



214 Key Drive, Suite 2000
Madison, MS 39110
Phone: 866-386-4136
Fax: 601-898-4793
Email: cs@continentalbrokers.biz

LAWYERS PROFESSIONAL LIABILITY INSURANCE POLICY

Notice: This is a claims made and reported Policy. Subject to its terms, this Policy applies only to Claims first made against the Insured and reported as required by this Policy during the Policy Period or an applicable extension period, provided such Claim is for a covered act, error or omission occurring on or after the retroactive date and before the end of the Policy Period. Amounts incurred as Claims Expenses reduce and may exhaust the Limit of Liability and are applied to the Self-Insured Retention. The Underwriter is not liable for Claims Expenses or damages once the Limit of Liability is exhausted. Please read this Policy carefully.

In consideration of the payment of the premium and in reliance upon the statements in the **Application** which is made a part of and deemed attached to this Policy, the Underwriter agrees with the **Named Insured** subject to the Limit of Liability, Self-Insured Retention, exclusions and other terms and conditions of this Policy:

I. Insuring Agreements

A. Coverage

To pay on behalf of the **Insured Damages** and **Claims Expenses**, in excess of the Self-Insured Retention, which the **Insured** shall become legally obligated to pay because of any **Claim** or **Claims**, including **Claim(s)** for **Personal Injury**, first made against any **Insured** and reported in writing to the Underwriter during the **Policy Period** or **Optional Extension Period**, arising out of any act, error or omission of the **Insured** committed on or after the Retroactive Date set forth in Item 6. of the Declarations and before the end of the **Policy Period** in rendering or failing to render **Professional Services**.

B. Defense and Settlement (Included in the Limit of Liability)

1. The Underwriter shall have the right and duty to defend, subject to the Limit of Liability stated in Item 3(a) and 3(b) of the Declarations, any **Claim** against the **Insured** seeking **Damages** which are payable under the terms of this Policy, even if any of the allegations of the **Claim** are groundless, false or fraudulent. The Underwriter shall have the right to select defense counsel. Formal retention of counsel shall not, however, be made until the Underwriter has consulted with the **Insured** regarding the selection and obtained the **Insured's** consent, such consent not to be unreasonably withheld.
2. Where the Underwriter defends a **Claim**, it will pay **Claims Expenses**, in excess of the Self-Insured Retention, incurred with its prior written consent. It is agreed that the Limit of Liability available to pay **Damages** shall be reduced and may be completely exhausted by payment of **Claims Expenses**. **Damages** and **Claims Expenses** shall be applied against the Self-Insured Retention.

3. The Underwriter shall have the right to make any investigation it deems necessary, including, without limitation, any investigation with respect to the **Application** and statements made in the **Application** and, with respect to coverage.
4. If the **Insured** shall refuse to consent to any settlement or compromise recommended by the Underwriter and acceptable to the claimant and elects to contest the **Claim**, the Underwriter' total obligation for such **Claim** shall not exceed the amount for which the **Claim** could have been settled, less the remaining Self-Insured Retention, plus the **Claims Expenses** incurred up to the time of such refusal, or the remaining applicable Limit of Liability, whichever is less, and the Underwriter shall have the right to withdraw from the further defense of the **Claim** by tendering the defense of the **Claim** to the **Insured**.
5. It is further provided that the Underwriter shall not be obligated to pay any **Damages** or **Claims Expenses**, or to undertake or continue defense of any suit or proceeding after the applicable Limit of Liability has been exhausted by payment of **Damages** and/or **Claims Expenses** or after deposit of the applicable Limit of Liability in a court of competent jurisdiction, and that upon such payment or deposit, the Underwriter shall have the right to withdraw from the further defense of the **Claim** by tendering the defense of the **Claim** to the **Insured**.

II. Territory

This Policy applies to **Claims** made and acts, errors or omissions committed anywhere in the world.

III. Definitions

Wherever used in this Policy in bold typeface, the following definitions shall apply:

- A. "**Application**" means all signed applications, including all attachments and other materials submitted therewith or incorporated therein, and any other such documents submitted in connection with the underwriting of this Policy including any endorsement or other part thereof, or any other professional liability policy issued by the Underwriter, of which this Policy is a renewal or replacement or which succeeded it in time.
- B. "**Circumstance**" means any act, error, omission, fact, event or situation that could reasonably be the basis for a **Claim**.
- C. "**Claim**" means:
 1. a written demand received by any **Insured** for money or services including the service of suit or notice of the institution of an arbitration or mediation proceeding received by any **Insured**;
 2. notice of the institution of a disciplinary, grievance or regulatory proceeding received by any **Insured**; or
 3. a written request received by any **Insured** to toll or waive a statute of limitations.

Multiple **Claims** arising out of the same, continuing or related acts, errors or omissions shall be considered a single **Claim** for the purposes of this Policy, irrespective of the number of **Claims**, claimants or **Insureds**. All such **Claims** shall be deemed to have been made at the time of the first such **Claim**.

D. "**Claims Expenses**" means:

1. reasonable and necessary fees charged by an attorney selected in accordance with Clause I.B.1.;
2. all other reasonable and necessary fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim** against an **Insured** for an act, error or omission covered by this Policy if incurred by the Underwriter, or by the **Insured** with the written consent of the Underwriter; and
3. premiums for appeal bonds for covered judgments or bonds to release property used to secure a legal obligation, if required for any **Claim** against an **Insured** for an act, error or omission covered by this Policy, provided however that the Underwriter shall have no obligation to appeal or to obtain bonds. The Underwriter shall have no obligation for premiums for bond amounts in excess of the applicable Limit of Liability of this Policy.

The term **Claims Expenses** does not include or mean any salary, overhead or other charges by the **Insured** for any time spent in cooperating in the defense and investigation of any **Claim** or **Circumstance** notified under this Policy.

E. "**Damages**" means a monetary judgment, award or settlement, including any pre-judgment and/or post-judgment interest thereon.

The term **Damages** shall not include or mean:

1. the return, reimbursement, disgorgement or withdrawal of legal fees, costs or expenses paid to or owed to the **Insured**;
2. any punitive or exemplary damages, unless insurable by law in any applicable jurisdiction that most favors the insurability of punitive or exemplary damages;
3. any damages which are a multiple of compensatory damages;
4. fines, taxes or loss of tax benefits, sanctions or penalties;
5. any amounts for which the **Insured** is not liable, or for which there is no legal recourse against the **Insured**; or
6. matters deemed uninsurable under the law pursuant to which this Policy shall be construed.

F. "**Insured**" means:

1. the **Named Insured**;

2. any lawyer who is a partner in the **Named Insured** including an incorporated partner and their shareholders, but solely for acts, errors or omissions on behalf of the **Named Insured**;
 3. any lawyer who is a stockholder or member of the **Named Insured**, but solely for acts, errors or omissions on behalf of the **Named Insured**;
 4. any lawyer acting as "of counsel" to the **Named Insured**, but solely for acts, errors or omissions on behalf of the **Named Insured**;
 5. any employed lawyer, paralegal or other employee of the **Named Insured**, but solely for acts, errors or omissions on behalf of the **Named Insured**;
 6. any contract lawyer or temporary lawyer whose services are retained by the **Named Insured**, but solely for acts, errors or omissions on behalf of the **Named Insured**;
 7. any person who previously qualified as an **Insured** under 2., 3., 4., 5., or 6. above prior to the termination of the required relationship with the **Named Insured**, but solely for acts, errors or omissions on behalf of the **Named Insured**;
 8. any lawyer who during the **Policy Period** becomes a partner, stockholder, member or employee of the **Named Insured**, but solely for acts, errors or omissions on behalf of the **Named Insured**;
 9. the estate, heirs, executors, administrators, assigns and legal representatives of any **Insured** in the event of such **Insured's** death, incapacity, insolvency or bankruptcy, but only to the extent that such **Insured** would otherwise be provided coverage under this Policy.
- G. "**Optional Extension Period**", if purchased, means the period of time set forth in Item 8(b) of the Declarations after the end of the **Policy Period** for reporting **Claims** as provided in Clause VIII. of this Policy.
- H. "**Named Insured**" means:
1. the partnership, professional corporation or professional association so designated in Item 1. of the Declarations;
 2. any partnership, professional corporation or professional association, advised in writing to the Underwriter prior to the inception date of this Policy, of which the partnership, professional corporation or professional association so designated in Item 1. of the Declarations is the successor; or
 3. if designated as an individual, the person so designated in Item 1. of the Declarations but only with respect to the conduct of a law practice of which the individual is the sole proprietor.
- I. "**Personal Injury**" means:
1. false arrest, detention or imprisonment, wrongful entry or eviction or other invasion of the right of private occupancy, or malicious prosecution or abuse of process; or

2. libel or slander or other defamatory or disparaging material, or a publication or an utterance in violation of an individual's right of privacy.
- J. "**Policy Period**" means the period of time between the inception date shown in the Declarations and the effective date of termination, expiration or cancellation of this Policy and specifically excludes any **Optional Extension Period** hereunder or any prior policy period or renewal policy period.
- K. "**Professional Services**" means those services rendered or failed to be rendered for others by the **Insured** in the capacity as:
1. a lawyer,
 2. an arbitrator or mediator,
 3. an administrator, conservator, executor, guardian, trustee, receiver, escrow agent or any similar capacity,
 4. an agent to a title insurance company and/or designated issuing attorney to a title insurance company, or
 5. a notary public,
- but solely for acts on behalf of the **Named Insured**.

Whenever the singular form of a word is used herein, the same shall include the plural when required by context.

IV. **Exclusions**

The coverage under this Policy does not apply to **Damages** or **Claims Expenses** in connection with or resulting from any **Claim**:

- A. arising out of or resulting from any criminal, dishonest, fraudulent or malicious act, error or omission of any **Insured**; however, this Policy shall apply to **Claims Expenses** incurred in defending any such **Claim** alleging the foregoing until such time as there is a final adjudication, judgment, binding arbitration decision or conviction against the **Insured**, or admission by the **Insured**, establishing such criminal, dishonest, fraudulent or malicious conduct, or a plea of *nolo contendere* or no contest regarding such alleged conduct, at which time the **Insured** shall reimburse the Underwriter for all **Claims Expenses** incurred defending the **Claim** and the Underwriter shall have no further liability for **Claims Expenses**;
- B. made by or on behalf of one or more **Insureds** under this Policy against another **Insured** or **Insureds** under this Policy; provided, however, that this exclusion shall not apply to any **Claim** arising directly out of any act, error or omission of the **Insured** in rendering or failing to render **Professional Services** in a lawyer-client relationship;
- C. arising out of or resulting from bodily injury to, or sickness, disease or death of any person, or to injury to or destruction of any tangible property, including the loss of use thereof; provided, however, that this exclusion shall not apply to any **Claim** arising directly out of any act, error or omission of the **Insured** in rendering or failing to render **Professional Services**;

- D. arising out of or resulting from any loss sustained by an **Insured** as a beneficiary or distributee of any trust or estate;
- E. arising out of or resulting from any **Insured's** activities as a trustee, partner, officer, director or employee of any employee trust, charitable organization, corporation, company or business other than that of the **Named Insured**; provided, however, that this exclusion shall not apply to any **Claim** brought by a client of the **Named Insured** arising directly out of any act, error or omission of the **Insured** in rendering or failing to render **Professional Services** to such client;
- F. made by or on behalf of or against or in connection with:
 - 1. any publicly held business enterprise (including the ownership, maintenance or care of any property in connection therewith), which directly or indirectly is owned 5% or more by any **Insured**; or
 - 2. any other business enterprise (including the ownership, maintenance or care of any property in connection therewith), not named in Item 1. of the Declarations, which directly or indirectly is owned 10% or more by any **Insured**; or
 - 3. any business enterprise (including the ownership, maintenance or care of any property in connection therewith), not named in Item 1. of the Declarations, which is directly or indirectly controlled, operated or managed by any **Insured** in a non-fiduciary capacity.

For purposes of Exclusion F.3. and notwithstanding the terms of Exclusion E., the holding by an **Insured** of a position as an officer or partner of such business enterprise or a position on the board of directors, board of trustees or equivalent body of such business enterprise (or a committee of such board or body) shall not in itself be deemed to constitute control, operation or management of such business enterprise;

- G. arising out of or resulting from any act, error or omission committed prior to the inception date of this Policy:
 - 1. if any **Insured** on or before the Continuity Date set forth in Item 7. of the Declarations knew or could have reasonably foreseen that such act, error or omission might be expected to be the basis of a **Claim**; or
 - 2. in respect of which any **Insured** has given notice of a **Claim** or **Circumstance** to the insurer of any other policy in force prior to the inception date of this Policy;
- H. made against the **Insured** during the **Policy Period** or the **Optional Extension Period** arising out of or resulting from the same, continuing or related acts, errors or omissions that also gave rise to a **Claim** made against the **Insured** prior to the **Policy Period**, regardless of whether such **Claim** was reported to a prior insurer or not;
- I. arising out of or resulting from any **Insured's** capacity as an elected public official or as an employee of a governmental body, subdivision, or agency thereof unless the **Insured** is deemed an employee solely by virtue of rendering **Professional Services** to such governmental body, the remuneration for which services inures to the benefit of the **Named Insured**;

- J. arising out of or resulting from any **Insured's** activities and/or capacity as a fiduciary under the Employee Retirement Income Security Act of 1974 or the Pension Protection Act of 2006 or any amendment or any regulation or order issued pursuant thereto, except if the **Insured** is deemed to be an administrator, conservator, executor, guardian, trustee, receiver, escrow agent or any similar capacity solely by reason of legal advice rendered with respect to any employee benefit plan; or
- K. arising out of or resulting from any financial or investment advice, prediction of future performance, warranty or guarantee, regarding a specific or identifiable investment where such advice, prediction, warranty or guarantee does not constitute legal advice.

V. **Limit of Liability**

- A. The Limit of Liability stated in Item 3(a) of the Declarations for "Each **Claim**" is the limit of the Underwriter's liability for all **Damages** and **Claims Expenses** arising out of each **Claim**.
- B. The Limit of Liability stated in Item 3(b) of the Declarations as "Aggregate for the **Policy Period**" is the total limit of the Underwriter's liability for all **Damages** and **Claims Expenses** arising out of all **Claims** and **Circumstances** which are covered under the terms and conditions of this Policy.
- C. Neither the inclusion of more than one **Insured** under this Policy, nor the making of **Claims** by more than one person or entity shall increase the Limit of Liability.
- D. The Limit of Liability for the **Optional Extension Period** shall be part of, and not in addition to, the Limits of Liability of the Underwriter for the **Policy Period**.

VI. **Self-Insured Retention**

The "Each **Claim** Self-Insured Retention" stated in Item 4. of the Declarations applies separately to each **Claim**. The Each **Claim** Self-Insured Retention shall be satisfied by monetary payments by the **Insured** of **Damages** and **Claims Expenses** resulting from each **Claim** which is covered under the terms and conditions of this Policy. Satisfaction of the Each **Claim** Self-Insured Retention is a condition precedent to the payment by the Underwriter of any amounts hereunder, and the Underwriter shall be liable only for amounts in excess of such Each **Claim** Self-Insured Retention subject to the Underwriter's total liability not exceeding the Limit of Liability stated in Items 3(a) and 3(b) of the Declarations. The **Insured** shall make direct payments within the Each **Claim** Self-Insured Retention to appropriate parties designated by the Underwriter.

VII. **Innocent Insured**

- A. Whenever coverage under this Policy would be excluded, suspended or lost because of Exclusion IV.A. relating to criminal, dishonest, fraudulent or malicious acts, errors or omissions by any **Insured**, and with respect to which any other **Insured** did not personally participate or personally acquiesce or remain passive after having personal knowledge thereof, the Underwriter agree that such insurance as would otherwise be afforded under this Policy shall cover and be paid with respect to those **Insureds** who did not personally commit or personally participate in committing or personally acquiesce in or remain passive after having personal knowledge of one or more of the acts, errors or omissions described in Exclusion IV.A.

- B. With respect to this provision, the Underwriter's obligation to pay shall be in excess of the Self-Insured Retention and in excess of the full extent of any assets of any **Insured** to whom Exclusion IV.A. applies. In no event shall the Underwriter's obligation to pay exceed the Limit of Liability stated in Item 3. of the Declarations.

VIII. **Optional Extension Period**

- A. If this Policy is cancelled or non-renewed by the Underwriter or the **Named Insured**, then the **Named Insured** shall have the right, upon payment of an additional premium calculated at that percentage shown in Item 8.(a) of the Declarations of the total annualized premium for this Policy, to an extension of the coverage granted by this Policy with respect to any **Claim** first made against the **Insured** and reported in writing to the Underwriter during the period of time set forth in Item 8.(b) of the Declarations after the end of the **Policy Period**, but only with respect to any act, error or omission committed on or after the Retroactive Date and before the effective date of cancellation or non-renewal which is otherwise covered by this Policy.
- B. As a condition precedent to the right to purchase the **Optional Extension Period**, the total premium for this Policy must have been paid. The right to purchase the **Optional Extension Period** shall terminate unless written notice together with full payment of the premium for the **Optional Extension Period** is given to the Underwriter within thirty (30) days after the effective date of cancellation or non-renewal. If such notice and premium payment is not so given to the Underwriter, there shall be no right to purchase the **Optional Extension Period**.
- C. In the event of the purchase of the **Optional Extension Period**, the entire premium for the **Optional Extension Period** shall be deemed earned at its commencement.
- D. The Limit of Liability for the **Optional Extension Period** shall be part of and not in addition to the Limit of Liability of the Underwriter for the **Policy Period**.
- E. The offer of renewal terms, conditions or premiums different from those in effect prior to renewal shall not constitute a refusal to renew for purposes of this Clause VIII.

IX. **Other Insurance**

This Policy shall apply in excess of any other valid and collectible insurance available to any **Insured**, unless such other insurance is written only as specific excess insurance over the Limit of Liability of this Policy.

X. **Notice of Claim or Circumstance**

- A. If any **Claim** is made against the **Insured**, the **Insured** shall forward as soon as practicable to the Underwriter through the person or entity named in Item 9.(a) of the Declarations written notice of such **Claim** in the form of a facsimile, electronic mail, or express or certified mail together with every demand, notice, summons or other process received by the **Insured** or the **Insured's** representative, but in no event later than the expiration of the **Policy Period** or the last day of the **Optional Extension Period**. If the **Insured** elects to transmit notice in the form of a facsimile or electronic mail, the **Insured** must also immediately transmit a copy of the original transmission by mail.

B. If during the **Policy Period** the **Insured** first becomes aware of any **Circumstance** and gives written notice to the Underwriter in the form of a facsimile, electronic mail, or express or certified mail through the person or entity named in Item 9.(a) of the Declarations as soon as practicable during the **Policy Period** of:

- (1) the specific details of the act, error or omission that gave rise to the **Circumstance**; and
- (2) the injury or damage which may result or has resulted from the **Circumstance**; and
- (3) the facts by which the **Insured** first became aware of the act, error or omission

then any subsequent **Claim** made against the **Insured** arising out of such **Circumstance** which is the subject of the written notice shall be deemed to have been made at the time written notice complying with the above requirements was first given to the Underwriter. If the **Insured** elects to transmit notice in the form of a facsimile or electronic mail, the **Insured** must also immediately transmit a copy of the original transmission by mail.

C. A **Claim** or **Circumstance** shall be considered to be reported to the Underwriter when written notice is first received by the Underwriter in the form of a facsimile, electronic mail, or express or certified mail through the person or entity named in Item 9.(a) of the Declarations if provided in compliance with Clause A. or B. above.

D. In the event of non-renewal of this Policy by the Underwriter or the **Named Insured**, the **Insured** shall have thirty (30) days from the expiration date of the **Policy Period** to notify the Underwriter as soon as practicable of **Claims** made against the **Insured** during the **Policy Period** which arises out of any act, error or omission committed prior to the termination date of the **Policy Period** and which are otherwise covered by this Policy.

E. If any **Insured** shall make any claim under this Policy knowing such claim to be false or fraudulent, as regards amount or otherwise, this Policy shall become null and void and all coverage hereunder shall be forfeited.

XI. **Assistance and Cooperation of the Insured**

The **Insured** shall cooperate with the Underwriter in all investigations, including investigations regarding the application for and coverage under this Policy. The **Insured** shall execute or cause to be executed all papers and render all assistance as is requested by the Underwriter. The **Insured** agrees not to take any action which in any way increases the Underwriter's exposure under this Policy.

Upon the Underwriter's request, the **Insured** shall assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization other than an employee of any **Insured** who may be liable to the **Insured** because of acts, errors or omissions with respect to which insurance is afforded under this Policy; and the **Insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. If such attendance is at the Underwriter's request, and after the first three (3) days attendance required for each **Claim**, the Underwriter shall reimburse the **Insured**, upon written request, for actual loss of earnings and reasonable expenses due to such attendance up to \$400 for each day in the aggregate for all **Insureds** subject to a maximum amount of \$7,500 for each **Claim**.

Such payments hereunder are not subject to the Self-Insured Retention and are payable by the Underwriter in addition to the Limit of Liability.

Except as provided in the above paragraph, expenses incurred by the **Insured** in assisting and cooperating with the Underwriter, as described in the first paragraph of this Clause, are not reimbursable under this Policy.

The **Insured** shall not, except at its own cost, admit liability, make any payment, assume any obligation, incur any expense, enter into any settlement, stipulate to any judgment or award or otherwise dispose of any **Claim** without the written consent of the Underwriter.

XII. **Action Against the Underwriter**

No action shall lie against the Underwriter unless, as a condition precedent thereto, there shall have been full compliance with all terms of this Policy, nor until the amount of the **Insured's** obligation to pay shall have been fully and finally determined either by judgment or award against the **Insured** after trial, arbitration, court order or by written agreement of the **Insured**, the claimant and the Underwriter. Nothing contained herein shall give any person or organization any right to join the Underwriter as a party to any **Claim** against the **Insured** to determine their liability, nor shall the Underwriter be impleaded by any **Insured** or its legal representative in any **Claim**.

XIII. **Subrogation**

In the event of any payment under this Policy, the Underwriter shall be subrogated to all the **Insured's** rights of recovery therefor against any person or organization and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing to prejudice such rights and cooperate with the Underwriter in the pursuit of subrogation. Any recoveries shall be applied first to subrogation expenses, second to **Damages** and **Claims Expenses** paid by the Underwriter, and third to the Self-Insured Retention. Any additional amounts recovered shall be paid to the **Named Insured**.

XIV. **Changes**

Notice to any agent or knowledge possessed by any agent or by any other person shall not affect a waiver or a change in any part of this Policy or estop the Underwriter from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by endorsement issued to form a part of this Policy, signed by the Underwriter.

XV. **Mergers and Acquisitions**

A. If during the **Policy Period**:

- (1) the **Named Insured** consolidates or merges with another firm so that the **Named Insured** is the surviving firm,
- (2) the **Named Insured** acquires another firm, or
- (3) a group of persons who formerly practiced at another firm become partners, stockholders, members and/or employees of the **Named Insured**,

where as a result of such consolidation, merger, acquisition or group of persons joining the **Named Insured** the total number of lawyers of the **Named Insured**,

at the inception date of this Policy, does not increase by more than 5% or 25 attorneys (whichever is less); then coverage shall be afforded under this Policy for any **Claim** or **Claims**, otherwise covered by this Policy, that arise out of any act, error or omission in rendering or failing to render **Professional Services**, committed subsequent to such consolidation, merger, acquisition or group of persons joining the **Named Insured**, by any person previously employed by such consolidated, merged or acquired firm or who formerly practiced at such other firm and now is employed by or practices at the **Named Insured**.

If as a result of any such consolidation, merger, acquisition or group of persons joining the **Named Insured** the total number of lawyers of the **Named Insured**, at the inception date of this Policy, increases by more than 5% or 25 attorneys (whichever is less), then no coverage shall be afforded under this Policy for any **Claim** or **Claims** that arise out of any act, error or omission in rendering or failing to render **Professional Services**, whenever committed, by such consolidated, merged or acquired firm, group of persons or any person employed by such consolidated, merged or acquired firm. The foregoing provision shall not apply if the **Named Insured** gives the Underwriter written notice at least 30 days prior to the consolidation, merger, acquisition or such group of persons joining the **Named Insured**, obtains the written consent of the Underwriter to extend coverage to such additional firm or persons, and agrees to pay the additional premium required by the Underwriter.

B. If during the **Policy Period** the **Named Insured**:

- (1) consolidates or merges with another firm such that the **Named Insured** is not the surviving entity,
- (2) is acquired by another firm, or
- (3) sells substantially all of its assets to another firm,

then coverage under this Policy shall not apply to acts, errors or omissions committed subsequent to such consolidation, merger or acquisition and the Underwriter shall retain the total premium for this Policy, such total premium to be deemed earned at the date of such consolidation, merger or acquisition. The **Named Insured** shall provide written notice of such consolidation, merger or acquisition as soon as practicable, together with such information as the Underwriter may require.

C. All notices and premium payments made under this Clause shall be directed to the Underwriter through the entity named in Item 9.(c) of the Declarations.

XVI. **Assignment**

The interest hereunder of any **Insured** is not assignable. If the **Insured** shall die or be adjudged incompetent, this Policy shall cover the **Insured's** legal representative as the **Insured** with respect to liability previously incurred and covered by this Policy.

XVII. **Cancellation and Non-Renewal**

A. The **Named Insured** may cancel this Policy by surrender thereof to the Underwriter, or by mailing to the Underwriter written notice stating when thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall

become the end of the **Policy Period**. Delivery of such written notice shall be equivalent to mailing.

- B. The Underwriter may cancel this Policy only for nonpayment of premium by mailing or delivering to the **Named Insured** at the address shown in the Declarations written notice stating when, not less than ten (10) days thereafter, such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice by the Underwriter shall be equivalent to mailing.
- C. If this Policy is cancelled pursuant to A. hereinabove, the Underwriter shall retain the short rate portion of the premium hereon calculated in accordance with the Short Rate Table set forth in Clause XXVI. of this Policy. If this Policy is cancelled pursuant to B. hereinabove, the Underwriter shall be entitled to the pro rata portion of the premium hereon. Payment or tender of any unearned premium by the Underwriter shall not be a condition precedent to the effectiveness of cancellation.
- D. If the Underwriter decides not to renew this Policy, the Underwriter shall mail or deliver written notice to the **Named Insured**, at the address shown in Item 1. of the Declarations at least sixty (60) days before the end of the **Policy Period**. The notice of non-renewal shall state the reason for non-renewal.

XVIII. **Representations**

By acceptance of this Policy, all **Insureds** agree that the statements contained in the **Application** are their agreements and representations, that they shall be deemed material to the risk assumed by the Underwriter, and that this Policy is issued in reliance upon the truth thereof.

XIX. **Entire Agreement**

By acceptance of this Policy, all **Insureds** agree that this Policy embodies all agreements existing between them and the Underwriter relating to this Policy. Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop the Underwriter from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by written endorsement issued to form a part of this Policy, signed by the Underwriter.

XX. **Bankruptcy**

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

XXI. **Authorization**

By acceptance of this Policy, all **Insureds** agree that the **Named Insured** will act on their behalf with respect to the giving and receiving of any notice provided for in this Policy, the payment of premiums and the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements.

XXII. **Headings**

The descriptions in the headings and subheadings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

XXIII. Valuation and Currency

All premiums, limits of liability, self-insured retentions, **Damages** and other amounts under this Policy are expressed and payable in the currency of the United States. If judgment is rendered, settlement is denominated or another element of **Damages** under this Policy is stated in a currency other than United States dollars or if **Claims Expenses** are paid in a currency other than United States dollars, payment under this Policy shall be made in United States dollars at the rate of exchange published in the *Wall Street Journal* on the date the judgment becomes final or payment of the settlement or other element of **Damages** is due or the date such **Claims Expenses** are paid.

XXIV. Disputes

A. Mediation

If any dispute arises between any **Insured**, or any person or entity succeeding to the **Insured's** rights and obligations under this Policy, and the Underwriter, involving this Policy and/or a **Claim** or **Circumstance** hereunder, such dispute shall be referred to a qualified mediator in a good faith effort to negotiate a resolution of the dispute, prior to the initiation of any arbitration or other proceedings. The party electing to mediate shall provide written notice to the other party setting forth its request to mediate and a brief statement regarding the issue to be mediated. The person or entity named in Item 9.(b) of the Declarations is authorized and directed to accept the notice of mediation on behalf of the Underwriter. The **Named Insured** is authorized and directed to accept the notice of mediation on behalf of any **Insured**.

One mediator, who shall be mutually agreed upon by the **Insured** and the Underwriter, shall preside over the mediation. If the parties are unable to agree on a mediator within 30 days of a written request to mediate, then the dispute shall be referred to JAMS or a similar entity mutually agreed upon by the **Insured** and the Underwriter.

The **Insured** and the Underwriter shall each bear 50% of the expense of the mediator and of the mediation. Any mediation proceedings shall take place at a location mutually agreed upon by the **Insured** and the Underwriter, but notwithstanding the location of the mediation, the applicable law shall be the law of the state designated in Item 10 of the Declarations. If the location cannot be mutually agreed upon by the **Insured** and the Underwriter, it shall be decided by the mediator.

The mediation will continue until the dispute is resolved, or until the mediator notifies the parties that it is unlikely that the dispute will be resolved through mediation, or until any party elects to end the mediation after a minimum of 30 days after the first mediation session.

B. Arbitration

As a condition precedent to any right of action hereunder, in the event that a good faith effort to mediate pursuant to Clause XXIV. A. above cannot resolve a dispute between any **Insured**, or any person or entity succeeding to the **Insured's** rights and obligations under this Policy, and the Underwriter, involving this Policy and/or a **Claim** or **Circumstance** hereunder, such dispute shall be determined by final and binding arbitration, before a panel of three arbitrators. The arbitration and the selection of the arbitrators shall be administered by JAMS or a similar entity mutually agreed upon by the **Insured** and the Underwriter.

Any party demanding arbitration shall provide written notice to the other party setting forth its request to arbitrate and a brief statement regarding the issue to be arbitrated. The person or entity named in Item 9.(b) of the Declarations is authorized and directed to accept the notice of arbitration on behalf of the Underwriter. The **Named Insured** is authorized and directed to accept the notice of arbitration on behalf of any **Insured**.

Judgment on the arbitrators' decision and award may be entered in a court of competent jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of competent jurisdiction.

The **Insured** and the Underwriter shall each bear 50% of the expense of the arbitration. Any arbitration proceedings shall take place at a location mutually agreed upon by the **Insured** and the Underwriter, but notwithstanding the location of the arbitration, the applicable law shall be the law of the state designated in Item 10 of the Declarations. If the location cannot be mutually agreed upon by the **Insured** and the Underwriter, it shall be decided by the arbitration panel.

C. **Service of Suit**

Subject to the application of Clauses XXIV.A. and XXIV.B. above, it is agreed that in the event of the failure of the Underwriter to pay any amount due under this Policy, the Underwriter, at the request of the **Named Insured**, will submit to the jurisdiction of any court of competent jurisdiction within the United States and will comply with all requirements necessary to give such court jurisdiction. This clause does not constitute and should not be understood to constitute an agreement by the Underwriter that an action is properly maintained in a specific forum, nor may it be construed as a waiver of the Underwriter's rights to commence an action in a court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any State of the United States, all of which rights the Underwriter expressly reserves. It is further agreed that service of process in such suit may be made upon persons named in Item 9.(b) of the Declarations and that in any suit instituted against the Underwriter, the Underwriter will abide by the final decision of such court or of any Appellate Court in the event of an appeal.

The person or entity named in Item 9.(b) of the Declarations is authorized and directed to accept service of process on behalf of the Underwriter in any such suit and/or upon the request of the **Named Insured** to give written undertaking to the **Named Insured** that the person or entity named in Item 9.(b) of the Declarations will enter a general appearance upon the Underwriter's behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefor, the Underwriter hereby designates the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute or his successor or successors in office, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the **Named Insured** or any beneficiary hereunder arising out of this Policy, and hereby designate the person or entity named in Item 9.(b) of the Declarations as the persons to whom the said officer is authorized to mail such process or a true copy thereof.

XXV. **Choice of Law**

Except with respect to the insurability of punitive and exemplary damages under Clause III.E.2., any disputes involving this Policy shall be resolved by applying the law designated in Item 10. of the Declarations.

XXVI. **Short Rate Table and Procedures**

Notwithstanding anything to the contrary contained herein and in consideration of the premium for which this Policy is written it is agreed that in the event of cancellation thereof by the **Insured** the Earned Premium shall be computed as follows:

SHORT RATE TABLE

A. For policies written for one year:

Days Policy in Force	Per cent. of One Year Premium	Days Policy in Force	Per cent. of One Year Premium
1 - 73	30	206 - 209	66
74 - 76	31	210 - 214 (7 months)	67
77 - 80	32	215 - 218	68
81 - 83	33	219 - 223	69
84 - 87	34	224 - 228	70
88 - 91 (3 months)	35	229 - 232	71
92 - 94	36	233 - 237	72
95 - 98	37	238 - 241	73
99 - 102	38	242 - 246 (8 months)	74
103 - 105	39	247 - 250	75
106 - 109	40	251 - 255	76
110 - 113	41	256 - 260	77
114 - 116	42	261 - 264	78
117 - 120	43	265 - 269	79
121 - 124 (4 months)	44	270 - 273 (9 months)	80
125 - 127	45	274 - 278	81
128 - 131	46	279 - 282	82
132 - 135	47	283 - 287	83
136 - 138	48	288 - 291	84
139 - 142	49	292 - 296	85
143 - 146	50	297 - 301	86
147 - 149	51	302 - 305 (10 months)	87
150 - 153 (5 months)	52	306 - 310	88
154 - 156	53	311 - 314	89
157 - 160	54	315 - 319	90
161 - 164	55	320 - 323	91
165 - 167	56	324 - 328	92
168 - 171	57	329 - 332	93
172 - 175	58	333 - 337 (11 months)	94
176 - 178	59	338 - 342	95
179 - 182 (6 months)	60	343 - 346	96
183 - 187	61	347 - 351	97
188 - 191	62	352 - 355	98
192 - 196	63	356 - 360	99

197 – 200	64	361 - 365	(12 months)...	100
201 - 205	65			

B. For policies written for more or less than one year:

1. If Policy has been in force for 12 months or less, apply the standard short rate table for annual policies to the full annual premium determined as for a Policy written for a term of one year.
2. If Policy has been in force for more than 12 months:
 - (a) Determine full annual premium as for a Policy written for a term of one year.
 - (b) Deduct such premium from the full insurance premium, and on the remainder calculate the pro rata Earned Premium on the basis of the ratio of the length of time beyond one year the Policy has been in force to the length of time beyond one year for which the Policy was originally written.
 - (c) Add premium produced in accordance with items (a) and (b) to obtain Earned Premium during full period Policy has been in force.