Title 49, United States Code) or a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), or the premises of a United States mission; and
4. to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

No act may be certified as an "act of terrorism" if the act is committed as part of the course of a war declared by Congress (except for workers' compensation) or if losses resulting from the act, in the aggregate for insurance subject to TRIA, do not exceed \$5,000,000.

## Cap On Losses From Certified Acts Of Terrorism

| Policy No.     | Eff. Date of Pol. | Exp. Date of Pol. | Eff. Date of End. | Add'l Prem. | Return Prem. |
|----------------|-------------------|-------------------|-------------------|-------------|--------------|
| MPL 5969759 01 | 09/25/2011        | 09/25/2012        | 09/25/2011        | N/A         | N/A          |

**Policyholder:** Toren Condominium Inc.

### **THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

#### **Not-For-Profit Select Liability Insurance Policy**

##### **A. Cap on Losses From Certified Terrorism Losses**

"Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act ("TRIA"). The Terrorism Risk Insurance Act provides that the Secretary of Treasury shall certify an act of terrorism:

1. to be an act of terrorism;
2. to be a violent act or an act that is dangerous to human life, property or infrastructure;
3. to have resulted in damage within the United States, or outside of the United States in the case of an air carrier (as defined in section 40102 of Title 49, United States Code) or a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), or the premises of a United States mission; and
4. to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

No act may be certified as an act of terrorism if the act is committed as part of the course of a war declared by Congress (except for workers' compensation) or if losses resulting from the act, in the aggregate for insurance subject to TRIA, do not exceed \$5,000,000.

If aggregate insured losses attributable to one or more "certified acts of terrorism" exceed \$100 billion in a Program Year (January 1 through December 31) and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of Treasury.

##### **B. Application of Other Exclusions**

The terms and limitations of a terrorism exclusion or any other exclusion, or the inapplicability or omission of a terrorism exclusion or any other exclusion, do not serve to create coverage which would otherwise be excluded, limited or restricted under this policy.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY SHALL APPLY AND REMAIN UNCHANGED.**

# ADAM LEITMAN BAILEY

Actively at the helm of the law firm he built from scratch, Adam Leitman Bailey, Esq. practices residential and commercial real estate law. Among New York's most successful and prominent real estate attorneys, Mr. Bailey has been identified among the top five percent of attorneys in the New York area, and named a Super Lawyer by Law & Politics magazine and honored with Martindale-Hubbell "AV" Preeminent rating. During the past four years, the internationally esteemed Chambers & Partners repeatedly selected Mr. Bailey as one of New York's Leading Real Estate lawyers, hailing Mr. Bailey as a "tenacious and confident litigator who is quick-witted in court and respected by the judges", and noting that Bailey is "an extraordinary practitioner who gets great results" quoting a client on Mr. Bailey's "ability to anticipate things before they happen."

Real Estate Weekly recognized that "Adam Leitman Bailey has made a name for himself with his success winning cases in the courtroom." That same newspaper called Mr. Bailey "famous" for his "condominium, foreclosure and tenant representation," and compared his real estate practice to Apple's business. New York Real Estate Journal declared Mr. Bailey to be "one of New York's best real estate attorneys." The New York Times referred to his legal strategy and legislation proposed in one case as "novel," in addition to remarking on how in another case "Adam Leitman Bailey fought on...grinding through excruciating detail and obscure Perry Mason moments." After Mr. Bailey's firm used a forgotten statute to prevail in a landmark federal case, the Wall Street Journal quoted a prominent New York developer's attorney who called the holding a "game changer" affecting real estate nationwide. In another case hailed as "the city's largest condo refund ever" (Curbed NY) involving "a settlement likely to send shivers through the ranks of the city's condo developers" (the New York Post), the settlement he received was the largest condominium settlement in history for one building and the largest government grant (\$21 million) for a cooperative in New York history.

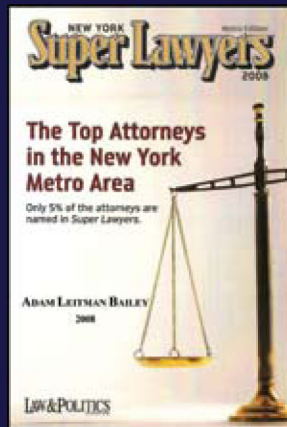
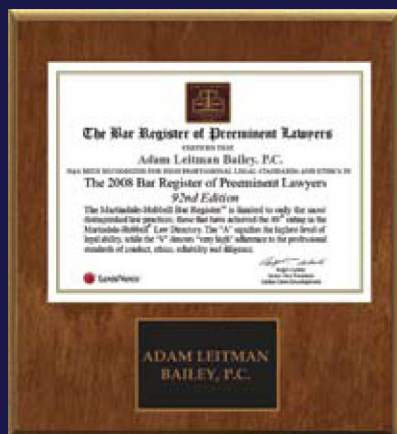
Dateline NBC referred to Mr. Bailey as "aggressive, tenacious and smart" in asking him to share his negotiating secrets on its nationally syndicated television program. Mr. Bailey's American advocacy has prevailed in numerous important trials and cases before various courts and trial venues, including Housing, Civil, and New York State Supreme and Federal Courts, as well as various New York Appellate tribunals. Such cases have included:

- Lorne v. 50 Madison Avenue LLC, an Appellate Division decision that finds responsibility for repairs of newly constructed buildings remains with Sponsor instead of Condo Board;
- Hartman v. Goldman, an adverse possession case of first impression before New York's Appellate Division;
- 542 East 14th Street v. Lee, a case of first impression before New York's Appellate Division defining expansion of rent regulation law for non-primary residence cases;
- Bacolitsas et al. v. 86th & 3rd Owner, LLC, a case the Wall Street Journal called a "game changer" in which a forgotten federal statute was used to assist numerous purchasers buying in newly constructed buildings.
- Rivas v. McDonnell, a noteworthy Appellate Division decision involving an interpretation of the recording statute;
- Sky View Parc Purchasers Association, et al. v. FTC Residential Company II, L.P., the largest condominium settlement in New York history;
- Giovanni Indomenico and Jihyun Indomenico et al. v. 123 Washington, LLC (Trump SoHo), where Adam Leitman Bailey prevailed in a settlement providing millions of dollars to clients based on fraud claims under the Federal Securities Law;

Mr. Bailey has successfully defended a number of the leading title companies and lenders in the nation, and prevailed in numerous trials and settlements involving commercial and residential building owners and tenants, real estate developers, real estate brokerages, insurance companies and cooperative and condominium boards. In addition, Mr. Bailey has favorably represented a number of tenant and homeowner associations and commercial and residential tenants, garnering for these persons and associations many millions of dollars in compensation and rent abatements. For clients facing landlords who leave buildings in disrepair, Mr. Bailey has an unusually successful track record of getting those residential towers, apartments, and stores repaired and all services restored.

Mr. Bailey has also applied his expertise in closing various real estate deals and commercial leases. He has been named to the Board of Editors for Commercial Leasing Law & Strategy and has a regular real estate column in the New York Law Journal. Bailey's lease drafting skills received national attention when BlumbergExcelsior, the nation's leading form distributor responsible for over 70 percent of the residential leases signed in the United States, tapped Bailey to draft a new set of New York City, State and national residential and office leases for purchase nationwide. BlumbergExcelsior's principal remarked that Bailey's lease drafting skills were "remarkable." While almost all New York property owners utilize his leases for residential purposes, his commercial leasing ideas and strategies are commonly a part of the entire national commercial leasing scene and have been included in "The Insider's Best Commercial Lease Clauses," published by the Vendome Group.

His success as cooperative and condominium general counsel earned Mr. Bailey recognition in "Who's Who in Real Estate" by Habitat Magazine. As an assistant adjunct professor at New York University, Mr. Bailey teaches commercial and residential landlord-tenant law. This year, Mr. Bailey has taken on the role of author to guide first-time home buyers through the purchase process. John Wiley and Sons has published his first book, Finding the Uncommon Deal: A Top New York Lawyer Explains How to Buy a Home for the Lowest Possible Price which became a number one New York Times bestseller and is available for purchase worldwide. This past year, Mr. Bailey was elected a Fellow of the American College of Real Estate Lawyers (ACREL) where he serves on the Insurance and Title Insurance committees and the American College of Mortgage Attorneys (ACMA).



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