

ASSET PROTECTION POLICY

Employment Practices and Third Party Discrimination Liability Coverage Section

In consideration of the payment of the premium, and in reliance upon the statements made to the Insurer in the Application forming a part hereof and its attachments and the material incorporated therein, Mt. Hawley Insurance Company, herein called the "Insurer," and the Insureds agree as follows:

I. INSURING CLAUSES

A. Employment Practices Liability Coverage

The Insurer will pay on behalf of the **Insureds**, **Loss** incurred by the **Insureds** as a result of **Claims** first made against the **Insureds** during the **Policy Period**, or during the Discovery Period (if purchased), by or on behalf of a past, present, prospective or alleged **Employee** for a **Wrongful Employment Act**.

B. Third Party Discrimination Liability Coverage

The Insurer will pay on behalf of the **Insureds**, **Loss** incurred by the **Insureds** as a result of **Claims** first made against the **Insureds** during the **Policy Period**, or during the Discovery Period (if purchased), by or on behalf of a **Third Party** for a **Third Party Wrongful Act**.

C. Continuity Coverage

If a **Claim** for a **Wrongful Employment Act** is first made against the **Insureds** during a prior employment practices liability policy or coverage section, if any, issued by the Insurer to the **Entity** for the policy period immediately preceding this Coverage Section's **Policy Period** ("Prior Policy") and if such prior **Claim** ("Prior Claim") is not covered under the Prior Policy solely because notice of the Prior Claim was not timely given to the Insurer under such Prior Policy, then such Prior Claim and any other **Claim** made during this Coverage Section's **Policy Period** which is a single **Claim** with such Prior Claim shall be considered a **Claim** first made during this Coverage Section's **Policy Period**, subject to the following conditions:

1. no **Executive Officer** or risk manager of the **Entity** was aware of such Prior Claim prior to the expiration of the time to give notice of such Prior Claim under the Prior Policy;
2. such Prior Claim would have been covered under the Prior Policy had notice of such Prior Claim been timely given under the Prior Policy; and
3. written notice of such Prior Claim is given under this Policy to the Insurer no later than sixty (60) days after the earlier of: (i) the date that any **Executive Officer** or risk manager of the **Entity** became aware of such Prior Claim; or (ii) the end of the **Policy Period**.

Coverage under this Coverage Section for any Prior Claim pursuant to this Section I. C. shall only apply to **Loss** incurred after the date the Prior Claim is first noticed to the Insurer under this Coverage Section.

The maximum coverage available under this Coverage Section for any such Prior Claim and all other **Claims** which are treated as a single **Claim** with such Prior Claim shall be the lesser of the coverage then available under the Prior Policy or this Coverage Section for such **Claims**, taking into account all of the terms, conditions and exclusions of the Prior Policy and this Coverage Section, including without limitation the applicable retention and applicable limit of liability under each policy as reduced by payments of **Loss**.

D. Workplace Violence Coverage

1. The Insurer shall pay on behalf of the **Entity** any **Workplace Violence Expenses** incurred by the **Entity** as a result of a **Workplace Violence Incident** first occurring during the **Policy Period**, subject to (i) the respective Sublimit of Liability set forth in Item 7. B. of the Declarations, which further limits and does not increase any other applicable Limit of Liability under this Policy, and (ii) the retention amount for all **Workplace Violence Incidents** combined as set forth in Item 5. of the Declarations; provided that the Insurer shall not be liable to make any payment pursuant to this Section I. D. for:
 - a. any **Workplace Violence Expenses** incurred in connection with any **Workplace Violence Incident** based upon, arising out of, directly or indirectly resulting from, or in consequence of (i) declared or undeclared war, civil war, insurrection, riot, rebellion, revolution, governmental intervention, expropriation or nationalization, or (ii) use or threat of force or violence occurring on the **Premises** for the purpose of demanding money, securities or property;
 - b. any **Workplace Violence Expenses** incurred in connection with any **Workplace Violence Incident** which occurs at any location other than the **Premises**; or
 - c. any **Workplace Violence Expenses** incurred as a result of any demand, litigation or proceeding against any **Entity** based upon, arising out of, directly or indirectly resulting from, or in consequence of a **Workplace Violence Incident**.
2. The **Insureds** shall, as a condition precedent to coverage provided by this Section I. D., give the Insurer notice in writing of any **Workplace Violence Incident** as soon as practicable after an **Executive Officer** or risk manager of the **Entity** first learns of such **Workplace Violence Incident** but in no event later than thirty (30) days after the **Workplace Violence Incident** occurs.

II. DEFINITIONS

When used in this Coverage Section, the following terms, whether in the singular or plural, are defined below:

- A. "**Benefits**" means perquisites, fringe benefits, deferred compensation, payments for time off, or leave of absence, including but not limited to any payment (including insurance premiums) in connection with an employee benefit plan. **Benefits** also includes any other payment to or for the benefit of an **Employee** arising out of the employment relationship but shall not include salary, wages, commissions, bonuses, non-deferred cash incentive compensation or **Stock Benefits**.
- B. "**Claim**" means:
 1. a written demand for monetary, non-monetary or injunctive relief against any **Insured**, or
 2. a civil or criminal proceeding against any **Insured** commenced by the service of a complaint or similar pleading or the return of an indictment, information or similar charging document, or
 3. a demand for arbitration or mediation received by any **Insured** relating to a **Wrongful Act** by the **Insured**, or
 4. an administrative or regulatory proceeding against any **Insured**, including a proceeding by or before the Equal Employment Opportunity Commission or a similar state or local governmental body or by the Office of Federal Contract Compliance Programs, commenced by the service upon or other receipt by the **Insured** of a notice of charges or similar document, or
 5. an administrative or regulatory investigation of any **Insured** commenced by the service upon or other receipt by the **Insured** of a target letter, formal investigation order or similar document, or

6. a written request received by an **Insured** to toll or waive a statute of limitations relating to a **Wrongful Act** by the **Insured**;

including any appeal related to any of the above.

Claim shall not include (i) any labor or grievance proceeding pursuant to a collective bargaining agreement, or (ii) an audit by the Office of Federal Contract Compliance Programs unless and until the **Insured** receives a Notice of Violation or Order to Show Cause or a written demand as described above in connection with such audit.

- C. "**Class Action**" means a civil proceeding against any **Insured** by or on behalf of a putative or certified class of past, present, prospective or alleged **Employees** for **Wrongful Employment Acts** or by or on behalf of **Third Parties** for **Third Party Wrongful Acts**, pursuant to Rule 23, Federal Rules of Civil Procedure, or a similar state rule of civil procedure.
- D. "**Discrimination**" means the failure to hire an applicant, the failure to promote, the demotion of, the segregation or classification of, or the employment related defamation of any **Employee** because of race, color, creed, religion, age, national origin, sex, sexual orientation or preference, gender, disability, handicap, pregnancy, obesity, marital status, veteran status, genetic information, HIV status or other protected class or characteristic established under any applicable federal, state or local statute or ordinance.
- E. "**Harassment**" means:
1. unwelcome sexual advances, requests for sexual favors, or other verbal, visual or physical conduct of a sexual nature that is made either explicitly or implicitly a term or condition of employment with the **Entity**, is used as a basis for employment decisions with the **Entity**, or creates a work environment that interferes with an **Employee's** performance or that is otherwise intimidating, hostile, or offensive; or
 2. conduct of a non-sexual nature which creates a work environment that interferes with an **Employee's** performance or that is otherwise intimidating, hostile, or offensive.
- F. "**Insured**" means any past, present, or future **Employee**, the **Entity** and all its past, present and future directors, advisory directors, members of the advisory board, trustees (other than a bankruptcy or litigation trustee), governors, **Managers**, officers and their functional equivalent.
- G. "**Loss**" means monetary amounts the **Insureds** are legally obligated to pay as a result of a covered **Claim**, including but not limited to monetary damages, judgments, settlements, pre- and post-judgment interest with respect to covered damages, punitive, exemplary and noncontractual liquidated damages if insurable as provided below, back pay, front pay, damages for mental anguish or emotional distress, claimant's attorney fees and costs for which an **Insured** against whom the **Claim** is made is legally obligated to pay by reason of a court order or settlement agreement to which the Insurer consents, the multiple portion of any multiplied damage award, and civil fines or penalties assessed against a natural person **Insured** for an unintentional or non-willful violation of law.

The law of the applicable jurisdiction most favorable to the insurability of punitive, exemplary or multiple damages or such fines or penalties shall control whether such amounts are insurable, provided such jurisdiction has a substantial relationship to the **Insured**, the **Entity**, or the **Claim** giving rise to such damages.

Loss shall not include: (i) taxes or civil or criminal fines or penalties imposed by law, other than civil fines or penalties expressly referenced above; (ii) severance pay or damages determined to be owing under an express contract of employment or an express obligation to make such payments in the event of the termination of employment, including but not limited to payments for **Stock Benefits**; (iii) **Benefits** due or that are to become due, or the equivalent value of such **Benefits**, except with respect to any **Claim** for **Wrongful Termination** of an **Employee**; (iv) the cost to provide any reasonable accommodation for any disabled person pursuant to the Americans with Disabilities Act or any similar federal, state or local law; (v) the cost to comply with any injunctive or other nonmonetary relief or any agreement to provide any such relief; (vi) salary, wages, commissions, bonuses, non-deferred cash incentive compensation, **Stock Benefits** or other compensation if actually or allegedly earned by the claimant in the course of employment, other than back pay, front pay or any additional

compensation allegedly due as a result of a **Wrongful Employment Act**; (vii) future salary, wages, commissions or **Benefits** of a claimant who has been hired, promoted or reinstated to employment, or shall be hired, promoted or reinstated to employment, pursuant to a settlement, order or other resolution of any **Claim**; (viii) any amount for which the **Insureds** are absolved from payment; or (ix) other matters uninsurable pursuant to the law under which this Coverage Section shall be construed, except as otherwise provided above.

- H. "**Premises**" means all properties and buildings which the **Entity** regularly occupies in conducting its business.
- I. "**Retaliation**" means unlawful or abusive retaliatory treatment against an **Employee** which results from an **Employee's** (i) exercise or attempted exercise of his or her rights under law, (ii) refusal to violate any law, (iii) opposition to any unlawful practice, (iv) disclosure or threatened disclosure to a superior or governmental authority of an alleged violation of law, (v) assisting, testifying for, or cooperating with an enforcement or governmental authority or an actual or potential claimant regarding an **Insured's** alleged or potential violation of law, or (vi) other activity which is protected by a whistleblower statute or law.
- J. "**Stock Benefits**" means:
1. any offering, plan or agreement between an **Entity** and any **Employee** which grants stock, stock options, warrants, or shares of the **Entity** to such **Employee**, including grants of stock options, restricted stock, stock warrants, performance stock shares, membership shares, or any other incentive or compensation granted in the form of securities of the **Entity**; or
 2. any instrument or payment whereby the value or amount of such instrument or payment is derived from the value of the **Entity's** securities, including a phantom stock plan or arrangement, or stock appreciation rights.
- K. "**Third Party**" means any natural person, other than an **Employee** or an applicant for employment with the **Entity**.
- L. "**Third Party Wrongful Act**" means actual or alleged:
1. discrimination by an **Insured** against a **Third Party** based on such person's race, color, creed, religion, age, national origin, sex, sexual orientation or preference, gender, disability, handicap, pregnancy or other protected class or characteristic established under any applicable federal, state or local statute or ordinance; or
 2. harassment by an **Insured** against a **Third Party**, including, but not limited to, hostile work environment, unwelcome sexual advances, requests for sexual favors, or other verbal, visual or physical conduct of a sexual nature;

provided such **Third Party Wrongful Act** is committed by an **Insured** in his or her capacity as such.

- M. "**Wage and Hour Law**" means: (i) the Fair Labor Standards Act (except the Equal Pay Act) or any similar law; and (ii) the Wage Payment and Collection Act or any other federal, state or local law, rule or regulation concerning wage and hour practices, off-the-clock work, overtime compensation, on-call time compensation, compensation for waiting time and dressing time, minimum wage compensation, timely payment of wages, reimbursement of expenses, classification of employees for the purposes of determining eligibility for overtime, on-call and minimum wage compensation, meal and rest periods, and maintenance of accurate employment records.
- N. "**Workplace Violence Expenses**" means reasonable fees and expenses incurred by the **Entity** with the Insurer's prior written consent, such consent not to be unreasonably withheld, to hire:
1. an independent public relations or security consultant or forensic analyst for ninety (90) days;
 2. an independent consultant to provide counseling for **Employees**; or
 3. an independent security guard to provide security services for fifteen (15) days;

immediately following the **Workplace Violence Incident**.

- O. "**Workplace Violence Incident**" means any unlawful and intentional actual or threatened use of deadly force involving the display of a lethal weapon which occurs in or on the **Premises** and which did or could reasonably result in the death or bodily injury of any **Insured Person**.
- P. "**Wrongful Act**" means:
1. solely with respect to coverage under Insuring Clause A. Employment Practices Liability Coverage, a **Wrongful Employment Act**, and
 2. solely with respect to coverage under Insuring Clause B. Third Party Liability Coverage, a **Third Party Wrongful Act**.
- Q. "**Wrongful Employment Act**" means actual or alleged:
1. **Wrongful Termination** of an **Employee** by an **Insured**; or
 2. **Discrimination** against an **Employee** or an applicant who has sought and been refused employment with the **Entity** by an **Insured**; or
 3. **Harassment** against an **Employee** or an applicant who has sought and been refused employment with the **Entity** by an **Insured**; or
 4. **Retaliation** against an **Employee** by an **Insured**; or
 5. any other violation of any federal, state or local laws concerning employment, including without limitation any failure to adopt adequate workplace or employment policies and procedures;
- provided, such **Wrongful Employment Act** is committed by an **Insured** in his or her capacity as such.
- R. "**Wrongful Termination**" means the actual or constructive termination of an employment relationship in a manner which constitutes a violation of any law, a breach of an implied agreement to continue employment, or a retaliatory discharge.

III. EXCLUSIONS

- A. The Insurer shall not be liable for **Loss** on account of that portion of any **Claim** made against any **Insured**:
1. for any actual or alleged bodily injury (other than mental anguish or emotional distress), sickness, disease or death of any person or for damage to or destruction of any tangible property including loss of use of any damaged or destroyed tangible property; or
 2. for any actual or alleged violation of the responsibilities, obligations or duties imposed by **ERISA**, any Social Security, worker's compensation, disability benefits, or unemployment compensation law, any **Wage and Hour Law**, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, rules or regulations promulgated under and amendments to any such law, or similar provisions of any federal, state or local statutory law or common law; however, this Exclusion shall not apply to any **Claim** for actual or alleged **Wrongful Termination** or **Retaliation** on account of the claimant's exercise of rights pursuant to any such law, rule or regulation.
- B. The Insurer shall not be liable for **Loss** on account of that portion of any **Claim** made against any **Insured** based upon, arising out of, directly or indirectly resulting from, or in consequence of:
1. a lockout, strike, picket line, replacement or any similar actions in connection with labor disputes or labor negotiations; or

2. any litigation, proceeding or investigation against any **Insured** pending on or before the Pending or Prior Date for this Coverage Section set forth in Item 5. of the Declarations, or the same or substantially the same fact, circumstance, situation, event or **Wrongful Act** underlying or alleged therein; or
3. any **Wrongful Act**, fact, circumstance, situation, transaction, event or **Wrongful Act** which was the subject of any notice given and accepted under any prior policy or coverage section for employment practices or similar insurance.

No **Wrongful Act** of any natural person **Insured** will be imputed to any other natural person **Insured** to determine the applicability of the foregoing Exclusions.

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