



# AIG Executive Liability<sup>®</sup>

Insurance provided by a member of American International Group, Inc.

## Not-For-Profit Risk Protector<sup>SM</sup>

### EMPLOYED LAWYERS PROFESSIONAL LIABILITY INSURANCE COVERAGE SECTION FIVE ("EMPLOYED LAWYERS COVERAGE SECTION")

**Notice:** Pursuant to Clause 1 of the General Terms and Conditions, the General Terms and Conditions are incorporated by reference into, made a part of, and are expressly applicable to this Coverage Section, unless otherwise explicitly stated to the contrary in either the General Terms and Conditions or in this Coverage Section.

In consideration of the payment of the premium, and in reliance upon the statements made to the **Insurer** by application, including its attachments and the material incorporated therein, which form a part of this policy, the **Insurer** agrees as follows:

#### 1. INSURING AGREEMENTS

##### COVERAGE A: EMPLOYED LAWYER INSURANCE

This policy shall pay on behalf of the **Employed Lawyer** all sums which the **Employed Lawyer** shall become legally obligated to pay as **Damages** arising from a **Claim** first made against the **Employed Lawyer** during the **Policy Period** or **Discovery Period** (if applicable) and reported to the **Insurer** pursuant to the terms of this policy for any **Wrongful Act** of the **Employed Lawyer**, except when and to the extent that the **Organization** has indemnified such **Employed Lawyer**.

##### COVERAGE B: ORGANIZATION INDEMNIFICATION

This policy shall pay on behalf of the **Organization** all sums which the **Organization** may be required or permitted by law to indemnify an **Employed Lawyer** for any sum which the **Employed Lawyer** becomes legally obligated to pay as **Loss** arising from a **Claim** first made against the **Employed Lawyer** during the **Policy Period** or the **Discovery Period** (if applicable) and reported to the **Insurer** pursuant to the terms of this policy for any **Wrongful Act** of the **Employed Lawyer** while acting in the course of said **Employed Lawyer's** employment by the **Organization**, but only when and to the extent that the **Organization** has indemnified the **Employed Lawyer** for such **Loss** pursuant to law, common or statutory, contract, or the charter or by-laws of the **Organization** duly effective under such law which determines and defines such rights of indemnity.

##### COVERAGE C: DEFENSE COSTS, CHARGES AND EXPENSES

The **Insurer** shall have the right and duty to defend, subject to the applicable Retention amount and subject to and as part of the applicable **Limits of Liability**, any **Claim** against the **Employed Lawyer** 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 **Insurer** shall be entitled to exercise all rights of an **Employed Lawyer** in the choice of arbitrators and in the conduct of any arbitration proceeding involving a **Claim** covered by this Coverage Section.

The **Insurer** shall have the right to make any investigation it deems necessary and, with the written consent of the **Employed Lawyer**, settle any **Claim** covered by this Coverage Section. If the **Employed Lawyer** shall refuse to consent to any settlement recommended by the **Insurer** and acceptable to the claimant and elects to contest the **Claim**, then the **Insurer's** liability shall not exceed the amount for which the **Insurer** would have been liable for **Loss** if the **Claim** had been so settled when and as recommended, and the **Insurer** shall have no liability for **Defense Costs** accruing thereafter, and the **Insurer** shall have the right to withdraw from the further defense thereof by tendering control of said defense to the **Employed Lawyer**.

The **Employed Lawyer** shall not, except at the **Employed Lawyer's** own cost, admit liability, voluntarily make any payment, assume any obligation or incur any expenses without the written consent of the **Insurer**.

The **Insurer** shall not be obligated to pay any **Loss**, or to undertake or continue defense of any **Claim** after the applicable limit of the **Insurer's** liability has been exhausted by payment of **Loss** or after deposit of the applicable limit of the **Insurer's** liability in a court of competent jurisdiction, and in such a case, the **Insurer** shall have the right to withdraw from the further defense thereof by tendering control of said defense to the **Employed Lawyer**.

## 2. DEFINITIONS

(a) "**Claim**" means:

- (1) a written demand for monetary, non-monetary or injunctive relief;
- (2) a civil, administrative, regulatory or arbitration proceeding for monetary, non-monetary or injunctive relief which is commenced by service of a complaint or similar pleading; or
- (3) a judicial, administrative, bar association or other proceeding against an **Employed Lawyer** solely concerning the eligibility or license of such **Employed Lawyer** to practice law.

(b) "**Damages**" means a monetary judgment award or monetary settlement arising from a **Claim**, but does not include fines, sanctions or statutory penalties whether imposed by law or otherwise, nor the return of or restitution of legal fees, costs and expenses.

(c) "**Employed Lawyer**" means:

- (1) any person admitted to practice law who is, was or becomes employed as a lawyer full time and salaried by the **Organization**, but only as regards **Wrongful Acts** which occur during the term of such employment; and
- (2) non-lawyer employees of the **Organization** who are, were or become assistants of an **Employed Lawyer** as defined in sub-paragraph (1) above, while acting under the direction and control of such **Employed Lawyer** in the performance of professional services on behalf of the **Organization**.

(d) "**Executive**" means any:

- (1) past, present or future duly elected or appointed director, officer, trustee, trustee emeritus, executive director or governor of the **Organization**, or committee member of a duly constituted committee of the **Organization**; or
- (2) past, present or future General Counsel and Risk Manager (or equivalent position) of the **Organization**.

(e) "**Indemnifiable Loss**" means **Loss** for which the **Organization** has indemnified or is permitted or required to indemnify any **Individual Insureds**.

(f) "**Individual Insured**" means any **Employed Lawyer**.

(g) "**Insured(s)**" means:

- (1) any **Employed Lawyer**; and
- (2) any **Organization**, but solely with respect to Coverage B and such **Organization's** indemnification of an **Employed Lawyer**.

This **Coverage Section** affords no coverage for **Defense Costs** incurred by, settlements by or on behalf of, contractual obligations of, or judgments against any entity whether arising out of a **Claim** made against an **Organization**, based upon any legal obligation to pay any amount that an **Organization** has or may have to a claimant, or derived from the acts or omissions of **Employed Lawyers**.

No **Organization** is covered in any respect under Coverage A or Coverage C of this **Coverage Section**. An **Organization** is covered, subject to this **Coverage Section's** terms, conditions, exclusions and other limitations only with respect to its indemnification of **Employed Lawyers** under Coverage B as respects a **Claim** against such **Employed Lawyers**.

(h) "**Legal Services**" means any professional legal services rendered by:

- (1) an **Employed Lawyer** in his or her capacity as an employee of an **Organization**; and
- (2) any **Employed Lawyer** while a full time, permanent employee of an **Organization**, including, but not limited to, any moonlighting or *pro bono* services.

(i) "**Loss**" means **Damages** and **Defense Costs**; provided, however, **Loss** shall not include: (1) civil or criminal fines or penalties; (2) punitive or exemplary damages; (3) the multiplied portion of multiplied damages; (4) taxes; (5) any amount for which the **Insureds** are not financially liable or which are without legal recourse to the **Insureds**; and (6) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

(j) "**Personal Injury Peril**" means the following offenses:

- (1) false arrest, detention or imprisonment, wrongful entry or eviction or other invasion of the right of private occupancy, or malicious prosecution; or
- (2) the publication or utterance of a libel or slander or other defamatory or disparaging material, or a publication or an utterance in violation of an individual's right of privacy.

(k) "**Wrongful Act**" means any actual or alleged:

- (1) negligent act, error, omission, breach of duty, misstatement or misleading statement; or
- (2) **Personal Injury Peril**;

committed or omitted in the performance of **Legal Services**.

### 3. EXCLUSIONS

In addition to the exclusions set forth in Clause 4 of the General Terms and Conditions (other than Paragraph 4(a) (profit or advantage) and the paragraph following Paragraph 4(h)), the **Insurer** shall not be liable to make any payment for **Loss** in connection with a **Claim**:

- (a) arising out of, based upon or attributable to the committing in fact of any criminal, fraudulent or dishonest act by an **Employed Lawyer**; provided, however, the **Insurer** shall defend such **Claim** alleging the foregoing conduct, until there is a judgment, final adjudication, adverse admission or finding of fact against the **Employed Lawyer** as to such conduct, at which time the **Insured** shall reimburse the **Insurer** for **Defense Costs**;
- (b) against an **Employed Lawyer** that is brought, directly or indirectly, by or on behalf of any: (1) **Employed Lawyer**; (2) **Organization**; (3) business entity that is controlled, managed or operated, directly or indirectly, in whole or in part, by the **Organization**; (4) parent company, partner, trustee, successor or assignee of the **Organization**, or any person or entity affiliated with the **Organization**; (5) receiver, conservator, trustee, creditor or assignee of creditors or for the benefit of creditors or similar representative in the event of the insolvency or bankruptcy of the **Organization**; or (6) security holder or member of the **Organization**, whether directly or derivatively, unless such security holder or member claim is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of an **Employed Lawyer**, the **Organization** or any **Executive** of the **Organization**; provided, however, this exclusion shall not apply to defense costs incurred in the defense of any **Claim** brought by or on behalf of the **Organization**;
- (c) for discrimination or other unfair employment practices; provided, however, this exclusion shall not apply to any **Claim** alleging a **Wrongful Act** in the performance of **Legal Services**;
- (d) arising out of any breach of fiduciary duty, responsibility, or obligation in connection with any employee benefit or pension plan, including violations of the responsibilities, obligations or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974, as amended, or similar statutory or common law of the United States of America or any state or jurisdiction therein;
- (e) alleging, arising out of, or in any way relating to any purchase or sale of securities by the **Organization**; provided, however, this exclusion shall not apply to the issuance by the **Organization** of tax exempt bond debt or **Claims** brought by tax exempt bond debt holders;
- (f) arising out of mental anguish, emotional distress or humiliation; provided, however, this exclusion shall not apply to any **Claim** alleging the foregoing if such allegations result from a **Personal Injury Peril**;
- (g) alleging, arising out of, based upon or attributable to any actual or alleged act or omission of an **Employed Lawyer** serving in the capacity of a director or officer; provided, however, this exclusion shall not apply to alleging a **Wrongful Act** in the performance of **Legal Services**; or
- (h) against an **Employed Lawyer** for a **Wrongful Act** that was committed or allegedly committed at a time when the **Employed Lawyer** was not employed by the **Organization**.

#### 4. DISCOVERY CLAUSE

Except as indicated below, if the **Named Organization** shall cancel or the **Named Organization** or the **Insurer** shall refuse to renew this **Coverage Section**, then solely with respect to this **Coverage Section**, the **Named Organization** shall have the right to a period of either one, two or three years following the effective date of such cancellation or nonrenewal upon payment of the respective "**Additional Premium Amount**" described below (herein referred to as the "**Discovery Period**") in which to give to the **Insurer** written notice of **Claims** first made against the **Insureds** during said **Discovery Period** for any **Wrongful Act** occurring prior to the end of the **Policy Period** and otherwise covered by this policy. The rights contained in this paragraph shall terminate, however, unless written notice of such election together with the additional premium due is received by the **Insurer** within thirty (30) days of the effective date of cancellation or nonrenewal.

The **Additional Premium Amount** for: (1) one year shall be 75% of the "full annual premium;" (2) two years shall be 150% of the "full annual premium;" and (3) three years shall be a reasonable premium amount to be mutually agreed upon by the **Named Organization** and the **Insurer**. As used herein, "full annual premium" means the premium level in effect for this **Coverage Section** immediately prior to the end of the **Policy Period**.

In the event of a **Transaction**, as defined in Clause 9 of the General Terms and Conditions, the **Named Organization** shall have the right, within thirty (30) days before the end of the **Policy Period**, to request an offer from the **Insurer** of a **Discovery Period** (with respect to **Wrongful Acts** occurring prior to the effective time of the **Transaction**) for a period of no less than three (3) years or for such longer or shorter period as the **Named Organization** may request. The **Insurer** shall offer such **Discovery Period** pursuant to such terms, conditions and premium as the **Insurer** may reasonably decide. In the event of a **Transaction**, the right to a **Discovery Period** shall not otherwise exist except as indicated in this paragraph.

The **Discovery Period** is not cancelable, except for non-payment of premium. This clause and the rights contained herein shall not apply to any cancellation resulting from non-payment of premium.