AGENDA
Executive Committee
October 25, 2018
WSTIP Office ~ Olympia

CALL TO ORDER – President Paul Shinners
9:00 am
1. Roll Call of Members and Introduction of Guests
2. Changes in Agenda/Motion to Accept Agenda

CONSENT AGENDA

1. Minutes – September 27, 2018
002
2. September 2018 Administrative Vouchers/Checks – Total voucher approval of $310,993.93 including staff payroll and internet/credit card payments.
007
010

COVERAGE APPEAL – Burdett et al v. Community Transit
014

EXECUTIVE SESSION
Pursuant to RCW 42.30.110 (1) (i) to discuss with legal counsel representing the agency litigation in which a member acting in an official capacity is a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.

The Executive Session is expected to conclude after 60 minutes, unless extended by the Presiding Officer.

DISCUSSION ITEMS
1. 2018 Executive Committee Work Plan, Strategic Plan – Christianson
173
2. Executive Committee Retreat – Jordan
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4. 2019 Budget Item: Board Errors and Omissions Coverage – White
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5. 2019 Budget Item: Building Reserve Fund – Powell
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6. Losses Above $100,000 Report – Kerrigan
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8. Notice Letter from the Department of Licensing – Christianson
235

ACTION ITEMS
1. Request to Engage Certified Public Accountant
242

STAFF REPORTS
1. Executive Staff Report – Christianson, Adams, Kerrigan & Powell
255

SUBCOMMITTEE REPORTS
1. Governance Policy Committee – No Report
2. Board Development Committee – No Report
3. Emerging Risks & Opportunities Committee – No Report
4. Data Governance Committee – No Report
5. Coverage Review Committee – Verbal Report
267

1:00 pm RECAP and ADJOURN – President Paul Shinners

*WP = Work Plan Item #
Board Development Committee Meeting – 10/25 after EC MTG
Governance Policy Committee Meeting – 10/25 after EC MTG
Emerging Risks and Opportunities Committee Meeting – 11/07 @ WSTIP
Data Governance Committee Meeting - TBD
Coverage Review Committee Meeting – TBD @ WSTIP
Audit Committee – 10/25 before EC MTG
Minutes of the
Executive Committee Meeting
September 27, 2018
Heathman Lodge ~ Vancouver, WA

<table>
<thead>
<tr>
<th>Executive Committee Members Present</th>
<th>Staff Present</th>
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<tbody>
<tr>
<td>Paul Shinners, President, Kitsap</td>
<td>Cedric Adams, Claims Manager</td>
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<tr>
<td>Staci Jordan, Vice-President, Island Transit Authority</td>
<td>Anna Broadhead, Board Relations</td>
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<tr>
<td>Shonda Shipman, Secretary, Whatcom Transportation Authority</td>
<td>Tracey Christianson, Executive Director</td>
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<tr>
<td>Nick Covey, Medium Member Rep, Link Transit</td>
<td>Chris DeVoll, Transit Risk Specialist</td>
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<tr>
<td>Amy Asher, Small Member Rep, RiverCities Transit</td>
<td>Marisa Espinoza, Finance Specialist</td>
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<tr>
<td>Danette Brannin, At-Large Member Rep, Mason Transit</td>
<td>Rick Hughes, General Counsel</td>
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<tr>
<td>Suzanne Coit, Treasurer, Intercity Transit</td>
<td>Joanne Kerrigan, Member Services Manager</td>
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<td>Andrea Powell, Administrative Services Manager</td>
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<th>Board Members Present (Executive Session Only)</th>
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<tr>
<td>Geri Beardsley, Community Transit</td>
<td>Steve Mertens, Columbia County Public Transportation</td>
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<td>Lynn Bourton, Link Transit</td>
<td>Agustin Ortega, Yakima Transit</td>
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<td>Sara Crouch, Jefferson Transit</td>
<td>Jim Quintana, C-Tran</td>
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<td>Rich Evans, Pacific Transit</td>
<td>Wayne Thompson, Pullman Transit</td>
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<td>Tom Hingson, Everett Transit</td>
<td>Lynda Warren, Spokane Transit</td>
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<td>Rob Huyck, Pierce Transit</td>
<td>Derrick Wojcik-Damers, Twin Transit</td>
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<td>Jesse Kinney, Valley Transit</td>
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<td>Joe Macdonald, Skagit Transit</td>
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<td>Dunyele Mason, Clallam Transit</td>
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<td>LeeAnn McNulty; Mason Transit</td>
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<td>Ken Mehin, Grays Harbor Transit</td>
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<td>Brenda Lamb, Link Transit</td>
<td>Magan Waltari, Whatcom Transportation Authority</td>
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<td>Brian White, Alliant</td>
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Call to Order
President Shinners called the meeting to order at 9:01 am. Shinners welcomed all participants as a sign-in sheet was passed around the room. Guests Lamb and Waltari were introduced. He reminded everyone of the short agenda and hoped everyone had time to review the draft Public Officials Liability Coverage Document. Shinners explained that O’Regan had accepted a position at Tidewater Barge and that is why, per the Bylaws, he is President again. Shinners also explained Hebdon accepted a position with Pasco School District. The large member representative position will be filled at the Board meeting. He called for changes to the agenda, he added a discussion item regarding appeal process as there is potential for an appeal at the next Executive Committee meeting and asked for a motion to approve the amended agenda. **Jordan moved to approve the agenda. Shipman seconded the motion and the motion passed.**

Consent Agenda
Minutes – August 23, 2018, August 2018 Administrative Vouchers/Checks, August 2018 Claims Vouchers/Checks
Shinners asked if there were any items to remove from the consent agenda. Jordan asked about voucher number 27898. Christianson explained the expense was a wellness committee expense for the summer regatta. There were no items removed from the consent agenda. **Covey moved to approve the consent agenda. Brannin seconded the motion and the motion passed.**
Discussion Items
2018 Executive Committee Work Plan, Strategic Plan
Shinners said as in customary fashion the work plan is included. Christianson explained the work plan had been updated and the strategic plan included for informational purposes only. Staff did include a memo highlighting progress on Strategic Plan items.

Training Academy Proposal/Recommendation
Shinners explained that two Executive Committee Retreats ago we asked staff to do more shared services specifically train operators, staff felt the scope was too big but are recommending a training to equip trainers with the tools necessary to train effectively. Kerrigan talked about the sub-committee and their role in developing the proposed Trainer’s academy. She explained why it doesn’t appear in the budget as staff are working to secure grant funds from Washington State Department of Transportation. Shinners asked if participation was voluntary. Kerrigan said yes, the only requirement to participate is that you have attended the WSTIP Supervisors School within the last five years. Beardsley asked if someone could drop in for just one of the three days. Kerrigan said yes although they wouldn’t receive the full benefit of the entire program.

Governance Policies: Claims Management, Contractors and Suppliers, Succession for Executive Director
Christianson said Jordan is the chair of the committee but asked that she go through the policies. Christianson walked everyone through the changes to the claims management policy (consolidated claims settlement procedures, repair of covered losses by member, and subrogation, in addition to added language to meet AGRiP Advisory Standards), contractors and suppliers policy (language added to meet AGRiP Advisory Standards), and Succession for Executive Director (suggest repealing management succession policy as it is duplicative and most responsibilities of the policy are in the Executive Directors job description regarding staff readiness). Jordan said the Governance Policy Committee recommends adoption of the policies as presented.

Shipman moved to adopt the Claims Management Policy. Asher seconded the motion and the motion passed.

Jordan moved to adopt the Contractors and Suppliers Policy. Brannin seconded the motion and the motion passed.

Shipman moved to adopt the Succession for Executive Director Policy. Covey seconded the motion and the motion passed.

Governance Policy: Assessment Allocation Policy (to Board)
Shinners asked the Executive Committee to recommend adoption of the Assessment Allocation Policy to the Board. Christianson explained the changes made to the policy were recommended by the actuary to memorialize current practices and that the actuary sets the UIM rate as part of the actuarial study instead of the Board. The committee discussed 4g and 14 requesting the policy be changed to employees instead of FTE. Jordan moved to recommend adoption of the Assessment Allocation Policy as amended to the Board. Covey seconded the motion and the motion passed.

Appeal Process
Shinners said there is potential for an appeal at the next Executive Committee meeting for a Public Officials Liability claim, it has been a long time since we have done an appeal. Per the Bylaws, if the
Executive Director denies a claim the member may appeal to the Executive Committee. Hughes has proposed a process based on the Bylaws, the President will review the facts of the appeal and at the hearing (appeal) there will be a presentation by the Executive Director and by the member (appellant) to rebut the others argument, this may or may not be held in Executive Session. There was brief discussion regarding Executive Sessions and Open Public Meetings Act.

Executive Committee Retreat
Shinners said he is looking for member input as to what they would like discussed at the Executive Committee Retreat. Jordan said the retreat is scheduled for January 16-18, 2019 at the Cedarbrook Lodge at SeaTac, reminded everyone that to attend you need to be a new Board member (within the past year), have run for an Executive Committee office, or have served the prior year on the Executive Committee. Registration will be available soon, facilitators are being secured, and if you have topics to please bring them forward to Jordan or Christianson.

Action Items
Public Records Request Fees
Powell explained the legislature had made changes to the fee schedule to include electronic files and a requirement to keep a full index of records. Staff feel with the current staffing a full index of records would be burdensome and request authority to keep a partial index of records which are already available online. Coit asked how many public disclosure requests staff had received to date in 2018. Powell said there had been three requests. Shipman moved to adopt the standard fee schedule for records provided in response to a Public Disclosure Request as authorized by RCW 42.56.120; AND waive the requirement for a complete and current index in favor of a partial index as allowed under RCW 45.56.070 (4.a). Brannin seconded the motion and the motion passed.

Governance Policies/Request to ADOPT: Audit Committee, Expense Reimbursement, Investment, Reimbursement for Paperless Meeting Devices
Audit Committee Policy – Powell said there were no substantive changes to the policy. Shipman moved to adopt the Audit Committee Policy. Jordan seconded the motion and the motion passed.

Expense Reimbursement Policy – Powell noted the changes on this policy were to reimburse members for travel to committee meetings and ability to pay for travel for third party attendees. Committee members amended #2 to state that maps showing mileage had to be submitted with the request for reimbursement. Shipman moved to adopt the Expense Reimbursement Policy as amended. Asher seconded the motion and the motion passed.

Investment Policy – Powell said changes to the policy were general language cleanup. There was discussion about Local Government Investment Pool (LGIP) and Thurston County Investment Pool (TCIP) and the separate investment managed by the Thurston County Treasurer’s Office (TCTO), and performance. Covey moved to adopt the Investment Policy as presented. Shipman seconded the motion and the motion passed.

Reimbursement for Paperless Meeting Devices Policy – Christianson explained this policy had been back and forth between the Governance Policy Committee and Executive Committee. We are removing the stipend. Jordan moved to adopt the Reimbursement for Paperless Meeting Devices Policy as presented. Brannin seconded the motion and the motion passed.
Governance Policies/Request to REPEAL: Claim Settlement, Management Succession, Non-Member Intergovernmental Procurement, Repair of Covered Losses by Member, Subrogation

Claims Settlement, Repair of Covered Losses by Member, and Subrogation Policies - Shinners said since the Claims Management Policy was approved essentially consolidating three policies the Claim Settlement, Repair of Covered Losses by Member, and Subrogation needed to be repealed. Shipman moved to repeal the Claim Settlement, Repair of Covered Losses by Member, and Subrogation policies. Covey seconded the motion and the motion passed.

Management Succession Policy – Christianson explained the management succession policy is duplicative of the Executive Director job description and confusing with the Succession of Executive Director Policy. Brannin moved to repeal the Management Succession Policy. Covey seconded the motion and the motion passed.

Non-Member Intergovernmental Procurement Policy – Christianson said this policy is duplicated within the Purchasing Policy and recommended repealing. Covey moved to repeal the Non-Member Intergovernmental Procurement Policy. Asher seconded the motion and the motion passed.

Public Officials Liability Coverage Document (to Board)
Shinners said the Coverage Review Committee had been working on the Public Officials Liability (POL) Coverage Document as there was a huge spike in the loss fund projection last year regarding non-auto liability claims. The committee is trying to add clarity to the coverage document and have re-ordered it to help make it clear as to what is or is not covered. The committee compared the current POL document with the POL coverage documents of four other pools. Basically, everything is covered unless it is excluded, but you have to carefully review the exclusions. Christianson said at the last Executive Committee we presented the document but didn’t ask to bring the document forward to the Board formally, so staff is asking for a motion to move the document forward to the Board for discussion. Hughes said Section 18 of the Bylaws states the Executive Committee shall make recommendations for … all other matters that come before the Board.

Shinners said this document is our liability coverage for everything not auto related and focuses on employment practices. Pay close attention to the exclusions; he wants everyone to be comfortable with the document. The next phase will be to look at where the claims are occurring, last year there was a huge spike in our experience rating for POL. Christianson said the actuarial report will be presented at the Work Session and will show that for the first six months of 2018 there has been little claim activity for POL. Board members asked questions regarding exclusions, asked for a matrix to explain WHY exclusions were added, and asked if it is excluded, to cite if another policy provides coverage. No action was taken on this topic.

Sub-Committee Reports
Governance Policy Committee
Christianson reported the Governance Policy Committee had met after almost every Executive Committee meeting and will have a couple more policies before the end of the year. Committee members are Jordan (chair), Shipman and Shinners. O’Regan had been on the committee until last month.

Board Development Committee
The Board Development Committee has been working on work session topics, tracking Behind the Curtain completion stats, and have asked a few Battlefield Leadership Training participants to give
Emerging Risks and Opportunities Committee Report
Kerrigan said the Emerging Risks and Opportunities Committee had done the bulk of the work on the Technology Grant which is on the Board agenda for tomorrow and are tracking a list of other projects. Huyck shared videos and information from the first few weeks of the Lytx DriveCam project data and fielded questions from Board members regarding the project. Jordan reminded everyone they could volunteer for committees rather than being voluntold. Committee members are Jordan (chair), Asher, Covey, Huyck, Mehin, and Quintana.

Data Governance Committee
Powell reported challenges with the committee as many of the committee members have left employment.

Coverage Review Committee
Shinners said the committee had worked on the Public Officials Liability Policy which will be presented during the Work Session. Shinners, O'Regan, Brannin, and Covey were the committee members.

Audit and Finance Committee
Committee has been meeting on a regular basis before the Executive Committee meeting, the committee consists of all Executive Committee members per the governance policy.

Nominations and Elections Committee
Shinners said the Nominations and Elections Committee will begin soliciting soon, think about running for office as it’s a great way to contribute, learn the policies and coverage documents. Committee members are Jordan, Shipman, and Shinners.

Executive Session
There was no Executive Session.

Recap and Adjournment
Shinners noted the Work Session would begin at noon and the Member Representative Meetings will begin at 1:00 pm.  

Shinners adjourned the meeting at 10:45 am.

Submitted this 25th day of October 2018.

Approved: ________________________________

Shonda Shipman, Secretary

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i Check numbers 27875 through 27932 in the amount of $85,218.08. Internet transfers of $46,057.00 for the 08/15/2018 payroll; $45,456.36 for the 08/31/2018 payroll; and $11,552.84 for the 08/2018 staff benefits, internet and ACH payments for staff credit cards, travel/expense reimbursements and professional/misc. services total $48,430.79. Total voucher approval, including August 2018 staff payroll and Internet and ACH payments is $236,715.07.

ii Check numbers 11314 through 11451 in the amount of $566,153.82. Total voucher approval is $566,153.82.
September 2018 Administration Voucher Approval

September 1st to September 30th 2018 vouchers audited and certified by the auditing officer as required by RCW 42.24.080,

and those expense reimbursement claims certified as required by RCW 42.24.090, have been recorded on a listing which has been e-mailed to the Executive Committee members on October 18, 2018.

ACTION:

I, __________________________________________, as of this date, ____________________________, 2018 Move that the following checks be approved for payment:

Vouchers: Check Numbers 27933 through 27979 in the amount of $180,229.83. Internet transfers of $45,653.59 for the 09/15/2018 payroll; $44,048.64 for the 09/30/2018 payroll; and $11,552.84 for the 09/2018 staff benefits. Internet and ACH payments for staff credit cards, travel/expense reimbursements and professional/misc. services total $29,509.03. Total voucher approval requested, including September 2018 staff payroll and Internet and ACH payments is $310,993.93.

The motion was seconded by ________________________________and approved by a unanimous vote.

I, the undersigned, PRESIDENT/VICE PRESIDENT OF THE WASHINGTON STATE TRANSIT INSURANCE POOL (WSTIP) of the state of Washington, do hereby certify that the merchandise or services, herein specified have been received and the following checks are approved for payment.

___________________________________
PRESIDENT/VICE-PRESIDENT

___________________________________
DATE
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<th>Date</th>
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Total 310,993.93
September 2018 Claims Voucher Approval

September 1st to September 30th 2018 vouchers audited and certified by the auditing officer as required by RCW 42.24.080,

and those expense reimbursement claims certified as required by RCW 42.24.090, have been recorded on a listing which has been e-mailed to the Executive Committee members on October 18, 2018.

ACTION:

I, __________________________, as of this date, ________________________, 2018
Move that the following checks be approved for payment:

Vouchers: Check Numbers 11452 through 11537 in the amount of $301,193.21. Total voucher approval requested is $301,193.21.

The motion was seconded by ________________________________and approved by a unanimous vote.

I, the undersigned, PRESIDENT/VICE PRESIDENT OF THE WASHINGTON STATE TRANSIT INSURANCE POOL (WSTIP) of the state of Washington, do hereby certify that the merchandise or services, herein specified have been received and the following checks are approved for payment.

___________________________________
PRESIDENT/VICE-PRESIDENT

___________________________________
DATE
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## Washington State Transit Insurance Pool
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#### US Bank Claims Account

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**Total** 301,193.21
TO: WSTIP Executive Committee
FROM: Tracey Christianson, Executive Director
SUBJECT: Coverage Appeal: Burdett et al v Community Transit

Background
The attached documentation will provide a thorough review of the Executive Director’s denial of coverage for Burdett et al vs. Community Transit, and subsequent appeal of that decision by Community Transit. Community Transit representatives will be available to address their request in person; however, they have provided a comprehensive package of their concerns. Community Transit will be represented by Geri Beardsley, Emmett Heath, and attorney, Frank Cordell.

The Executive Committee has the responsibility of being the body to hear a member appeal of a coverage decision. This responsibility is outlined in the Bylaws. I recommend each of you thoroughly prepare by reading the materials provided. Rick Hughes will be present to assist the committee with legal questions and concerns.

Attached is a coverage appeal process that Rick drafted to help provide structure to a process that has not be utilized in sometime. Staff recognize the weight of this decision and the feeling of formality that so many attorneys bring to such a proceeding. However, I urge you to proceed in your traditional manner which staff describes as amiable, friendly, and somewhat informal.

Not included in this package
WSTIP staff engaged Curt Feig, Nicoll Black and Feig, to provide a rebuttal to the appeal. This document will not be ready until next week and will be sent as soon as possible. Curt Feig will be present to answer questions that the Executive Committee may have.

/tc
WSTIP Appeals Process

Prior to the appeals hearing:

1. The WSTIP member tenders a claim or complaint to Executive Director.
2. Executive Director reviews materials and investigates as necessary, then:
   a. Accepts the tender and acknowledges defense and indemnity obligation
   b. Accepts tender with Reservation of Rights letter stating reasons in writing
   c. Denies the tender stating reasons in writing
3. Within 30 days after the Executive Director’s decision, an aggrieved member may appeal to the Executive Committee (EC).
4. The appeal is heard at next regular EC meeting, or the next regular meeting after that, at President’s discretion.

At the appeals hearing:

1. The President shall provide an overview of the facts leading up to the hearing.
2. Any EC member employed by the appellant must recuse him/herself.
3. The Executive Director and appellant may each be assisted by legal counsel to discuss coverage issues only.
4. At the hearing appellant first presents facts and argument, followed by the Executive Director. Appellant and Executive Director are each entitled to one rebuttal to point out disagreements with the presentation/argument just presented. The President can allow more discussion at his/her discretion.
5. The EC may, but is not required to, ask the parties if they would like to negotiate a resolution subject to the EC’s approval.
6. The Executive Committee may adjourn into executive session if appropriate, but any decision will be made in open public meeting.
7. Following the hearing or any continuation thereof, the EC shall issue a written determination on the appeal.
8. WSTIP General Counsel will be available to assist the EC as needed.
October 17, 2018

Executive Committee  
Washington State Transit Insurance Pool  
2629 – 12th Court SW  
Olympia, WA 98502

Sent via email

Re: Coverage Appeal regarding Burdett, Johnson and Perkins v. Community Transit

Dear Executive Committee:

Thank you for reviewing Community Transit’s appeal of Washington State Transit Insurance Pool's (WSTIP’s) decision to deny coverage for Burdett, Johnson and Perkins v. Community Transit (Burdett). The purpose of this letter is to provide you with context and background on the underlying claim. This letter accompanies a more formal written appeal submitted on Community Transit’s behalf by Frank Cordell of Gordon Tilden Thomas Cordell. As you will see in the formal written appeal, Community Transit requests that WSTIP provide coverage under reservation of rights.

Procedural Status
On August 15, 2018, Community Transit was served a summons and complaint alleging violations of Washington’s wage and overtime laws. The complaint was filed by plaintiffs Burdett, Johnson and Perkins as a class action lawsuit on behalf of all Community Transit coach operators and seeks back pay, punitive damages and injunctive relief. The complaint is attached to the written appeal as Tab A.

On August 16, 2018, Community Transit participated in a conference call with WSTIP to discuss the complaint and next steps. Part of the discussion centered on the fact that the complaint has not yet been filed in court (to date it has not been filed). Service on Community Transit triggered a 90-day “pre-litigation” window prior to the plaintiff’s November 13, 2018, filing deadline. Plaintiff’s counsel requested that Community Transit participate in pre-litigation mediation during that window to “resolve” the issues.

On August 17, 2018, Community Transit tendered the claim to WSTIP for defense and coverage. WSTIP assigned Summit Law and began covering the cost of investigatory work. Community Transit is assisting Summit Law as they investigate the allegations. We have not yet responded to a request for pre-litigation mediation. In anticipation of an appeal by Community Transit, WSTIP offered to cover the cost of the investigatory work until this appeal is resolved.

On September 4, 2018, Community Transit received notice from WSTIP that the tender of the claim for defense and coverage was denied based on WSTIP’s interpretation of the Public Officials Liability (POL) Policy in effect in 2018. Community Transit respectfully disagrees with this decision and submits this appeal to the WSTIP Executive Committee as authorized by the WSTIP Bylaws.

Summary of Burdett Complaint
In November 2017, the Amalgamated Transit Union (ATU) Local 1576 filed an institutional grievance against Community Transit claiming unpaid wages. No specific details were provided in the grievance.
The ATU asked that grievance be placed into abeyance so the parties’ attorneys could discuss and “resolve” the issue.

Community Transit's attorney and the ATU’s attorney met in January 2018. The ATU's attorney indicated that the ATU strongly believed employees had worked off-the-clock. Again, there was no specificity or facts to support the ATU's claims. In March 2018, Community Transit submitted an information request to the ATU requesting proof of wrongdoing. Community Transit received over 100 pages of documents but no proof of wrongdoing.

On August 15, 2018, Community Transit was served a class action complaint on behalf of all transit operators alleging unpaid wages in the areas of pre-trip work activities, reading an employer newsletter (typically two to four pages), attending mandatory meetings, and participating in bidding for work assignments (ironically, the ATU had previously successfully argued in front of an arbitrator that bid time is not “time worked.”) The complaint, which is included in the formal appeal, is extremely sparse and does not provide factual support for the allegations. Community Transit strongly contests the allegations in the Burdett complaint.

Throughout 2017 and into 2018, Community Transit was aware of a wage-and-hour investigation regarding King County Metro (KCM) coach operators and the subsequent settlements totaling over $8 million (summarized below). The KCM settlement certainly had the potential for ripple effects on Community Transit, as well as other transit agencies. Community Transit reviewed its practices and procedures to ensure coach operators were, and continue to be, properly compensated for time worked.

Of note, as part of contract negotiations for a contract that expired in late 2016, Community Transit increased pre-trip time from 15 to 18 minutes starting in June 2018. Community Transit and the ATU have a tentative agreement to further increase the pre-trip time from 18 to 20 minutes. These changes were based on review of the pre-trip tasks and the varying degrees of complication associated with the different types of buses used by Community Transit. The changes were not in any way an admission that operators had not been paid for pre-trip inspection work.

**King County Metro Settlements**

In March 2017, the U.S. Department of Labor (DOL) began an investigation of issues related to KCM operator wages. Among other issues, the investigation focused on whether operators were properly compensated for pre-trip inspections and meetings with management after their shift, and whether KCM was properly paying wages at straight time versus overtime.

In October 2017, KCM paid two years of back wages and damages totaling $6.4 million to approximately 2,400 operators. In June 2018, KCM and the Amalgamated Transit Union (ATU) Local 587 reached an additional settlement agreement to pay a total of $8.3 million to 3,728 operators to cover all possible uncompensated time for a three-year period. The 2017 payments counted as credits towards the second settlement. KCM also increased the pre-trip inspection time from 10 to 18 minutes and made other procedural changes.

While the KCM settlements were the result of a DOL investigation, rather than a class action wage-and-hour complaint, it appears that the Burdett complaint may be a copycat effort to achieve similar back pay. The allegations and relief requested are similar. In addition, the Burdett plaintiff’s counsel represents both the KCM ATU 587 and the Community Transit ATU Local 1576. And finally, the timing does not appear to be a mere coincidence. The initial grievance with Community Transit was filed one month after KCM’s initial payment of $6.3 million to coach operators.
Coverage Appeal
The written appeal contains the legal and technical arguments behind this appeal, as well as clarification regarding the defense versus coverage related to punitive damages and injunctive relief. For purposes of this letter, we stress several key points from the written appeal:

1. The exceptions WSTIP relies on to exclude coverage are “defense-oriented” exclusions which require a judicial determination that Community Transit “in fact” committed the alleged conduct. Denial of coverage based on mere allegations is contrary to generally accepted principles. WSTIP members should reasonably expect WSTIP to provide coverage unless and until a judicial determination of a wrongful act by the member.

2. The 2018 POL Policy does not exclude coverage of an award or settlement of employer-paid pay and benefits, including back wages. The proposed 2019 POL Policy includes a specific exclusion for these types of losses. In the absence of the new exclusion or any specific exclusion, WSTIP members should reasonably expect coverage.

3. Any uncertainty regarding coverage should be resolved in favor of agreeing to defend. WSTIP members should reasonably expect WSTIP to defend them if the lawsuit is “conceivably covered.”

4. Coverage under reservation of rights provides defense coverage for WSTIP members while putting the member on notice that claims coverage may ultimately not cover some or all of the alleged liability.

Community Transit requests a decision by the Executive Committee that WSTIP provide coverage subject to reservation of rights.

Thank you again for considering this matter. We are eager to discuss this appeal with you at the WSTIP Executive Committee meeting on October 25, 2018.

Sincerely yours,

[Signature]
Gen Beardsley
Director of Administration

cc: Tracey Christianson, WSTIP Executive Director
    Frank Cordell, Gordon Tilden Thomas Cordell
    Emmett Heath, Community Transit CEO
October 12, 2018

Tracey Christianson
Executive Director
Washington State Transit Insurance Pool
2929 12th Court SW
Olympia, WA  98502

Re:
   Matter:    Burdett, Johnson & Perkins vs. Snohomish County Public
              Transportation Benefit Area d/b/a Community Transit
   Insured:   Community Transit
   Claim No:  18-014659-1
   Date of Loss:  8/17/2018

Dear Ms. Christianson:

Snohomish County Public Transportation Benefit Area (“Community Transit”) has retained this firm in connection with the above-referenced matter. We have reviewed Washington State Transit Insurance Pool’s (“WSTIP”) letter of September 4, 2018, in which WSTIP denies coverage for the putative wage-and-hour class action brought against Community Transit by plaintiff Burdett. For the reasons set forth in this letter and accompanying materials, we and Community Transit are respectfully of the view that WSTIP’s denial is contrary to the language of the governing Public Officials Liability Coverage Document, the intent behind that language, and the fact that the allegations of the Burdett action are strongly contested and unsupported by any facts or judicial findings.

For these reasons, as set forth in detail below, Community Transit requests that WSTIP reconsider its denial and agree to defend Community Transit under reservation of rights.

I. Summary of Facts

A. The Burdett putative class action asserts wage and hour claims against Community Transit.

On August 16, 2018, Community Transit was served with a putative class action by plaintiffs Lisa Burdett, Darrell Johnson, and Lela Perkins (collectively “Plaintiffs”). Plaintiffs are Community Transit operators seeking to recover unpaid wages they claim are due for work they performed but for which they were not compensated. Plaintiffs claim they have been wrongfully denied compensation for four categories of work: (1) preliminary pre-trip work; (2) time spent reading Behind the Wheel, an employer publication that the operators are required to read as part of their employer-mandated training; (3) attendance of mandatory meetings; and (4) time spent in bidding for work assignments. See Complaint at 2-3 (copy attached at Tab A).
Plaintiffs have brought three causes of action, all of which are created by Washington statute. First, they seek damages under RCW 49.46, including the payment of overtime for all work performed by non-exempt employees over 40 hours per week. Tab A at 5. Second, they claim they are entitled to double damages under RCW 49.52.050-.070 on grounds that Community Transit acted “willfully.” *Id.* at 6. Third, the Plaintiffs assert a claim for injunctive relief, seeking a court order to compel Community Transit to comply with RCW 49.46.070 by keeping accurate wage and hour records. *Id.* at 6-7.

B. **Community Transit’s notified WSTIP of the claim and WSTIP denied coverage.**

Community Transit is insured under WSTIP’s Public Officials Liability Coverage Document (“Policy”) (copy attached at Tab C) in force from January 1, 2018 to January 1, 2019. Community Transit tendered the Burdett lawsuit to WSTIP on August 17, 2018. On September 4, 2018, WSTIP responded with a letter denying defense and indemnity coverage, stating that “[i]f there is no coverage for the claims asserted, there is not a duty to defend.” Denial Letter at 4 (copy attached at Tab B).

WSTIP’s denial rests on the following assertions:

- The Policy does not cover Plaintiffs’ claims for wages due under RCW 49.46 because the damages sought do not constitute a “loss” under the Policy. *Id.* at 1.

- The Policy excludes coverage for any wages due because the payment of such wages arose out Community Transit “obtaining profit, advantage or remuneration to which Community Transit is not entitled.” *Id.* at 2 (Exclusion E).

- The Policy excludes Plaintiffs’ claims under RCW 49.52.050 for double damages because if the allegations were proven true, it would amount to a “deliberate violation” of a state statute. *Id.* at 2 (Exclusion G). WSTIP also denied coverage for claims under RCW 49.52.050 under a different exclusion precluding coverage for exemplary damages. *Id.* at 3 (Exclusion Q).

- Plaintiffs’ claims for injunctive relief fall within an exclusion for losses associated with the rendering of an adverse judgment for injunctive and declaratory relief. *Id.* at 3 (Exclusion Q).

For the following reasons, Community Transit respectfully disagrees with WSTIP’s denial based on these Policy provisions.
II. Argument

A. Liability for the alleged failure to pay wages due is a covered “loss” under the Policy.

1. The damages sought by the Plaintiffs are “loss” under the Policy’s definition of that term.

WSTIP’s denial asserts that the damages sought by Plaintiffs, in the form of wages that they contend they should have been paid, is not a “loss” under the Policy. Tab B at 1. WSTIP’s interpretation of “loss” does not comport with the plain language of the Policy. The relevant Policy terms start with the insuring agreement, or basic grant of coverage, which provides that WSTIP:

\[
\text{will pay on behalf of member . . . those sums that member . . . becomes legally obligated to pay as loss because of a wrongful act(s) to which this coverage applies.}
\]

Tab C at 2.

The Policy defines “loss” and “wrongful act” in relevant part as follows:

**Loss** means the amount (less the deductible or retention) the member . . . becomes legally obligated to pay as damages, judgments, settlements, including claim expenses for wrongful acts.

**Wrongful act** means: any actual or alleged error, misstatement, or misleading statement, or any act, omission, or neglect, including malfeasance, misfeasance, and nonfeasance.

Tab C at 7, 8.

WSTIP asserts that any damages Community Transit is required to pay to Plaintiffs in the underlying suit are not “losses” because Community Transit would merely be paying “the wages that the Plaintiffs would have received in the normal course of their employment.” Tab B at 1. However, that rationale—that an award of damages that is measured by wages that were incorrectly withheld—is found nowhere in the Policy’s definition of “loss.” That definition includes all “damages” that Community Transit becomes legally obligated to pay. The statutory causes of action under which the Plaintiffs are proceeding provide for an award of damages, not injunctive relief (holding aside the recordkeeping cause of action, discussed below).

More fundamentally, the definition of “loss” is extraordinarily broad and includes not only “damages,” but also “judgments [and] settlements . . . for wrongful acts.” Tab C at 7, 8. Therefore, even if the underlying Plaintiffs were not technically seeking “damages,” (though they are), they would be seeking a money judgment or monetary settlement.
Further, the Plaintiffs clearly allege that Community Transit committed a “wrongful act,” namely the “nonfeasance” of failing to pay wages for work performed. See Black’s Law Dictionary (10th ed. 2014) (defining nonfeasance as the “failure to act when a duty to act exists.”).

In sum, Community Transit is seeking coverage for a “loss” as a result of an alleged “wrongful act” as those terms are broadly defined in the Policy. Thus, the Policy covers the claims as long as they do not fall within one of the Policy’s specific exclusions.

2. No Washington law or public policy trumps the Policy’s definition of “loss.”

WSTIP’s denial letter asserts that a “loss” cannot include “wages that the plaintiffs would have received in the normal course of their employment.” Tab B at 1. We are uncertain whether WSTIP is arguing that Washington law or public policy somehow contradicts the plain meaning of the definition of “loss.” If so, WSTIP is incorrect.

First, there is no Washington law or public policy that prevents an insurer from covering a loss arising out of an insured’s failure to compensate its employees for the nonpayment of wages. Illustrative is the decision in Virginia Mason Med. Ctr. v. Executive Risk Indem. Inc., 2007 WL 3473683, *4 (W.D. Wash. Nov. 14, 2007), aff’d, 331 Fed. Appx. 473 (9th Cir. 2009). In that case, Judge Pechman of the U.S.D.C. for the Western District of Washington addressed a similar argument regarding whether Washington public policy precluded coverage for Virginia Mason’s settlement of a class action complaint brought under the Washington Consumer Protection Act. The plaintiff class alleged that Virginia Mason wrongfully collected certain fees from the class-member plaintiffs, and sought damages in the amount of the fees collected.

Judge Pechman, and in turn the Ninth Circuit Court of Appeals, flatly rejected the insurer’s argument that coverage for such a loss was void as against public policy, holding that there is no public policy in Washington against providing coverage for the risk of being forced to pay money that was wrongfully obtained. Id. Indeed, we could find no instance in which the Washington courts have applied public policy to prohibit coverage where the policy language would provide coverage. To the contrary, in the leading case addressing whether public policy may render a particular loss uninsurable, Fluke Corp. v. Hartford Acc. & Indemn. Co., the Washington Supreme Court held that public policy did not prevent the insuring of punitive damages. 145 Wn.2d 137, 144, 34 P.3d 809 (2001) (“The paramount public policy here is the commitment to upholding the plain language of contracts.”); see also Certain Underwriters at Lloyd’s, London v. Valiant Ins. Co., 155 Wn. App. 469, 477, 229 P.3d 930 (2010) (“Washington courts rarely invoke public policy to override the express terms of an insurance policy.”) Therefore, there is no public policy in Washington that overrides the Policy’s definition of “loss.”

B. No exclusion applies, and WSTIP must defend Community Transit under reservation of rights.

WSTIP’s denial relies on its interpretation of Exclusions E and G, which provide as follows:

Exclusion E:
This coverage does not apply to a loss: [a]rising out of or attributable to the member . . . obtaining profit, advantage or remuneration to which the member or additional covered party is not entitled; Provided, an adverse fact or finding attributable to a member . . . shall not be imputed to any other member.

Tab C at 3. We refer to this exclusion in this letter as Exclusion E or by the shorthand “profit or advantage exclusion.”

Exclusion G:

This coverage does not apply to a loss: [b]rought about or contributed to by fraud, dishonestly, or bad faith or arising from the deliberate violation of any federal, state, or local statute, ordinance, rule, or regulation; Provided, an adverse fact or finding attributable to a member . . . shall not be imputed to any other member.

Id. We refer to this term as Exclusion G or by the shorthand “deliberate violation exclusion.”

For the following reasons, WSTIP’s application of these exclusions is incorrect.

1. Neither exclusion is triggered by mere allegations; Community Transit is entitled to a defense.
   a. The language of the exclusions conveys WSTIP’s intent that the exclusions apply only upon a judicial finding that the excluded conduct occurred.

For the reasons set forth in Sections II.B. 3 and 4, below, Community Transit is of the view that neither exclusion applies—at all—to the allegations made in the underlying action. However, WSTIP need not even address that question at this stage, because it should be clear that the exclusions are not triggered by the mere allegations of the Plaintiffs. There has been no proof or finding that the conduct addressed in the exclusions—wrongfully gaining a profit or advantage or willfully committing fraud or violating a statute—in fact occurred. Accordingly, WSTIP is obligated to defend Community Transit against the Burdett action under reservation of rights.

Exclusions E and G are unique among the 19 exclusions found in Section 2 of the policy, in that they both contain the following proviso or condition: “Provided, an adverse fact or finding attributable to a member . . . shall not be imputed to any other member.” (Emphasis added.) We recognize that this proviso pertains specifically to questions of imputation of facts or judicial findings from one member to another, but its import and intent are clear: the exclusions are intended to apply not to the mere allegations of underlying plaintiffs, but rather only where the member is found “in fact” to have committed the excluded conduct, or where the excluded conduct has been established in a judicial finding. There can be no other interpretation; the Policy would not need to address questions of imputation of facts and findings if the exclusions were triggered merely by the underlying allegations.
There of course has not yet been an “adverse fact or finding attributable” to Community Transit in the underlying litigation. Community Transit denies and vigorously contests the underlying allegations. Accordingly, Exclusions E and G cannot apply to bar Community Transit’s claim for defense costs.

This is the same conclusion that courts have reached when interpreting policy exclusions that are analogous to those in WSTIP’s Exclusions E and G in that they contain “fact”-related provisos. For example, in the Virginia Mason case cited earlier, Judge Pechman considered the effect of an exclusion that barred coverage for “[c]laims brought about or contributed in fact . . . by an Insured gaining any profit, remuneration or advantage to which such insured was not legally entitled.” See 2007 WL 3473683, at *5. The court concluded that such an exclusion requires a factual finding to be made before it can apply to preclude coverage:

[T]he phrase “in fact” requires an entry of some pertinent factual finding before Exclusion III(A) is triggered. Such a finding could result from a final decision on the merits or from a determination by this Court that Virginia Mason was not “legally entitled” to the funds paid the Gibson plaintiffs.

Id. The Virginia Mason holding is not an outlier. E.g., Wintermute v. Kansas Bankers Sur. Co., 630 F.3d 1063, 1071 (8th Cir. 2011) (“[w]e believe the phrase ‘gaining in fact’ must have some meaning, and relying solely on the allegations of a personal gain contained in the complaint reads that phrase out of the insurance contract.”); PMI Mortgage Ins. Co. v. Am. Int’l Specialty Lines Ins. Co., 2006 WL 825266, *5 (N.D. Cal. Mar. 29, 2006) (holding that requiring “an actual adjudication or determination of fact prior to application of the profit or advantage exclusion, more appropriately effectuates the goal of giving the phrase ‘in fact’ its ordinary and popular meaning.”); St. Paul Mercury Ins. Co. v. Foster, 268 F.Supp.2d 1035, 1045–46 (C.D. Ill. 2003) (holding that exclusion for losses “arising out of or attributable to any insured gaining in fact any personal profit, remuneration, or financial advantage to which insured was not legally entitled” required the issue to be adjudicated in the underlying litigation before the exclusion could be applied).

Furthermore, the requirement that an adverse fact or finding be made before defense costs are excluded makes particular sense in the context of Exclusion G because Community Transit cannot be liable at all for violating RCW 49.52.050 unless a court finds that Community Transit acted “willfully.” See Travelers Cas. & Sur. Co. of Am. v. Spectrum Glass Co., Inc., 2012 WL 3780356, at *7 n. 1 (W.D. Wash. Aug. 31, 2012) (observing that “RCW 49.52.050 requires proof that the employer withheld the wages ‘willfully and with intent to deprive the employee’ of the wages”). If WSTIP had in fact intended for Exclusion G to apply to bar defense costs based upon the bare allegations of the underlying claim, the Policy could have easily included such a requirement. Pendergast-Holt v. Certain Underwriters at Lloyd’s of London, 600 F.3d 562, 571 (5th Cir. 2010) (noting that underwriters “could have unambiguously reserved a unilateral right to determine that the alleged acts in fact occurred.”). But because the Policy did not grant WSTIP such broad power, it can hardly be said that such an outcome is what the parties intended when they entered into this insurance agreement.

Finally, we submit that, at best for WSTIP, the language of Exclusions E and G, and particularly the provisos, are ambiguous, i.e., reasonably susceptible to more than one meaning. With all
due respect, one could say that the provisos are inartfully worded, and would be clearer if they did not focus on the concept of imputation of facts or adverse findings. However, the provisos undeniably convey that such facts or adverse findings are necessary to trigger the exclusions. If WTSIP determines that the language is ambiguous, it should construe that language in favor of member Community Transit. *E.g.*, *Washington Pub. Util. Districts' Utilities Sys. v. Pub. Util. Dist. No. 1 of Clallam Cty.*, 112 Wn.2d 1, 16–17, 771 P.2d 701, 710 (1989) ("exclusionary provisions are contrary to the fundamental purpose of an insurance policy; and, therefore, will be narrowly construed in favor of the insured."). We recognize that there are some questions in the law concerning the extent to which insurance-specific legal rules apply to statutory risk pools such as WSTIP, but the basic proposition that ambiguous contract language should be construed against the drafter should, in fairness, apply here.

**b. In the insurance marketplace, the “profit or advantage” and “willful violation of statute” exclusions are universally understood to provide defense coverage for the underlying allegations of excluded conduct.**

We and Community Transit wish to emphasize that the result we are seeking on this appeal—a defense under reservation of rights where the “profit or advantage” and “willful violation of statute” exclusions *might* later be determined to apply to some extent—is not an anomaly or a figment of the undersigned insurance lawyer’s imagination. To the contrary, defending this case under reservation of rights is completely in the mainstream, and in fact would be the outcome under the overwhelming majority, if not all, of the directors’ and officers’, professional liability, and similar coverage forms in use in the insurance marketplace for the last many decades. WSTIP’s members rightfully expect the same outcome under the WSTIP Policy language.

We have attached at Tab E a report from expert witness Peter Marchel. The report explains Mr. Marchel’s expert qualifications and attaches his C.V. In summary, Mr. Marchel, a lawyer by training, has nearly three decades of experience in the insurance industry, including working with major insurers such as Safeco, and with international brokers such as Marsh and Sedgwick. His work has long included the negotiation and placement of D&O, professional liability, and employment practices liability insurance. He holds a variety of professional designations, including Chartered Property Casualty Underwriter, Associate in Insurance Services, Registered Professional Liability Underwriter, and Associate in Risk Management. He consults with and testifies on behalf of a wide range of clients, both policyholder and insurer. He has been qualified as an expert witness on a wide variety of insurance matters and is an expert in the various standardized policy forms that have been used with respect to these coverages over the past three decades.

As Mr. Marchel demonstrates, including by reference to legal authorities and policy specimen forms:

- These two exclusions, for wrongful “profit or advantage” and “deliberate violation of statute,” are extraordinarily common in D&O and professional liability-type coverage (which of course is analogous to WSTIP’s Public Officials Liability Coverage). Indeed, these two exclusions are nearly universally found in such policies.
- It is equally universal that these exclusions are subject to a condition or exception that is intended to afford the insured with a defense against underlying claims that allege the type of conduct which, if proved, would fall within the exclusions. As Mr. Marchel explains, those exceptions take various forms. Two of the most common such exceptions are the “final adjudication” and the “in fact” approach. In the former, the exclusion provides that it applies only when there has been a “final adjudication” that the insured committed the excluded conduct, e.g., wrongfully obtained a profit or advantage. Under the “in fact” approach, the exclusion does not apply unless it is judicially determined that the insured “in fact” committed the conduct in question. The only difference between these two approaches is that the “in fact” showing can be made by a judicial finding prior to a final adjudication on the merits of the claim in the underlying litigation.

But the critical point for present purposes is that, regardless of the variant used by a particular insurer, it is virtually always the case that these two exclusions: (1) are not triggered simply by the underlying plaintiff’s bare allegations; and (2) therefore are not intended to negate defense coverage for such lawsuits.

- As Mr. Marchel points out, were this not the case, the value of this type of insurance coverage would be greatly reduced. Given the nature of D&O and Public Officials liability coverage, a significant percentage of the types of allegations that an insured might be expected to receive will implicate in some fashion the “profit or advantage” and/or “willful violation of statute” exclusions. In some cases it may be appropriate that, if the insured is found liable for such conduct, i.e., that the insured actually committed that conduct and it was wrongful, the insured should not have indemnity coverage for that liability.

However, in most such cases it will be unclear, and vigorously contested, as to whether the insured did in fact commit the wrongful conduct. In those cases the duty to defend is extremely important to the insured. If an insurer were to offer this type of coverage with exclusions that were not subject to these defense-oriented exceptions, that insurer would find itself losing business to its competitors who offer more mainstream coverage.

We and Community Transit submit that a continued refusal by WSTIP to defend Community Transit would be well outside the mainstream and would significantly reduce the value of the WSTIP coverage as compared with what WSTIP members could obtain from a commercial insurer.

c. **WSTIP must defend Community Transit if the Burdett lawsuit is “conceivably covered”; all legal and factual uncertainty must be resolved in favor of agreeing to defend.**

We would emphasize that the Policy creates a traditional duty to defend on the part of WSTIP: “The Pool has the right and duty to defend any suit or claim seeking damages from a member … for wrongful act(s) to which this coverage applies.” Tab C at 2. Community Transit would ask WSTIP to be mindful that the Washington courts have made the duty to defend in our state more robust than anywhere else in the country. In a series of recent decisions, including Woo v.
Fireman’s Fund Ins. Co., 161 Wn.2d 43, 164 P.3d 454 (2007), and American Best Food, Inc. v. Alea London, Ltd., 168 Wn.2d 398, 404, 229 P.3d 693 (2010), the Washington Supreme Court reaffirmed and strengthened the duty:

- The duty to defend is independent of and broader than the duty to indemnify, and the insurer must defend the insured if the underlying claims are “conceivably covered” under the policy’s coverage. *Woo*, 161 Wn.2d at 53.

- Any uncertainty—legal as to whether the policy applies or factual, that is, as to whether facts might ultimately be developed that could affect coverage—must be resolved in favor of defending the insured. *Id.* at 60; *Queen City Farms, Inc. v. Cent. Nat’l Ins. Co. of Omaha*, 126 Wn.2d 50, 68, 74, 882 P.2d 703 (1994). This “low bar” for defending the insured would figure prominently in a court’s evaluation of WSTIP’s determination, should the Board choose not to defend under reservation of rights.

2. **Plaintiffs’ claims for double damages under RCW 49.52.070 and injunctive relief under RCW 49.46.070 do not reduce the defense coverage owed to Community Transit.**

WSTIP asserts that it does not owe either defense or indemnity costs for Community Transit’s potential liability for double damages under RCW 49.52.070, or for Community Transit’s potential liability for injunctive relief under RCW 49.46.070. Community Transit acknowledges that the claim for injunctive relief and the portion of the 49.52.070 claim that seeks exemplary damages (i.e., not including the portion of that claim that seeks compensatory damages) fall within Exclusion Q.¹ Unlike Exclusions E and G, Exclusion Q is not subject to any condition that preserves defense coverage for such claims, and accordingly there is no defense or indemnity coverage for these claims *as such*.

However, we say “as such” because the presence of uncovered claims, along with covered claims, in the underlying lawsuit does not diminish Community Transit’s coverage for the costs of defending against the underlying lawsuit as a whole. This is because the costs of defending an underlying lawsuit cannot be allocated between covered and non-covered claims where the claims are “reasonably related” to one another. *Bordeaux, Inc. v. Am. Safety Ins. Co.*, 145 Wn. App. 687, 698, 186 P.3d 1188 (2008) (quotation omitted). Here, Community Transit is owed coverage for the claims brought against it for the alleged failure to pay wages due under RCW 49.46. The defense of this covered claim is “reasonably related” to the defense of the claim against Community Transit for the “willful withholding” of wages under RCW 49.52.070, as well as the claim for injunctive relief under RCW 49.46.070, because the defense of each of these claims all center around whether Community Transit improperly withheld wages from its employees. Therefore, even if Community Transit is not owed defense costs for one of these claims, it is still owed coverage for the defense of the lawsuit as a whole.

¹ Exclusion Q provides: “This coverage does not apply to a loss: Arising out of demands or actions seeking relief or redress in any form other than monetary damages, for any fees, costs or expenses which you may become obligated to pay as a result of any adverse judgment for declaratory relief or injunctive relief, or for punitive or exemplary damages.” Tab C at 4.
3. **Exclusion E does not bar coverage for indemnification because Community Transit did not obtain a “profit, advantage, or remuneration” from the Plaintiffs.**

For the reasons discussed in the preceding sections, we submit that WSTIP must agree to **defend** Community Transit. WSTIP presumably would do so under reservation of rights to deny or limit coverage for any settlement or judgment liability that Community Transit might ultimately incur. WSTIP may proceed to decide, at this time, whether or to what extent Community Transit may have indemnity coverage for the Burdett lawsuit. WSTIP need not do so, however; we submit that WSTIP should not tackle this subject unless and until there is such a settlement or judgment liability on the table and there is an accompanying record that would allow WSTIP to assess the nature of the liability and whether or to what extent it is covered.

However, in the event WSTIP chooses to proceed, it should find that Exclusion E does not apply to the Burdett allegations. In arguing for the application of this exclusion, WSTIP asserts that “the definition of remuneration is generally accepted to be the total of the financial and nonfinancial benefits to employees of all the elements in the employment package.” Tab B at 2. With all due respect, this position is incorrect, and indeed “backwards.” Plaintiffs’ claims for unpaid wages are not premised on Community Transit obtaining “remuneration” from and having to return remuneration to its employees. Instead, Plaintiffs’ claims are premised on their allegation that Community Transit failed to “remunerate” them. This differs from cases where this exclusion would apply, such as where the employees claim that their employer actually wrongfully appropriated their wages, and then in turn failed to pay them. See **Cohen v. Greenwich Ins. Co.**, 2011 WL 8780709, at *3 (Ariz. Super. Ct. Dec. 1, 2011) (holding that exclusion for “profit or remuneration gained by any Insured to which such insured is not legally entitled” applied to bar coverage for class action lawsuit alleging that insured violated the Massachusetts Tip Act, which requires that all money collected from customers as a “service” charge be paid directly to the company’s employees.). Unlike in **Cohen**, the employees here are alleging that they did not receive remuneration. They are not alleging that Community Transit ever wrongfully obtained or possessed their remuneration. Such conduct is therefore covered under the Policy, and does not fall under Exclusion E.

Moreover, the courts have rejected insurers’ arguments for the application of analogous exclusions where, as here, the insured never obtained money from the underlying plaintiff. An instructive example is the opinion of the U.S. Court of Appeals for the Sixth Circuit in **William Beaumont Hosp. v. Fed. Ins. Co.**, 552 Fed. Appx. 494 (6th Cir. 2014). In that case, William Beaumont Hospital (“the Hospital”) sought indemnification from its insurer for a settlement the Hospital reached in an antitrust class action brought by nurses to recover wages that were unlawfully retained by hospitals in the Detroit area. *Id.* at 495. The insurer relied heavily on **Level 3 Commc'n's, Inc. v. Federal Ins. Co.**, 272 F.3d 908 (7th Cir. 2001), to argue that the Hospital’s policy did not cover the nurses’ claims because they arose from the Hospital’s

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2 The Hospital’s Policy generally defined a loss as “[T]he total amount which any Insured becomes legally obligated to pay on account of each Claim and for all Claims in each Policy Period ... made against them for Wrongful Acts for which coverage applies, including, but not limited to, damages, judgments, settlements, costs and Defense Costs.” 552 Fed. Appx. at 496. An endorsement to the policy further specified that “[s]olely with respect to any Claim based upon, arising from or in consequence of profit, remuneration or advantage to which an Insured was not legally entitled, the term Loss ... shall not include disgorgement by any Insured or any amount reimbursed by any Insured Person.” *Id.*
“gaining of profit, remuneration, or advantage to which it was not entitled and the settlement was a disgorgement of that advantage.” *Id.* at 497.

The court rejected the insurer’s argument that the Hospital was seeking coverage for the disgorgement of ill-gotten gains:

Relying on the definitions of these terms, we find the hospital never gained possession of (or obtained or acquired) the nurses' wages illicitly, unlawfully, or unjustly. Rather, according to the nurses' complaint, Beaumont retained the due, but unpaid, wages unlawfully. This is not mere semantics. Retaining or withholding differs from obtaining or acquiring. The hospital could not have taken money from the nurses because it was never in their hands in the first place. While the hospital's alleged actions are still illicit, there is no way for the hospital to give up its ill-gotten gains if they were never obtained from the nurses. Therefore, the damages Beaumont paid in settlement of the claim does not constitute disgorgement.

*Id.* at 499. The *Beaumont* court is not alone in finding this distinction to be dispositive. *E.g.*, *Chubb Custom Ins. Co. v. Grange Mut. Cas. Co.*, 2011 WL 4543896, at *12 (S.D. Ohio Sept. 29, 2011) (holding plaintiffs' damages for insurer under-adjusting their claims did not constitute restitution where the insurer did not “wrongfully acquire” the money but “simply retained it”); *Unified W. Grocers, Inc. v. Twin City Fire Ins. Co.*, 457 F.3d 1106, 1115 (9th Cir. 2006) (noting “[t]he fundamental distinction is not whether the insured received ‘some benefit’ from a wrongful act, but whether the claim seeks to recover only the money or property that the insured wrongfully acquired.”).

Applied here, this distinction is dispositive because the Plaintiffs do not allege that Community Transit wrongfully obtained their wages. They allege that Community Transit wrongfully retained their wages. Thus, any amount that Community Transit would be held liable for would not be calculated based on what Community Transit obtained, but by the amount needed to compensate the Plaintiffs for the amount that was allegedly retained. See Tab A at 5 ("Community Transit failed to compensate plaintiffs and the Class at the overtime rate in accordance with Washington law."); *William Beaumont*, 552 Fed. Appx. at 500 (noting that paying the nurses their unpaid wages was compensatory because it was not calculated based on the profit obtained by the Hospital, but by the amount required to put the nurses in the position they would have been in without the unlawful conduct). Although this is a subtle distinction, it is one that courts have held to be determinative in coverage cases similar to that presented here.

Additionally, if the parties had intended for Exclusion E to apply to wage and hour claims, it is fair to assume that the parties would have agreed upon language to that effect in the 2018 Policy. See *Lynott v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 123 Wn.2d 678, 688 (1994) (“In evaluating the insurer's claim as to meaning of language used, courts necessarily consider whether alternative or more precise language, if used, would have put the matter beyond reasonable question.”) (quoting 13 John A. Appleman & Jean Appleman, Insurance Law & Practice § 7403 (1976)). This omission is particularly indicative of the parties' intent under the circumstances here. WSTIP specifically excluded coverage for the violation of ERISA, as well
as “any similar federal, state or local laws and regulations,” yet did not provide a similar exclusion for any claims associated with wage and hour statutes. Tab C at 3. As Mr. Marchel’s report explains, the lack of such an exclusion is particularly glaring given that exclusions for claims brought under wage and hour statutes are commonplace in EPL and D&O policies. Tab E at 5.

Finally, WSTIP added Exclusion Y to the 2019 Coverage Document, which excludes coverage “consisting of awards or settlements of employer-paid pay and benefits, such as but not limited to vacation, general leave, sick leave, back pay, payroll taxes, and retirement.” 2019 Policy at 10 (copy attached at Tab D). Thus, if WSTIP and Community Transit had intended to exclude this type of claim from the insurable losses under the 2018 Policy, the parties could have, and should have agreed to do so. But in the absence of such language, it is not fair to say that the parties intended for Exclusion E to apply as broadly as WSTIP advocates for today.

4. **Exclusion G does not apply because Community Transit’s potential liability under RCW 49.46 is not based on the deliberate violation of a statute.**

For the reasons discussed above, WSTIP need not address at this time whether or to what extent Exclusion G applies to Community Transit’s potential liability under RCW 49.46. However, to the extent it wishes to reach this issue, WSTIP should agree that the exclusion does not apply to Community Transit’s claim for coverage associated with its potential liability under RCW 49.46. Again, Exclusion G, in relevant part, applies to losses “[b]rought about or contributed to by fraud, dishonesty, or bad faith or arising from the deliberate violation of any federal, state, or local statute, ordinance, rule, or regulation.” Tab C at 3. But Community Transit’s liability under RCW 49.46 does not require that Community Transit acted deliberately or intentionally to be in violation of the statute. See RCW 49.46.130 (requiring employers to compensate their employees for regular hours worked and overtime for any hours worked beyond forty in a workweek). Thus, because there is no element of intent in the statute, Exclusion G cannot preclude coverage for Community Transit’s liability for unpaid wages under RCW 49.46.130 unless Community Transit acted deliberately in violating the statute.

III. Conclusion and Request for Relief

Community Transit—and indeed all members of WSTIP—are entitled to expect defense coverage for wage-and-hour lawsuits of the type at issue here. While, in the event of a settlement of the Burdett case, there may be substantial or full indemnity coverage as well, WSTIP need not reach that question now. Instead, the Policy language makes clear that:

- Plaintiffs seek “loss” as defined in the policy, and the insuring agreement is satisfied.
- The two implicated exclusions, for wrongful “profit or advantage” and “willful violation of statute,” are intended to apply only where the facts or a judicial finding lead to the conclusion that the insured member in fact gained the wrongful profit or advantage or in fact willfully violated a statute. Community Transit vigorously contests Plaintiffs’ allegations, and no facts have been established and no judicial finding has occurred.
- Community Transit agrees that two categories of relief sought by Plaintiffs, double damages and injunctive relief related to recordkeeping, are not covered. However,
under clear Washington law, because the defense of those claims is closely related to the defense of the covered claims, Community Transit is entitled to a full defense against the underlying action, with no allocation of defense costs to the uncovered claims.

For these reasons, Community Transit requests that WSTIP reverse its denial and agree to defend the Burdett action under reservation of rights.

We appreciate WSTIP’s consideration of Community Transit’s appeal, and look forward to presenting this matter to you and the Executive Committee at the October 25, 2018 meeting.

Sincerely yours,

Franklin D. Cordell

FDC/jl

Enclosures

cc: Geri Beardsley, Community Transit
SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

LISA BURDETT, DARRELL
JOHNSON, and LEA PERKINS,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

SNOHOMISH COUNTY PUBLIC
TRANSPORTATION BENEFIT AREA
CORPORATION d/b/a Community
Transit,

Defendant.

I. NATURE OF ACTION

1.1 Plaintiffs Lisa Burdett, Darrell Johnson, and Lela Perkins bring this class action
against Snohomish County Public Transportation Benefit Area Corporation d/b/a Community
Transit ("Community Transit") to recover the unpaid wages owing to themselves and other
coach operators within the Class for work they performed but for which they did not receive
pay required by Washington law.

II. JURISDICTION AND VENUE

2.1 This court has jurisdiction by virtue of RCW 2.08.010.
2.2 Venue properly lies in this court by virtue of RCW 4.12.025(1) & (3).

III. PARTIES

3.1 Plaintiff Lisa Burdett is a resident of Washington. She has worked as a Community Transit operator for 27 years.

3.2 Plaintiff Darrell Johnson is a resident of Washington. He has worked as a Community Transit operator for 15 of his 16 years of employment with Community Transit.

3.3 Plaintiff Lela Perkins is a resident of Washington. She has worked as Community Transit operator for three of her three and one-half years of employment with Community Transit.

3.4 Defendant Community Transit is a public transportation benefit area organized in accordance with RCW 36.57A.010 et seq. County Transit is headquartered in this county. CT is an employer within the meaning of RCW 49.46 and RCW 49.52.

IV. FACTUAL ALLEGATIONS

4.1 During the three years prior to the commencement of this action, and thereafter, plaintiffs and other similar situated coach operators performed work for Community Transit for which they were not paid the wages required by Washington law.

4.2 Before embarking on their assigned bus routes, plaintiffs and the Class are required to engage in preliminary pre-trip work that is necessary for them to perform their jobs and is an integral part of their jobs. Coach operators do not have control over when and where such pre-trip activities are to be performed. Community Transit has refused to pay plaintiffs and the Class for all pre-trip work.

4.3 Community Transit requires coach operators to read an employer publication called Behind the Wheel. Community Transit describes Behind the Wheel as “a compilation of
information from management, supervision, and other departments wishing to provide
information to you, the coach operator.” The requirement that operators must read Behind the
Wheel constitutes employer-mandated training. Community Transit has refused to pay plaintiffs
and the Class for the time spent reading Behind the Wheel.

4.4 Coach operators are required to attend certain meetings at mandated times and
places. Community Transit has refused to pay plaintiffs and the Class for all the time spent in
mandatory meetings.

4.5 Coach operators are required to bid for their work assignments a minimum of
three times per year. Community Transit administers the bid process. Community Transit sets
the time for each employee’s bid, which must be conducted on Community Transit premises.
Community Transit has refused to pay plaintiffs and the Class for all the time spent on the bid
process.

4.6 Community Transit has had actual or constructive knowledge of the fact that it
has not paid plaintiffs and the Class for all hours worked.

V. CLASS ALLEGATIONS

5.1 Class Definition: All coach operators who have worked for Community Transit
at any time between the following dates: three years before the commencement of this action
and the final disposition of this action. Greater than two-thirds of the members of the Class are
citizens of Washington.

5.2 Numerosity: The proposed Class comprises over 100 persons. The Class is so
numerous that joinder of all members is impracticable.

5.3 Commonality: Questions of law and/or fact common to the Class include the
following:
a. Whether Community Transit engaged in the common course of action of failing to pay the Class for all hours worked in accordance with Washington law?

b. Whether unpaid time spent on necessary pre-trip activities constitutes hours worked under Washington law?

c. Whether unpaid time spent reading *Behind the Wheel* constitutes hours worked under Washington law?

d. Whether unpaid time spent in mandatory meetings constitutes hours worked under Washington law?

e. Whether unpaid time spent on bidding work assignments constitutes hours worked under Washington law?

f. Whether Community Transit has violated RCW 49.46.020?

g. Whether Community Transit has violated RCW 49.46.070?

h. Whether Community Transit has violated RCW 49.46.090?

i. Whether Community Transit has violated RCW 49.46.130?

j. Whether Community Transit has violated RCW 49.52.050?

5.4 **Typicality.** Plaintiffs' claims are typical of the claims of the Class. Plaintiffs work for Community Transit as Coach Operators. Plaintiffs' claims, like the claims of the Class, arise out of the same common course of conduct and are based on the same legal and remedial theories.

5.5 **Adequacy.** Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs have retained attorneys who have significant experience in complex employment law litigation and class action litigation. Neither plaintiffs nor their counsel have interests that are contrary to or that conflict with those of the Class.
5.6 Predominance. Community Transit has engaged in a common course of wage theft toward plaintiffs and members of the Class. The common issues arising from this conduct that affect plaintiffs and members of the Class predominate over any individual issues. Adjudication of these common issues in a single action has important and desirable advantages of judicial economy.

5.7 Superiority. Plaintiffs and the Class have suffered and will continue to suffer harm and damages as a result of Community Transit’s unlawful conduct. Absent a class action, however, most Class members likely would find the cost of litigating their claims prohibitive. Class treatment is superior to multiple individual suits or piecemeal litigation because it conserves judicial resources, promotes consistency and efficiency of adjudication, provides a forum for small claimants, and deters illegal activities. There will be no significant difficulty in the management of this case as a class action. The Class members are readily identifiable from Community Transit’s records.

VI. FIRST CAUSE OF ACTION: FAILURE TO PAY WAGES DUE UNDER RCW 49.46

6.1 Plaintiffs reallege paragraphs 1.1 through 5.7 as if fully set forth herein.

6.2 RCW 49.46 requires employers to compensate employees for all hours worked at no less than minimum wage. Community Transit has failed to compensate plaintiffs and the Class for all hours worked as required by RCW 49.46.

6.3 Washington law requires the payment of overtime for all work performed by non-exempt employees over 40 hours per week. Community Transit failed to compensate plaintiffs and the Class at the overtime rate in accordance with Washington law.

6.4 Community Transit’s actions and omissions, described above, violate the minimum wage and overtime requirements of RCW 49.46.
6.5 As a direct and proximate result of Community Transit’s actions and omissions, plaintiffs and the Class have been damaged in an amount to be proven at trial.

VII. SECOND CAUSE OF ACTION: WILLFUL WITHHOLDING OF WAGES IN VIOLATION OF RCW 49.52

7.1 Plaintiffs reallege paragraphs 1.1 through 5.7 as if fully set forth herein.

7.2 RCW 49.52.050 prohibits any employer from willfully withholding wages due to any employee under law or contract.

7.3 Community Transit’s actions and omissions described above constitute a violation of RCW 49.52.050.

7.4 RCW 49.52.070 provides that the remedy for a violation of RCW 49.52.050 is payment of twice the wages wrongfully withheld.

7.5 As a direct and proximate result of Community Transit’s violations of RCW 49.52.050, plaintiffs and the Class have been damaged in an amount to be proven at trial.

VIII. THIRD CAUSE OF ACTION: FAILURE TO MAINTAIN WAGE AND HOUR RECORDS REQUIRED BY LAW

8.1 Plaintiffs reallege paragraphs 1.1 through 5.7 as if fully set forth herein.

8.2 Community Transit has failed to keep accurate records of the wages and hours of plaintiffs and the Class in violation of RCW 49.46.070.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court certify this action as a class action and enter judgment awarding plaintiffs and the Class:

1. Lost wages in an amount to be proven at trial;

2. Double damages under RCW 49.52;

3. Prejudgment interest;

FRANK FREED
SUBIT & THOMAS LLP
Suite 1200 Hoge Building, 706 Second Avenue
Seattle, Washington 98104-1794 ~ (800) 698-6711

COMPLAINT - 6
4. Attorneys' fees, costs, and expenses;

5. A declaration that Community Transit has violated Washington wage and hour laws;

6. An order that Community Transit must keep the wage and hour records required by law; and

7. Such other and further relief as this Court may deem appropriate.

DATED this 14th day of August 2018.

FRANK FREED SUBIT & THOMAS LLP

By:
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msubit@frankfreed.com

Attorneys for Plaintiffs and the Class
September 4, 2018

Ms. Geri Beardsley  
Community Transit  
7100 Hardeson Road  
Everett, WA 98203-5834

RE: Burdett, Johnson & Perkins vs. Snohomish County Public Transportation Benefit Area  
Doing business as: Community Transit  
Claim #18-014659-1  
Date of Loss: 8/17/2018

Dear Geri:

We received an unfiled summons and complaint as notice of claim regarding Burdett et al. vs. Community Transit along with a written request from your General Counsel to accept tender of this matter. Because WSTIP’s Public Officials Liability Coverage Document is a claims-made policy, the date of loss for this event is set to the date that we received the notice of claim, which was August 17, 2018.

This means the 2018 Public Officials Liability Coverage Document will be used to interpret coverage. As normal practice, we do not usually interpret coverage prior to a legally-served or filed summons and complaint. Due to the uniqueness of this claim and the push towards pre-litigation mediation, it seems necessary to raise awareness early over WSTIP’s coverage concerns.

Based on the allegations of the complaint, and our investigation of this matter to date, we are denying coverage. WSTIP will continue to provide defense pending the appeal of our decision under Article XII, Section 52 of the WSTIP Bylaws or until the time for bringing an appeal has expired. If you have any additional information you believe would cause us to change our decision to deny coverage we would encourage you to provide it at your earliest convenience. If there is a reasonable basis to provide coverage we would, of course, prefer that outcome.

First Cause of Action – Failure to Pay Wages Due Under RCW 49.46.

Is the amount requested in the complaint considered a loss?
Under Section 1. Coverage Document, A. Coverage, the Coverage Document states:

1. We will pay on behalf of member or additional covered party those sums that member or additional covered party becomes legally obligated to pay as loss because of a wrongful act(s) to which this coverage applies.

In the notice of claim, the plaintiff alleges they were not paid the wages required by Washington law. Therefore, if this allegation were to be proven true, Community Transit would be required to pay the plaintiffs the wages they would have received in the normal course of their employment. Therefore, it would not be considered a loss. The intent by WSTIP members not to consider unpaid wages a “loss” is
further borne out by exclusions cited in this letter under Section 2, E. and G. as more fully explained below.

**Is the allegation of failure to pay wages due under RCW 49.46 covered under the Coverage Document?**

Under Section 2, Exclusions, the Coverage Document states:

E. Arising out of or attributable to the *member or additional covered party* obtaining profit, advantage or remuneration to which the *member or additional covered party* is not entitled; Provided, an adverse fact or finding attributable to a *member or additional covered party* shall not be imputed to any other *member or additional covered party*.

The definition of remuneration is generally accepted to be the total of the financial and nonfinancial benefits to the employee of all the elements in the employment package. Remuneration has historically included payroll as well as other forms of employee compensation. If the allegation of failure to pay one's employees the amount owed under state law were covered under the Coverage Document, the situation would place the member in a position of profit and advantage that it is not entitled. Coverage of wages owed would result in a windfall which Exclusion E prohibits.

**Second Cause of Action – Willful Withholding of Wages in Violation of RCW 49.52**

**Are willful actions in violation of RCW 49.52 covered under the Coverage Document?**

In the claim, the Plaintiff accuses Community Transit of "Willful Withholdings of Wages in Violations of RCW 49.52." In this second cause of action, by incorporation of prior paragraphs, plaintiffs request recovery of unpaid wages. RCW 49.52.050 states any employer who willfully and with intent deprives an employee of their wages is guilty of a misdemeanor.

Under Section 2, Exclusion G., the Coverage Document states coverage does not apply to claims:

G. Brought about or contributed to by fraud, dishonesty, or bad faith or arising from the *deliberate violation of any federal, state, or local statute, ordinance, rule, or regulation*; Provided, an adverse fact or finding attributable to a member or additional covered party shall not be imputed to any other member or additional covered party.

A further exclusion is also on point, and that is Exclusion E.

E. Arising out of or attributable to the *member or additional covered party* obtaining profit, advantage or remuneration to which the *member or additional covered party* is not entitled; Provided, an adverse fact or finding attributable to a *member or additional covered party* shall not be imputed to any other *member or additional covered party*.

The definition of remuneration is generally accepted to be the total of the financial and nonfinancial benefits to employees of all the elements in the employment package. Remuneration has historically included payroll as well as other forms of employee compensation. If the allegation of failure to pay one's employees the amount owed under state law were covered under this Coverage Document, the situation
would place the member in a position of profit and advantage that it is not entitled. Coverage of wages owed would result in a windfall which Exclusion E prohibits.

RCW 49.52.070 states that any employer in violation of RCW 49.52.050 shall be liable for twice the amount of the wages as exemplary damages.

Under Section 2, Exclusion Q, the Coverage Document states coverage does not apply if:

Q. Arising out of demands or actions seeking relief or redress in any form other than monetary damages for any fees, costs or expenses which you may become obligated to pay as a result of any adverse judgement for declaratory relief or injunctive relief, or for punitive or exemplary damages.

Lastly, as already mentioned violation of RCW 49.52.050 is a misdemeanor which is a criminal conviction.

Section 3. Who is covered states that employees must be acting within the scope of their duties on behalf of the member. The perpetration of a crime or crimes would not be considered within the scope and duties of any employee to the member.

Third Cause of Action – Failure to Maintain Wage and House Records Required by Law

Are non-monetary damages covered?
The complaint states Community Transit is in violation of RCW 49.46.070 which is an allegation of a failure to maintain accurate wage records. In the Prayer for Relief under this cause of action, plaintiff requests an order from the court requiring Community Transit to keep wage and hour records as required by law. These are not monetary damages and therefore are not covered as per the following:

Section 2, Exclusion Q, the Coverage Document states:

This coverage does not apply to demands or actions seeking relief or redress in any form other than monetary damages, or for any fees, costs or expenses which you may become obligated to pay as a result of any adverse judgment for declaratory relief or injunctive relief.

Under Section 2, Exclusion Q, the Coverage Document states coverage does not apply if:

Q. Arising out of demands or actions seeking relief or redress in any form other than monetary damages for any fees, costs or expenses which you may become obligated to pay as a result of any adverse judgement for declaratory relief or injunctive relief, or for punitive or exemplary damages.

Lastly, as already mentioned violation of RCW 49.52.050, particularly in relation to record keeping requirements with respect to the third cause of action, is a misdemeanor, which is a crime under RCW 9A.20.010.
Section 3. Who is covered ... states that employees must be acting within the scope of their duties on behalf of the member. The perpetration of a crime or crimes would not be considered within the scope and duties of any employee to the member.

If there is no coverage, WSTIP may decline the tender
The Coverage Document makes it clear in the introductory provisions that the policy will not be interpreted or construed according to Washington insurance law. Coverage documents are approved by the WSTIP Board and serve as an agreement among its members with respect to how coverage questions will be determined. If there is no coverage for the claims asserted, there is not a duty to defend. Conversely, WSTIP has the right and duty to defend any suit seeking damages from a member for wrongful acts to which the coverage afforded by the Coverage Document applies.

As you know, we have engaged defense counsel on this matter and started an investigation. We will keep our investigation open to review any additional information that may have a bearing on coverage and pay defense costs pending your right to appeal.

If a summons and complaint is legally served or filed, we would wish to review the matter again for coverage and if need be, update or revise this letter. By making this request, we do not waive our rights to deny coverage for any valid reason which may arise.

You May Appeal of this Decision
Community Transit may seek Executive Committee review, as is your right under the Bylaws of this organization. To seek review, you must:

- Send a written notice to the President and Executive Director that includes the identity of the appellant, the decision from which the appeal is taken, and the reasons why the appellant believes the decision is wrong.

- You must seek your appeal within 30 days following this decision.

- Depending on when we receive notice of your intent to appeal, the appeal would be heard at the next regular meeting of the Executive Committee or, alternatively, the next meeting after that.

Here are those dates and locations for your convenience:

October 25 – WSTIP office, Olympia
December 5 – Great Wolf Lodge, Grand Mound

- At the hearing, you (the member) will be asked to present your facts and then I will present mine. The Executive Committee decides based on those presentations.

Our president is Paul Shinniers, Finance Director for Kitsap Transit. His contact information is: Paul Shinniers, c/o Kitsap Transit, 60 Washington Avenue, Suite 200, Bremerton, WA 98337-1888. His email
address is pauls@kitsaptransit.com. My contact information is Tracey Christianson, Executive Director, WSTIP, 2629 12th Court SW, Olympia, WA 98502. My email address is tracey@wstip.org.

The appeal process is established in the WSTIP Bylaws. Just in case you did not have a copy of the Bylaws handy, I have included them.

If you decide to not seek an appeal of this decision, we will terminate our defense and investigation.

I am available to discuss our position with you and if you wish to discuss this matter, please feel free to call me at 360-786-1628.

Sincerely,

Tracey Christianson
Executive Director

Enclosures

cc: Mr. Emmett Heath, General Manager, Community Transit
    Mr. Mike Burress, Risk Manager, Community Transit
    Mr. Matt Hendricks, General Counsel, Community Transit
    Mr. Paul Shinners, President, WSTIP
    Ms. Staci Jordan, Vice President, WSTIP
    Mr. Rick Hughes, General Counsel, WSTIP
    Mr. Cedric Adams, Claims Manager, WSTIP
PUBLIC OFFICIALS LIABILITY COVERAGE DOCUMENT
COVERAGE DECLARATIONS

COVERAGE DOCUMENT NO. WSTIP POL 2018 - CT

MEMBER: Community Transit

ADDRESS: 7100 Hardeson Rd, Everett WA 98203

COVERAGE PERIOD:
From: January 1, 2018 12:01 AM
To: January 1, 2019 12:01 AM

Retroactive date: January 1, 1989; except January 1, 2018 for $5,000,000 Excess $20,000,000.

The Coverage Document for the Pool consists of Coverage Declarations, Table of Contents, Introduction, and Coverage Part.

COVERAGE IN EXCESS OF THE POOL'S RETENTION OF $2,500,000 IS IN LAYERS. THE LAYER IN EXCESS OF $2,500,000 TO $5,000,000 IS PROVIDED BY GOVERNMENT ENTITIES MUTUAL, INC. (GEM). THE LAYER IN EXCESS OF $5,000,000 TO $15,000,000 IS PROVIDED BY MUNICH REINSURANCE AMERICA, INC. THE LAYER IN EXCESS OF $15,000,000 TO $20,000,000 IS PROVIDED BY LLOYDS OF LONDON. THE LAYER IN EXCESS OF $20,000,000 TO $25,000,000 IS PROVIDED BY HALLMARK SPECIALTY INSURANCE COMPANY. THE COVERAGE IN EXCESS OF THE POOL'S RETENTION ARE SUBJECT TO THE TERMS, CONDITIONS, AND LIMITATIONS IN THE RESPECTIVE REINSURANCE OR EXCESS INSURANCE AGREEMENTS.

<table>
<thead>
<tr>
<th>COVERAGE</th>
<th>LIMITS OF LIABILITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Per Occurrence and Aggregate</td>
<td>$20,000,000</td>
</tr>
<tr>
<td>Limits of Liability:</td>
<td></td>
</tr>
<tr>
<td>$5,000,000 Excess $20,000,000, Hallmark Specialty Insurance Company, Policy No. 77PEF170039</td>
<td></td>
</tr>
<tr>
<td>Deductible:</td>
<td>$5,000</td>
</tr>
</tbody>
</table>

Washington State Transit Insurance Pool

Tracey Christianson, Executive Director
January 1, 2018
2018
PUBLIC OFFICIALS LIABILITY COVERAGE DOCUMENT
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INTRODUCTION

The Washington State Transit Insurance Pool (Pool) is not an insurance company. It is an entity created pursuant to RCW 48.62. It is controlled and governed by applicable state statutes and regulations, the Interlocal agreement through which the Pool was formed, and its own bylaws and governance documents.

The state statutes and regulations which apply to insurance companies do not apply to the Pool. The Pool is not regulated by the state insurance commissioner. The judicial cases which apply to the construction and interpretation of insurance policies do not apply to this coverage document.

This coverage document shall be construed, applied, and interpreted in accordance with the Pool’s rules, regulations, and bylaws.

Various provisions in this coverage document restrict coverage. Please read the entire document carefully to determine rights, duties, and what is and is not covered.

Throughout this policy the words “you” and “your” refer to member shown in the Coverage Declarations and any other person or organization qualifying as an additional covered party. The words “we,” “us,” “our,” “WSTIP” or “Pool” refer to the Washington State Transit Insurance Pool.

Words and phrases that appear in italics have special meaning. Please refer to definitions in Section 7.

LAYERED COVERAGE

The coverage provided by the Pool’s program is in layers. The first layer of coverage is funded by the Pool and its terms and conditions are as set forth in this coverage document. Above the Pool’s layer of coverage are coverages provided by excess or reinsurers. For the most part, the coverages provided by the excess or reinsurers “follow the form” of the Pool’s coverage but there are some differences. Coverage for any loss above the Pool’s layer shall be determined by the terms, conditions, and exceptions as set forth in the excess or reinsurance coverage documents.
COVERAGE PART

Section 1. Coverage Agreement

A. Coverage

1. We will pay on behalf of member or additional covered party those sums that member or additional covered party becomes legally obligated to pay as loss because of a wrongful act(s) to which this coverage applies.

2. This coverage applies to a wrongful act(s) only if:

   a. The wrongful act(s) takes place after the Retroactive Date shown in the Declarations and before the end of the policy period; and

   b. A claim is first made against member or additional covered party as set forth in paragraph B below during the coverage period or any extended reporting period we may provide according to Section 6 – Extended Reporting Period.

B. Claims

1. A claim will be deemed to have been made at the earlier of the following:

   a. When notice of such claim is received and recorded by us; or

   b. When you become aware of a wrongful act(s) which may subsequently give rise to a claim being made and you give written notice to us of such circumstances immediately but not later than:

      1. The end of the coverage period; or
      2. The end of any applicable extended reporting period.

2. All claims based on or arising out of the same wrongful act, or a series of related wrongful act(s), by one or more covered entities shall be considered first made when the first of such claims is made.

C. Investigation, Settlement, and Defense

1. The Pool has the right and duty to defend any suit or claim seeking damages from a member or additional covered party for wrongful act(s) to which this coverage applies. We may, at our discretion, investigate and settle any claim or suit as we consider appropriate. The member or additional covered party has an obligation to cooperate with us in our investigation and defense. Our duty to defend or settle ends when the limit of liability has been exhausted by payment of damages, judgments, settlements, and claim expenses.

2. A member is obligated to pay its deductible.

Washington State Transit Insurance Pool
Section 2. Exclusions
This coverage does not apply to a loss:

A. Arising out of any wrongful act(s) that take(s) place prior to the earlier of the inception date or retroactive date(s) of this coverage document.

B. Which represents cost, civil fine, penalty or expense levied or imposed from any complaint or enforcement action by any federal, state or local governmental regulatory agency.

C. Arising out of obligations under the Employee Retirement Income Security Act of 1974 (ERISA), including subsequent amendments or any similar federal, state or local law or regulation.

D. Arising out of condemnation, inverse condemnation, adverse possession, dedication by adverse use, or disputes involving the application of impact or linkage fees. This includes but is not limited to, takings and partial takings of private property resulting from the application of a land use, zoning, building, subdivision or similar laws or regulations.

E. Arising out of or attributable to the member or additional covered party obtaining profit, advantage or remuneration to which the member or additional covered party is not entitled; Provided, an adverse fact or finding attributable to a member or additional covered party shall not be imputed to any other member or additional covered party.

F. Arising out of bodily injury, property damage, personal injury, or advertising injury. This exclusion does not apply to loss by an employee, former employee, or prospective employee or by the spouse or child thereof resulting from:

1. refusal to employ;
2. termination of employment; or
3. coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment-related practices or policies.

G. Brought about or contributed to by fraud, dishonesty, or bad faith or arising from the deliberate violation of any federal, state, or local statute, ordinance, rule, or regulation; Provided, an adverse fact or finding attributable to a member or additional covered party shall not be imputed to any other member or additional covered party.

H. Arising out of directly or indirectly, debt security financing, including but not limited to bonds, notes and debentures.

I. Arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.

J. Arising out of, resulting from, caused or contributed to by asbestos, lead, or mold or exposure to asbestos, lead, or mold, or for the costs of abatement, mitigation, removal or disposal of asbestos, lead or mold.
K. Arising from breach of contract.

L. Arising out of the destruction or disappearance of money, securities or the loss of use thereof.

M. Arising out of or contributed to by your failing to place or maintain any insurance, bond, or self-insurance.

N. Arising out of rendering or failure to render professional services.

O. By reason of the assumption of liability in a contract or agreement. This exclusion does not apply to loss that you would have in the absence of the contract or agreement.

P. Arising out of:
   1. any tax assessments or adjustments;
   2. the collection, refund, disbursement, or application of any taxes; or
   3. failure to anticipate tax revenue shortfalls.

Q. Arising out of demands or actions seeking relief or redress in any form other than monetary damages, for any fees, costs or expenses which you may become obligated to pay as a result of any adverse judgment for declaratory relief or injunctive relief, or for punitive or exemplary damages.

R. Bodily injury or property damage due to war (declared or not) or any act or condition incident to war. War includes civil war, insurrection, rebellion, revolution, or terrorist activity.

S. Liability arising out of the hazardous properties of nuclear material.

Section 3. Who is covered?

The coverage afforded by this Coverage Document applies to:

A. The member identified in the Coverage Declarations.

B. Each of the following are additional covered parties while acting within the scope of his, her, or its duties on behalf of member:
   1. elected, appointed, and employed officials;
   2. current or former members of commissions, boards, or other units operated by you;
   3. your current or former employees;
   4. all persons who perform a service on a volunteer basis for you, provided such performance is under your direction and control. This does not include any person or entity working on retainer or as an independent contractor;
   5. all persons or organizations providing service to you under any mutual aid or similar agreement; and
   6. the estate of any person or entity described in this subsection, provided any claim is first made within one year of that person’s death.
C. The Pool and its employees while acting within the scope of his, her, or its official duties.

Section 4. Limits of Coverage

A. The most we will pay for all loss arising from a wrongful act during any coverage period is the limits of liability as shown in the Declarations.

B. The limits of liability as set forth above is the most we will pay regardless of the number of covered persons or the number of suits or claims.

C. If the wrongful act(s) originated in a coverage period prior to this coverage document, the wrongful act(s) shall be deemed to be covered solely by the limits provided by the Pool’s earlier coverage document.

D. We will not cover any matter for which there is coverage for member or additional covered party under the Liability Coverage Document issued by Pool to member.

Section 5. Conditions

A. Duties in event of wrongful act, claim, or suit:

1. if a wrongful act occurs which you believe may result in a claim, you must notify us in writing immediately. Such notice should include how, when, and where the wrongful act occurred and the names and addresses of the people involved;
2. if you receive a claim or suit which may involve coverage under this Coverage Document, you must record the time and date on which you received the claim or suit and immediately provide a copy of all documents received to us; and
3. in connection with any claim or suit you must:

   a. authorize us to obtain records or other information; and
   b. cooperate with us in the investigation, settlement, or trial of any claim or suit.

B. Subrogation

1. When we have paid a loss on your behalf, you must transfer to us your rights to recover payments for that loss from others; and
2. You must cooperate with us in all proceedings to recover payments from others we have made on your behalf.
3. You may waive subrogation but only prior to any claim or suit.

C. Legal action against us
No person or entity may:

1. join us as a party in a suit seeking damages from a covered party; or
2. sue us regarding coverage under this Coverage Document unless all terms and conditions have been fulfilled.

D. Other insurance
If there is other valid and collectible coverage or insurance for a loss covered by this Coverage Document, our coverage shall be excess.

E. No assignment.
Your rights and duties under this Coverage Document may not be assigned or transferred without our consent.

Section 6. Extended reporting period

A. If this coverage is canceled or not renewed, we will provide a basic extended reporting period without additional charge or, at your option, a supplementary extended reporting period for an additional charge. An extended reporting period does not change the scope of coverage or extend the coverage period. It only extends the reporting period to report a claim to us.

B. The basic extended reporting period starts with the termination of coverage and lasts for sixty days. The basic extended reporting period does not apply to claims that are covered under any subsequent coverage or insurance you purchase, or that would be covered but for the exhaustion of the amount of coverage or insurance applicable to such claims.

C. Supplementary extended reporting period

1. a supplemental extended reporting period of one year duration is available but only by an endorsement;
2. this supplemental period starts when the basic extended reporting period ends;
3. you must give us a written request for the endorsement within 60 days after the end of the coverage period. The supplemental extended reporting period will not go into effect unless you pay the additional contribution promptly when due;
4. the additional contribution shall be twenty-five percent of the member's annual contribution for public officials' liability coverage; and
5. the coverage afforded through the supplementary extended reporting period shall be excess over any other valid and collectible coverage or insurance.

Section 7. Definitions
The following terms are defined as follows:

A. Additional covered parties are those persons or entities set forth in Section 3B.

B. Advertising injury means injury arising out of one or more of the following offenses committed in the course of advertising your goods, products, or services:
1. oral or written publication of material that slanders or libels a person or organization or disparages a person’s or organization’s goods, products, or services;
2. oral or written publication of material that violates a person’s right of privacy;
3. misappropriation of advertising ideas or style of doing business; or
4. infringement of copyright, title or slogan.

C. **Bodily injury** means physical injury, mental injury, shock, sickness, or disease sustained by a person, including death, resulting from any of these at any time.

D. **Claim** means written notice from any person or entity that it is his, her or its intention to hold **member** or **additional covered party** responsible for damages arising out of a **wrongful act**.

E. **Claim expenses** means:

1. **claim** investigations costs;
2. legal expenses; and
3. litigation costs, pre- and post-judgment interest on awards and judgments, and the cost of bonds to release attachments or to appeal.

**Claim expenses** do not include salaries and expenses of employees of **member**, overhead, or any fees paid for claim administration.

F. **Loss** means the amount (less the deductible or retention) the **member** or **additional covered party** becomes legally obligated to pay as damages, judgments, settlements, including **claim expenses** for any **wrongful acts**.

G. **Member** means a Washington State public transit entity that participated in the formation of the Pool or has been approved for membership in the Pool.

H. **Offense** means any of the **offenses** included in the definitions of **advertising injury** or **personal injury**.

I. **Personal injury** means injury arising out of one or more of the following offenses

1. false arrest, detention, or imprisonment;
2. malicious prosecution;
3. defamation;
4. the wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling, or premises that a person occupies;
5. oral or written publication of material that slanders or libels a person or organization or disparages a person’s or organization’s goods, products, or services; or
6. oral or written publication of material that violates a person’s right of privacy;
7. assault and battery not committed by, at the direction, or with consent of **member**; or
8. discrimination prohibited by state or federal law including discrimination based upon race, religion, nationality, national origin, color, creed, sex, sexual preference, age employment, or disability.
I. **Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes materials to be recycled, reconditioned, or reclaimed.

J. **Professional services** means:

1. the practice of medicine, such as (but not limited to) physician, surgeon, osteopath, chiropractor, anesthesiologist, dentist, psychiatrist, psychologist, nurse, paramedic, emergency medical technician, or pharmacist; or
2. services by architects, engineers, surveyors, or draftsmen.

K. **Property damage** means physical injury to tangible property, including all resulting loss of use of that property.

L. **Suit** means a civil proceeding which seeks damages arising out of a **wrongful act**. **Suit** includes:

1. an arbitration proceeding in which such damages are claimed and to which you must submit or do submit with our consent; or
2. any other alternative dispute resolution proceeding in which such damages are claimed and to which you submit with our consent.

M. **Wrongful act** means:

1. any actual or alleged error, misstatement, or misleading statement, or any act, omission, or neglect including malfeasance, misfeasance, and nonfeasance by **member** or **additional covered party** rendered in the discharge of his or her duties for you; and
2. any actual or alleged wrongful termination, discipline, or discrimination related to hiring or employment.
August 16, 2018

TO: WSTIP Executive Committee
FROM: Tracey Christianson, Executive Director
SUBJECT: Draft Public Officials Liability Coverage Document

This is an item for discussion only and feedback. The goal of this presentation is to encourage communication on how best to present these extensive revisions to the Board.

Background:
The Coverage Review Committee was formed to review and make updates to WSTIP coverage documents. The Committee started with the Public Officials Liability Document. The first goal was to try to make the document more readable and understandable. The Committee also compared our document to four other pools in Washington coverage documents in terms of coverage and exclusions. Items were changed to clarify or add additional exclusions. Also, the Committee decided to move advertising and personal injury from the general liability document into this document seeing that the trigger for claims and suits for personal injury and advertising injury met the definition of a wrongful act.

Because so many changes were made, specifically a re-order of the document, a redline version is very difficult to look at. Therefore, the Committee asked that an overview of work be provided.

Here is an overview of the work done:

Introduction, Layered Coverage, Definitions (page 1 – 4)
The document was re-ordered, moving the definitions to the front. New definitions were added, others revised, and some unchanged. Here is a list of definitions, establishing whether they were revised or new:

- A – revised (section reference only)
- B – no change
- C – no change
- D – no change
- E – no change
- F – revised
- G – no change
- H – no change
- I – revised
- J – no change
- K – revised – see carve back language regarding rendering first aid and Naloxone
- L – no change
- M – new
- N – new
- O – no change
- P – new
- Q – revised

Member Responsibilities (page 5-6)
A new section heading was added on Member Responsibilities. Any existing member responsibility identified were moved into that new section heading. Here is a list of member responsibilities establishing whether the pre-existed or were new.
1 - pre-existed
2 - new
3 - pre-existed
4 - pre-existed
5 - pre-existed
6 - new
7 - pre-existed
8 - new

Pool Responsibilities (page 6)
A new section was added on Pool Responsibilities. Any existing member responsibility identified were moved into that new section heading. Here is a list of member responsibilities establishing whether the pre-existed or were new.

1 - pre-existed
2 - pre-existed
3 - new
4 - pre-existed
5 - new

Other Conditions of Coverage (page 6)
The remaining Conditions were revised for clarity.

1 - pre-existed / shortened
2 - pre-existed but revised
3 - pre-existed

Who is Covered (page 7)
Who is Covered was not changed … although a remaining question is B5 which seems in direct conflict with several exclusions.

Limits of Coverage (page 7)
Limits of Coverage … unchanged.

Extended Reporting Period (page 7-8)
The only change was the contribution within C4 after conferring with the broker for current costs of such extensions.
Exclusions (page 8-11)
Exclusions were moved to the back. New exclusions were added, others revised, and some unchanged. Here is a list of exclusions, establishing whether they were revised or new:

A – revised  L – revised  W – new
B – revised  M – new  X – new
C – revised  N – new  Y – new
D – no change  O – no change  Z – new
E – no change  P – no change  AA – new
F – revised  Q – revised  BB – new
G – revised  R – no change  CC – new
H – new  S – revised  DD – new
I – no change  T – revised  EE – new
J – no change  U – no change  FF – moved here from
K – no change  V – revised  conditions / not new

Besides the Committee and our own legal counsel review, the document was also reviewed by Curt Feig, Nicoll Black and Feig. A well-known (and prior used) attorney, Curt Feig specializes in insurance coverage and related litigation.

Further reviews are now being sought from our broker, and reinsurance carrier, GEM, and we may seek a second-round review from Curt Feig.

Paul will discuss further work of the Coverage Review Committee during his Chair Report.

/tc
2019
PUBLIC OFFICIALS LIABILITY COVERAGE DOCUMENT
INTRODUCTION

The Washington State Transit Insurance Pool (Pool) is not an insurance company. It is an entity created pursuant to RCW 48.62. It is controlled and governed by applicable state statutes and regulations, the Interlocal Agreement through which the Pool was formed, and its own Bylaws and governance documents.

The state statutes and regulations that apply to insurance companies do not apply to the Pool. The Pool is not regulated by the state insurance commissioner. The judicial cases that apply to the construction and interpretation of insurance policies do not apply to this coverage document.

This coverage document shall be construed, applied, and interpreted in accordance with the Pool’s rules, regulations, and Bylaws. If there is coverage for member or additional covered party under the Liability Coverage Document issued by Pool to member this Coverage Document will not apply.

Various provisions in this coverage document restrict coverage. Please read the entire document carefully to determine rights, duties, and what is and is not covered.

Throughout this policy the words “you” and “your” refer to member shown in the Coverage Declarations and any other person or organization qualifying as an additional covered party. The words “we,” “us,” “our,” “WSTIP” or “Pool” refer to the Washington State Transit Insurance Pool.

Words and phrases that appear in bold and italics have special meaning. Please refer to the Definitions.

LAYERED COVERAGE

The coverage provided by the Pool’s program is in layers. The first layer of coverage is funded by the Pool and the terms and conditions governing that coverage are set forth in this coverage document. Above the Pool’s layer of coverage are coverages provided by excess insurers or reinsurers. For the most part, the coverages provided by the excess insurers or reinsurers “follow the form” of the Pool’s coverage but there are some differences. Coverage for any loss above the Pool’s layer shall be determined by the terms, conditions, and exceptions as set forth in the excess or reinsurance coverage documents.

DEFINITIONS

The following terms are defined as follows:

A. Additional covered party are those persons or entities set forth in Section 2B.

B. Advertising injury means injury arising out of one or more of the following offenses committed in the course of advertising your goods, products, or services.

Washington State Transit Insurance Pool
1. oral or written publication of material that slanders or libels a person or organization or disparages a person’s or organization’s goods, products, or services;
2. oral or written publication of material that violates a person’s right of privacy;
3. misappropriation of advertising ideas or style of doing business; or
4. infringement of copyright, title or slogan.

C. Bodily injury means physical injury, mental injury, shock, sickness, or disease sustained by a person, including death, resulting from any of these at any time.

D. Claim means written notice from any person or entity that it is his, her or its intention to hold member or additional covered party responsible for damages arising out of a wrongful act.

E. Claim expenses means:

1. claim investigations costs;
2. legal expenses; and
3. litigation costs, pre- and post-judgment interest on awards and judgments, and the cost of bonds to release attachments or to appeal.

Claim expenses do not include salaries and expenses of employees of member, overhead, or any fees paid for claim administration.

F. Loss means the amount the member or additional covered party becomes legally obligated to pay as damages, judgments, settlements, including claim expenses for any wrongful acts.

G. Member means a Washington State public transit entity that participated in the formation of the Pool or has been approved for membership in the Pool.

H. Offense means any of the offenses included in the definitions of advertising injury or personal injury.

I. Personal injury means injury arising out of one or more of the following offenses:

1. false arrest, detention, or imprisonment;
2. malicious prosecution;
3. defamation;
4. the wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling, or premises that a person occupies;
   5. assault or battery unless such would constitute a crime in the state in which it was committed; or
   6. discrimination prohibited by state or federal law including discrimination based upon race, creed, color, religion, sex, national origin, age, veteran’s status, marital status, disability, genetic information, pregnancy, or sexual orientation.

Washington State Transit Insurance Pool
J. **Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes materials to be recycled, reconditioned, or reclaimed.

K. **Professional services** means:

1. the practice of medicine, such as (but not limited to) physician, surgeon, osteopath, chiropractor, anesthesiologist, dentist, psychiatrist, psychologist, nurse, paramedic, emergency medical technician, or pharmacist; or
2. services by architects, engineers, surveyors, or draftsmen;
3. **professional services** does not include the rendering of emergency first aid including the administration of the drug Naloxone.

L. **Property damage** means physical injury to tangible property, including all resulting loss of use of that property.

M. **Sexual Abuse** means any actual, attempted, or alleged criminal sexual touching, contact, or display of the body of or to a person by another person, or persons acting in concert, which causes physical and/or mental injuries. Sexual abuse includes sexual molestation, sexual assault, sexual exploitation, or sexual injury. Sexual abuse does not include sexual harassment.

N. **Sexual harassment** means actual or alleged unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct or a sexual nature directed to an employee of member when:

1. Submission to such conduct is made either explicitly or implicitly a term and condition of such employee’s employment; or
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such employee; or
3. Such conduct has the purpose or effect of unreasonably interfering with such employee’s work performance or creating an intimidating or offensive work environment.

O. **Suit** means a civil proceeding which seeks damages arising out of a wrongful act. **Suit** includes:

1. an arbitration proceeding in which such damages are claimed and to which you must submit or do submit with our consent; or
2. any other alternative dispute resolution proceeding in which such damages are claimed and to which you submit with our consent.

P. **Terrorist activity** means activities against persons, organizations or property of any nature:

1. That involve the following preparation:
   a. Use or threat of force or violence; or,
   b. Commission or threat of a dangerous act; or,
   c. Commission or threat of an act that interferes with or disrupts an electronic communication, information or mechanical system; and
2. When one or both of the following applies:
   a. The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
   b. It appears that the intent is to intimidate or coerce a government, or to further political ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

Q. **Wrongful act** means:

1. any actual or alleged error, misstatement, or misleading statement, or any act, omission, or neglect including malfeasance, misfeasance, and nonfeasance by **member** or **additional covered party** rendered in the discharge of his or her duties for you; and

2. any actual or alleged wrongful termination; harassment; retaliation; discrimination; employment related misrepresentation to an employee or applicant for employment with the **member**; wrongful failure to employ or promote; wrongful deprivation of career opportunity; wrongful demotion or negligent employee evaluation including the giving of negative or defamatory statements in connection with an employee reference; wrongful discipline; violation of an employee’s or applicant’s civil rights; employment-related libel, slander, defamation or invasion of privacy.

3. Any other **offenses** included in the definitions of **advertising injury** or **personal injury**.

**COVERAGE PART**

**Section 1. Coverage Agreement**

**A. Coverage**

1. Generally, the Pool will pay for losses arising from public officials’ errors and omissions, personal injury and advertising injury, and employment practices liability. Specifically, we will pay on behalf of **member** or **additional covered party** those sums that **member** or **additional covered party** becomes legally obligated to pay as **loss** because of a **wrongful act** to which this coverage applies if it meets the responsibilities and conditions of this document and is not excluded.

2. This coverage applies to a **wrongful act** only if:
   a. The **wrongful act** takes place after the Retroactive Date shown in the Declarations and before the end of the coverage period; and
   b. A **claim** is made against **member** or **additional covered party** as set forth in paragraph B below during the coverage period or any extended reporting period we may provide according to Section 4 – Extended Reporting Period.

Washington State Transit Insurance Pool
B. Claims

1. A claim will be deemed to have been made at the earlier of the following:
   
a. When a claim is received and recorded by us; or

   b. When notice is provided as detailed in C1 below, but not later than:
   
    1. The end of the coverage period; or
    2. The end of any applicable extended reporting period.

2. All claims based on or arising out of the same wrongful act, or a series of related wrongful acts, by one or more covered entities shall be considered first made when the first of such claims is made.

C. Your Responsibilities

1. Immediate Reporting of Claims or Suits - If a member receives a written claim or suit that may involve coverage under this Coverage Document, you must record the time and date on which you received the claim or suit and immediately provide a copy of all documents received to the Pool.

2. Ask for an Explanation of Coverage - For a suit, the member must request an explanation of coverage available to them in writing.

3. Cooperate in the Process - A member or additional covered party must authorize us to obtain records or other information; and cooperate with us in the investigation, defense, settlement, or trial of any claim or suit.

4. Pay Your Deductible - A member is obligated to pay its deductible once claim expenses exceed the deductible and upon the Pool's demand.

5. Reporting Prior to Claim or Suit - If an event or situation occurs that you believe may result in a claim or suit, you must notify us in writing within a reasonable timeframe. Such notice should include an overview of the situation including all involved parties (name, address, and other contact information), what happened, when it happened, and where it happened.

6. Duty to Mitigate - Following a claim, suit or loss, the member is obligated to take all reasonable steps in mitigation to this or any other covered loss or damage. In the event member fails to take reasonable steps in mitigation, the Pool may deny or limit coverage.

7. Cooperate in Subrogation / Do Not Waive Subrogation without the Pool’s Consent - When we have paid a loss on your behalf, you must transfer to us your rights to recover payments for that loss from others. You must cooperate with us in all proceedings to recover payments from others we have made on your behalf. With the Pool’s consent, you may waive subrogation, but only prior to any claim or suit.
8. Exhaust Your Remedies - A member must exhaust all remedies available under the Interlocal Agreement, Bylaws, and Governance Policies prior to suing us for coverage under this Coverage Document.

D. The Pool's Responsibilities

1. Investigate Anything Reported to Us - The Pool may, at our discretion, investigate and settle any reported event or situation as we consider appropriate. The Pool has the right to investigate and settle any claim or suit as we consider appropriate.

2. Duty to Defend - The Pool has the duty to defend any suit seeking damages from a member or additional covered party for wrongful acts to which this coverage applies.

3. Inform You of Coverage Limitations - The Pool has a responsibility to inform the member or additional covered party of any identified limitations to the coverage afforded under this agreement including an outright denial of coverage.

4. Pay to the Limits - The Pool's duty to defend or settle ends when the limit of liability has been exhausted by payment of damages, judgments, settlements, and claim expenses.

5. Not Pay Expenses Prior to Acceptance - The Pool has no duty to pay any damages, judgments, settlements or claim expenses incurred by a member or additional covered party prior to the presentation and acceptance of the suit or claim by the Pool. For this limit of coverage, the word settlement is defined to mean any verbal or written agreement to resolve the claim or suit reached by the member, additional covered party and the claimant/plaintiff.

E. Other Conditions of Coverage

1. Legal Action Against Us - no person or entity may join us as a party in a suit seeking damages from a covered party

2. Other Insurance - The coverage provided by this Coverage Document shall be excess over any other valid commercial coverage or insurance available to any member or additional covered party, whether such coverage or insurance is stated to be primary, contributory, excess, contingent, or otherwise.

3. No Assignment - Your rights and duties under this Coverage Document may not be assigned or transferred without our consent.

Washington State Transit Insurance Pool
Section 2. Who is Covered?

The coverage afforded by this Coverage Document applies to:

A. The member identified in the Coverage Declarations.

B. Each of the following are additional covered parties while acting within the scope of his, her, or its duties on your behalf:

1. elected, appointed, and employed officials;
2. current or former members of commissions, boards, or other units operated by you;
3. your current or former employees;
4. all persons who perform a service on a volunteer basis for you, provided such performance is under your direction and control. This does not include any person or entity working on retainer or as an independent contractor;
5. all persons or organizations providing service to you under any mutual aid or similar agreement; and
6. the estate of any person or entity described in this subsection, provided any claim is first made within one year of that person’s death.

C. The Pool and its employees while acting within the scope of his, her, or its official duties.

Section 3. Limits of Coverage

A. The most we will pay for all loss arising from a wrongful act during any coverage period is the limits of liability as shown in the Declarations.

B. The limits of liability as set forth above is the most we will pay regardless of the number of covered persons or the number of suits or claims.

C. If the wrongful act originated in a coverage period prior to the inception of this coverage document or any applicable retroactive date, the wrongful act shall be deemed to be covered solely by the limits provided by the Pool’s earlier coverage document.

Section 4. Extended Reporting Period

A. If this coverage is canceled or not renewed, we will provide a basic extended reporting period without additional charge or, at your option, a supplementary extended reporting period for an additional charge. An extended reporting period does not change the scope of coverage or extend the coverage period. It only extends the reporting period to report a claim to us.

B. The basic extended reporting period starts with the termination of coverage and lasts for sixty days. The basic extended reporting period does not apply to claims that are covered under any subsequent
coverage or insurance you purchase, or that would be covered but for the exhaustion of the amount
of coverage or insurance applicable to such claims.

C. Supplementary extended reporting period

1. a supplemental extended reporting period of one year duration is available but only by an
endorsement;
2. this supplemental period starts when the basic extended reporting period ends;
3. you must give us a written request for the endorsement within 60 days after the end of the
coverage period. The supplemental extended reporting period will not go into effect unless you
pay the additional contribution promptly when due;
4. the additional contribution shall be 100 percent of the member's annual contribution for public
officials' liability coverage; and
5. the coverage afforded through the supplementary extended reporting period shall be excess over
any other valid and collectible coverage or insurance.

Section 5. Exclusions

This coverage does not apply to a loss:

A. Arising out of any wrongful act that takes place prior to the retroactive date(s) of this coverage
document.

B. Consisting of any cost, civil fine, penalty, or expense levied because of an enforcement action by
any federal, state or local governmental regulatory agency. This exclusion does not apply to loss
resulting from any claims for relief or complaints filed with the Equal Employment Opportunity
Commission, state or federal Human Rights Commission or similar administrative bodies to the
extent allowed by law.

C. Consisting of liability imposed under the Employee Retirement Income Security Act (ERISA), the
Comprehensive Omnibus Budget Reconciliation Act (COBRA), the Worker Adjustment and
Retraining Notification Act (WARN), any similar federal, state or local laws; any amendments to
such laws; or any regulations promulgated under any such laws.

D. Arising out of condemnation, inverse condemnation, adverse possession, dedication by adverse
use, or disputes involving the application of impact or linkage fees. This includes but is not
limited to, takings and partial takings of private property resulting from the application of a land
use, zoning, building, subdivision or similar laws or regulations.

E. Arising out of or attributable to the member or additional covered party obtaining profit,
advantage or remuneration to which the member or additional covered party is not entitled;
Provided, an adverse fact or finding attributable to a member or additional covered party shall
not be imputed to any other member or additional covered party.
F. Involving *bodily injury* or *property damage*. This exclusion does not apply to *bodily injury* caused by or arising out of any *wrongful act* involving an actual or alleged wrongful termination harassment; retaliation; discrimination; employment related misrepresentation to an employee or applicant for employment with the *member*; wrongful failure to employ or promote; wrongful deprivation of career opportunity; wrongful demotion or negligent employee evaluation including the giving of negative or defamatory statements in connection with an employee reference; wrongful discipline; violation of an employee's or applicant's civil rights; employment-related libel, slander, defamation or invasion of privacy.

G. Arising out of contributed to by fraud, dishonesty, bad faith, or the deliberate violation of any federal, state, or local statute, ordinance, rule, or regulation; An adverse fact or finding of fraud, dishonesty, bad faith or the deliberate violation of any federal, state, or local statute, ordinance, rule, or regulation attributable to a *member* or *additional covered party* shall not affect coverage to any other *member* or *additional covered party*.

H. Arising out of any intentional dishonest, fraudulent, criminal or malicious act, error or omission, by any *member*, or *additional covered party* including the violation of any statute, code or ordinance.

I. Arising out of, directly or indirectly, debt security financing, including but not limited to bonds, notes and debentures.

J. Arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of *pollutants* at any time.

K. Arising out of, resulting from, caused or contributed to by asbestos, lead, or mold or exposure to asbestos, lead, or mold, or for the costs of abatement, mitigation, removal or disposal of asbestos, lead or mold.

L. Arising out of breach of contract.

M. Resulting from the assumption of liability in a contract or agreement. This exclusion does not apply to *loss* that you would have in the absence of the contract or agreement.

N. Arising out of or related to any award, order or relief granted in any labor arbitration proceedings, civil service hearings, or unfair labor practices proceedings or any other similar employer/employee labor dispute, administrative hearing, or proceeding initiated against a member under the laws of the State of Washington and/or the United States of America or as provided for in any collective bargaining agreement between *member* or *additional covered party* and any employee, employee bargaining unit or union for any form of grievance resolution, including any defense cost associated with any proceeding described in this paragraph.

O. Arising out of the destruction or disappearance of money, securities or the loss of use thereof.

P. Arising out of or contributed to by your failing to place or maintain any insurance, bond, or self-insurance.
Q. Arising out of rendering or failure to render professional services.

R. Arising out of:

1. any tax assessments or adjustments;
2. the collection, refund, disbursement, or application of any taxes; or
3. failure to anticipate tax revenue shortfalls.

S. Consisting of punitive damages, multiplied damages, criminal fines or civil penalties, or any other damages, fines, penalties or assessments that are imposed for purposes other than to compensate an injured person or entity for their actual injury, loss, or damage.

T. Arising out of or related to any claim or suit for equitable relief including actions for injunctive relief or declaratory relief.

U. For bodily injury or property damage due to war (declared or not) or any act or condition incident to war. War includes civil war, insurrection, rebellion, revolution, or terrorist activity.

V. Arising out of the hazardous properties of nuclear material.

W. Arising out of the actual or alleged violation of the Public Records Act (RCW 42.56) and/or the Open Public Meetings Act (RCW 42.30).

X. Consisting of any costs or expenses incurred to make premises accessible to persons with disabilities as required by the Americans with Disabilities Act; any similar federal, state or local law; any amendments to such laws; or any regulations promulgated under any such laws.

Y. Consisting of awards or settlements of employer-paid pay and benefits, such as but not limited to vacation, general leave, sick leave, back pay, payroll taxes, and retirement.

Z. Arising out of sexual abuse or molestation of any person by an additional covered party or by any employee or volunteer of a member. The conduct of the employee or volunteer will not be imputed to the member. Sexual abuse does not include sexual harassment.

AA. Arising out of or related in any way to the ownership, maintenance, operations, use, loading or unloading of aircraft or watercraft.

BB. Arising out of fireworks or pyrotechnics displays, events or exhibitions.

CC. For liability arising out of:

1. An insufficiency of funds to meet any obligations under any plan included in the employee benefit program;
2. Inadequacy of performance/advice given with respect to participation in the employee benefits program, including:
   a. Failure of any investment to perform;
   b. Errors in providing information on past performance of investment vehicles;
c. Advice given to any person with respect to that person's decision to participate or
not participate in the employee benefit program.

DD. Consisting of damages, or loss costs or expenses because of bodily injury, personal injury,
advertising injury, or property damage arising directly or indirectly out of:
1. Any access to or disclosure of any person's or organization's confidential or personal
   information, including patents, trade secrets, processing methods, customer lists,
   financial information, credit card information, health information or any other type of non-
   public information; or
2. the loss of, loss of use, damage to, corruption of, inability to access, or inability to manipulate
electronic data.
3. This exclusion applies even if damages are claimed for notification costs, credit monitoring
   expenses, forensic expenses, public relations expenses or any other loss, costs or
   expenses incurred by any member or others out of that which is described in paragraph
   1 or 2 above.

EE. Arising out of bodily injury to member's employee whose employment is not subject to the
Industrial Insurance Act of Washington (Title 51 RCW) or the spouse, child, parent brother or
sister of that employee occurring in the course of employee's employment by member. This
exclusion applies:
1. Whether the member may be liable as an employer or in any other capacity; and
2. To any obligation to share damages with or repay someone else who must pay damages
   because of the injury.

FF. For which there is coverage for member or additional covered party under the Liability
Coverage Document issued by Pool to member.
Sub-Committee Reports
Governance Policy Committee
No report meeting scheduled after the Executive Committee meeting.

Board Development Committee
No report meeting scheduled after the Executive Committee meeting.

Emerging Risks and Opportunities Committee Report
See above discussion item. Next meeting August 28 @ WSTIP.

Data Governance Committee
No report. Next meeting July 31 @ WSTIP.

Coverage Review Committee
Shinners reported on progress the committee is making. The public officials liability coverage document is being reviewed by outside coverage counsel. Next meeting is August 13th at WSTIP. The committee will have a work product for review at the August Executive Committee meeting.

Recap and Adjournment
*Jordan moved to adjourn the meeting at 2:12 pm. Shinners seconded the motion and the motion passed.*

Submitted this 23rd day of August 2018.

Approved: ____________________________
Shonda Shipman, Secretary

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1 Check numbers 27762 through 27810 in the amount of $77,804.21. Internet transfers of $45,512.74 for the 06/15/2018 payroll; $46,814.23 for the 06/30/2018 payroll; and $13,401.06 for the 06/2018 staff benefits. Internet and ACH payments for staff credit cards, travel/expense reimbursements and professional/misc. services total $27,924.22. Total voucher approval, including June 2018 staff payroll and Internet and ACH payments is $211,456.46.

2 Check numbers 11084 through 11213 in the amount of $411,610.53. Total voucher approval is $411,610.53.
EXPERT REPORT OF PETER M. MARCHEL

I have been retained by the law firm Gordon Tilden Thomas & Cordell LLP, on behalf of its client Snohomish County Public Transportation Benefit Area d/b/a Community Transit, ("Community Transit"), to study and evaluate matters regarding Community Transit’s insurance policy with the Washington State Transit Insurance Pool ("WSTIP").

I. EXPERT QUALIFICATIONS

I have been asked to give my expert opinion based on my education, training, and experience as an expert in the field of insurance. I have particular expertise in matters relevant to Community Transit’s policy based on nearly 30 years’ experience assisting insurers with the negotiation and the placement of thousands of: Directors and Officers, Employment Practices Liability, and Professional Liability policies, as well the handling of hundreds of claims asserted under those policies. My work has included positions with some of the largest insurers in the industry such as Safeco, and well-known international brokers such as Marsh and Sedgwick. My CV, attached as Exhibit A, provides a more detailed summary of these various roles, and the responsibilities I held within each of them.

I was admitted to the Bar of the State of Washington in 1989, after receiving my Juris Doctorate and MBA from Willamette University in 1988. I am currently a licensed attorney in good standing in Washington State. I hold several insurance-related designations, including, but not limited to: Chartered Property Casualty Underwriter (CPCU), Registered Professional Liability Underwriter (RPLU), Associate in Risk Management (ARM), Associate in Management (AIM), and Associate in Insurance Services (AIS). I am currently a candidate for the Associate in Claims (AIC).

I currently serve on the Board of Directors for the local Washington Chapter of CPCU, the Washington RIMS Chapter, and the Northwest Chapter of PLUS. I am currently the President of the American Association of Insurance Management Consultants (AAIMCo).

I currently serve as the President of Marchel Risk Consulting LLC dba Marchel & Associates Risk Consulting, a licensed surplus lines brokerage that I founded in 2012. I founded Marchel & Associates Risk Consulting to assist insurance agencies, organizations and law firms in mitigating insurance risk. Our surplus lines brokerage evaluates risk profiles and helps clients develop and place risk mitigation programs, including insurance, for companies in the area of commercial liability – focusing on management, cyber breach and privacy, employment liability and professional liability. We also consult with organizations and law firms on risk mitigation, including insurance policy review, and work with clients to resolve insurance disputes. We provide clients with guidance preventing and defending management and professional liability claims. As part of our practice we also provide expert witness testimony and litigation claims handling, insurance placement, insurer bad faith and agent and brokers errors and omissions.

II. DOCUMENTS AND INFORMATION REVIEWED IN FORMING MY OPINIONS

To assist in the study and the formation of my opinions, I was provided with the following documents:

- Summons and Complaint—Claimants: Burdett, Johnson & Perkins et al., Dated August 14, 2018
- WSTIP’s 2018 Public Officials Liability Coverage Document
In addition to these documents, I have reviewed several treatises and insurance policies pertaining to Professional, Employment Practices, and Directors and Officers liability policies that I am familiar with from my work in the insurance industry. I have attached several of these policy forms as Exhibits B though E.

I also relied upon my professional education, as well as the training, experience, and personal contacts gained from nearly 30 years in the insurance industry in reviewing these documents and forming my opinion.

III. OPINIONS

My specific assignment on behalf of Community Transit was to provide my expert opinion on how exclusions similar to those in the Public Officials Liability Coverage Document (hereinafter the “Policy”) are commonly drafted and applied by insurers in the industry. More specifically, I was asked to evaluate, based upon my experience, whether WSTIP’s interpretations of Exclusion E, and Exclusion G, are consistent with how insurers understand these exclusions in the context of an insurer’s duty to defend insureds under Directors & Officers, Employment Practices Liability, and similar “wrongful acts”-based policies. Although I refer to some cases and legal treatises herein, I am expressing my opinion based on my work with insurers and firms in the industry and I am not expressing legal opinions or purporting to answer questions of law.

A. An Insurer’s Duty to Defend

To understand how these exclusions affect an insurer’s duty to defend under an insurance policy, it is important to first understand that the Public Officials Liability Coverage Document at issue here is a duty to defend policy. It is a well-known axiom in the insurance industry that the duty to defend is broader than the duty to indemnify and as such, an insurance policy that provides a duty to defend requires the insurer to defend the insured “unless and until the claim alleged in the suit is ‘clearly not covered by the policy.’” See 1 Law of Liability Insurance § 4.06 (2018) (quoting Immunex, 162 Wn. App at 774). When an insurer asserts that an exclusion applies to its duty to defend, the insurer is not allowed to apply an exclusion that depends upon facts to be proven at trial. COMMENT: A Common Law Approach to D&O Insurance “In Fact” Exclusion Disputes, 79 U. Chi. L. Rev. 1429, 1451 (2018).

The bedrock principle for when a duty to defend is triggered is that an insurer’s duty to defend arises when a complaint against the insured, construed liberally, alleges facts which could, if proved, impose liability upon the insured within the policy’s coverage. Nat’l Sur. Corp. v. Immunex Corp., 162 Wn. App. 762, 774, 256 P.3d 439, 445 (2011), aff’d, 176 Wn. 2d 872 (2013) (internal citations omitted). In this sense, an insurer’s duty to defend is significantly broader than its ultimate duty to indemnify the insured, for an insurer must defend the insured “unless and until the claim alleged in the suit is ‘clearly not covered by the policy.’” See 1 Law of Liability Insurance § 4.06 (2018) (quoting Immunex, 162 Wn. App at 774). When an insurer asserts that an exclusion applies to its duty to defend, the insurer is not allowed to apply an exclusion that depends upon facts to be proven at trial. COMMENT: A Common Law Approach to D&O Insurance “In Fact” Exclusion Disputes, 79 U. Chi. L. Rev. 1429, 1451 (2018).

Again, because a duty to defend policy is broader than a duty to indemnify policy, under a duty to defend policy, the insurer must establish as a matter of law that all the facts alleged in the complaint fall within the scope of an exclusion, thereby demonstrating that there is no possibility that the claim would be covered.
B. **Exclusions E. “Profit or Advantage” and G. “Deliberate Violation of Statute” Are Commonly Referred to As Personal Conduct Exclusions Found in D&O Policies And Under a Duty to Defend Policy Defense is Covered Until There Is a Factual Finding That Triggers the Exclusions.**

It has been my experience in placing thousands of Directors and Officers and similar “wrongful acts”-based policies, and working on hundreds of claims, that one of the most common exclusions found within those policies are so-called “personal conduct” exclusions. These exclusions are focused on “not rewarding” bad behavior. The personal-conduct exclusions include those that appear as Exclusion E and Exclusion G of the WSTIP Policy, which provide as follows:

**Exclusion E:**

This coverage does not apply to a loss: [a] arising out of or attributable to the member or additional covered party obtaining profit, advantage or remuneration to which the member or additional covered party is not entitled; **Provided,** an adverse fact or finding attributable to a member or additional covered party shall not be imputed to any other member or additional covered party.

Policy at 3.

**Exclusion G:**

This coverage does not apply to a loss: [b] brought about or contributed to by fraud, dishonestly, or bad faith or arising from the deliberate violation of any federal, state, or local statute, ordinance, rule, or regulation; **Provided,** an adverse fact or finding attributable to a member or additional covered party shall not be imputed to any other member or additional covered party.

*Id. (language bolded mine)*

These two personal-conduct exclusions are extremely common in D&O and similar “wrongful acts” based management liability policies; indeed, they are nearly universally found in such policies.

Personal-conduct exclusions share two other characteristics:

- First, they very often are subject to a limitation that prevents the imputation of knowledge to those without knowledge of the relevant behavior, *e.g.*, an intent to violate a statute.

- Second, and even more commonly, the exclusions will require that allegations under the personal conduct exclusions be proven either “in-fact” or through a “final adjudication.” This exception is consistent with the principle that the personal-conduct exclusions are intended to avoid rewarding “bad behavior”; coverage is provided for the defense of the allegations of bad behavior, but coverage ends if and when the allegations are proven “in-fact” or by “final adjudication.”
In other words, the exclusions contain language intended to provide the insured with defense coverage against the underlying claims until there is a finding that the alleged conduct actually occurred and even then, the exclusion is applied only to specific individuals based on their conduct.

As the policy specimens attached to this report reveal, the most common iterations of these exclusions are the “final adjudication,” and the “in-fact” approach. See Exhibits B through D. Each provides that the exclusion does not apply unless there is a finding, in one form or another, that the insured actually committed the wrongful, excluded conduct.

Regardless of the procedural distinction between the wording of these exclusions, the relevant common thread between them is that neither exclusion is triggered by unproven allegations in the underlying complaint. The upshot of this is that the exclusions do not vitiate an insurer’s duty to defend its insured until the truth of the allegations can first be verified in some manner by a court. In other words, as long as there are no factual findings that trigger the exclusion, the insurer will be unable to establish that the insured’s claim is “clearly not covered by the policy,” and the insurer's duty to defend will remain intact. See Immunex, 162 Wn. App at 774.

Accordingly, insureds place a high value on the protection afforded by the “final adjudication,” and “in fact” language in Directors and Officers liability policies because it preserves their defense coverage until there is a finding made that the underlying allegations are actually true. This is especially important in Directors and Officers, and Public Officials liability coverages because there will almost always be allegations in the underlying complaint that if proven true, would fall within the language of one of the many exclusions. This is why it is extremely important to the insured that their insurer defend them against these claims until they can be proven because in many cases the plaintiffs’ claims will lack merit. Otherwise, the duty to defend that insureds rely on would be non-existent in most cases based solely on the plaintiffs’ bare allegations.

The Exclusions in Community Transit’s Policy Are Similar in Nature to Exclusions in Other Directors and Officer Policies That Require a Factual Finding Before They Apply to Defense Coverage.

As explained above, Exclusions E and G of the Policy are personal conduct exclusions. The clause found in both exclusions states that the exclusions apply, “[p]rovided, an adverse fact or finding attributable to a member or additional covered party shall not be imputed to any other member or additional covered party.” This language, which commonly accompanies the “profit or advantage,” and the “deliberate violation of statute” exclusions, is known as a severability clause. Severability clauses are placed in D&O policies to prevent an insured from losing their own defense coverage based on findings made against other individuals. As such, whether a severability clause applies to defense coverage necessitates a factual finding. Though the exclusion here is inartfully phrased, the inclusion of this severability clause indicates that the exclusion does not apply to defense coverage unless and until there is a factual finding made against the insured or another individual in the underlying litigation. This reading would be consistent with how insurers and insureds understand the “final adjudication,” and “in fact” clauses in the context of these exclusions.

If the exclusions here were construed differently than how they are commonly interpreted in Directors and Officers and similar policies, the end result is that Community Transit’s Policy would provide significantly less defense coverage than that afforded by policies in the market insuring against the same risk. In other words, the duty to defend policy would become a less
valuable duty to indemnify policy. Thus, if WSTIP’s policy precluded defense coverage based on the mere allegations in the underlying complaint, WSTIP would be providing significantly less defense coverage than what an insured would expect to receive under any other Directors and Officers Liability policy in the market.

D. Directors and Officers Policies Commonly Include Specific Exclusions for Wage and Hour Claims

The underlying complaint is a wage and hour claim. When insurers intend to exclude coverage for wage and hour claims, they typically include an exclusion to that effect. For example, the Indian Harbor Policy attached to this report has an exclusion which does exactly that. See Exhibit B at Page 6 (excluding coverage for wage and hour claims brought under federal, state, local or foreign statutory law or common law). But unlike the Indian Harbor Policy and many D&O and EPL policies, WSTIP’s policy does not have an exclusion for employment-related matters, nor does it have an exclusion for wage related matters. Based on my experience in placing, drafting and assisting with claims on such policies, this leads me to conclude that if WSTIP had wished to exclude wage and hour or employment related matters, they could clearly do so as other insurers have in the marketplace.

IV. COMPENSATION

I am being compensated at the rate of $400.00 per hour for my review and report.

DATED this 11th day of October, 2018, at Carnation, Washington.

[Signature]

Peter Marchel
EXHIBIT A
Curriculum Vitae of Peter Marchel, JD, MBA, CDR, RPLU, CPCU, ARM, AIS, AIM

**Education**

JD, Doctor of Jurisprudence,  
Willamette University College of Law   (1988)  
(Law Review)

MBA, Master of Business Administration  
Willamette University Atkinson Graduate School of Management   (1988)

Certificate in Dispute Resolution,  
Willamette University College of Law   (1988)

BA Political Science and Communications  
University of Washington    (1984)

Certificate in Total Quality Management  
University of Washington    (1996)

CPCU – Chartered Property Casualty Underwriter.  
Awarded by the American Institute for Chartered Property Casualty Underwriters.   (1996)

AIM – Associate in Management.  
Awarded by the American Institute for Chartered Property Casualty Underwriters.   (1997)

AIS – Associate in Insurance Services.  
Awarded by the American Institute for Chartered Property Casualty Underwriters.   (1997)

RPLU – Registered Professional Liability Underwriter.  
Awarded by the Professional Liability underwriting Society.   (2011)

ARM – Associate in Risk Management  
Awarded by The Institutes Risk & Insurance Knowledge Group.   (2018)
Professional History
Marchel Risk Consulting LLC dba Marchel & Associates Risk Consulting
2012 –Current Founder & President.
Marchel & Associates Risk Consulting is a licensed surplus lines brokerage assisting insurance agencies, organizations and law firms in mitigating insurance risk. Clients range from single producer agencies to some of the largest brokerage firms in the world.

The surplus lines brokerage evaluates risk profiles and helps clients develop and place risk mitigation programs, including insurance, for companies in the areas of commercial liability – focusing on management, cyber breach and privacy, employment liability and professional liability. Industry focus: Financial Institutions, publicly traded companies and insurance companies and agencies.

We consult with organizations and law firms on risk mitigation, including insurance policy review. We work with clients to resolve insurance disputes. We provide clients with guidance on preventing and defending management and professional liability claims.

We provide expert witness testimony and litigation support in insurance claims handling, insurance placement, insurer bad faith and agent and brokers errors and omissions.

Crump Insurance Services, Inc. 2009 – 2011
Senior Vice President, Claims Advocate. Responsible for developing financial services practice in the Pacific Northwest and Canada. Worked with local and regional insurance agencies in placing insurance coverage for their clients. Provided education and training for local and regional brokerages in management and professional liability coverage areas.

Provide clients with advice concerning mitigation and placement of insurance for management and professional liability exposures.

Alexander Morford & Woo, Inc, 2002 - 2009
Vice President and General Counsel.
Created management liability business for Canadian based risks, worked with national Canadian insurance agency in placing over 100 Public D&O accounts for Canadian based companies.
Created financial institution practice for management and professional liability risks focusing on public companies and financial institutions. Provided training to local and regional insurance agencies. Developed and presented several management liability programs for public and private company boards of directors.

Provide clients with guidance on preventing and defending management and professional liability claims. Assist clients with reservation of rights and denial of coverage letters from their insurer.

**Marsh Inc, 1999 – 2002**  
**Senior Vice President and Claims Advocate.**  
Consulted with Fortune 500 Companies on insurance coverage issues in management and professional liability. Work with clients to resolve high profile insurance disputes. Provide clients with guidance on preventing and defending management and professional liability claims.

**Sedgwick Inc., 1997 – 1999**  
**Associate General Counsel and Professional Liability Risk Management and Litigation Director.**  
Managed North American legal department defending professional and employment liability claims. Managed, hired and fired law firms across North America. Responsible for reporting, reserving costs and expenses and resolving claims against Sedgwick in North America. Worked closely with Executive management in United States, Great Britain and fronting insurance company.

Developed and implemented training program, presented to employees across North America (5,000 employees). Reduced costs and expenses 35%.

**Safeco Insurance Company 1991 – 1997**  
**Attorney in Corporate** (1996 - 1997)  
Managed outside counsel on major litigation, RICO, Class Action and Bad Faith Lawsuits.

**Safeco Insurance Company 1991 – 1997**  
Carried full trial case load, defended policyholders as trial attorney. Provide legal advice to internal business units and departments. Provide training to claims department on Alternative Dispute Resolution techniques. Developed early case evaluation program by implementing Total Quality Management and Alternative Dispute Resolution techniques within the various SAFECO office trial departments.
Associate attorney.
Business formations and Real Estate transactions. Motions practice before county administrative and regulatory agencies and various Superior Courts.

Casey & Pruzan 1989 - 1990
Associate attorney.
Business and Real Estate transactions. Motions practice before Court of Appeals, Bankruptcy Court and various Superior Courts.

Washington State Supreme Court 1988 - 1989
Law Clerk to Chief Justice Callow.
Research and draft legal opinions. Prepare research and draft opinions on attorney disciplinary appeals.

Teaching
Adjunct Professor Crichton College, Memphis TN
Summer 2000 – Spring 2002

Classes:
Business Law
Finance
Insurance Law
Introduction to Business
Investments

Professional Affiliations and Licenses
Licensed Attorney in State of Washington
Licensed Surplus Lines Broker and Agent in State of Washington
Licensed in additional jurisdictions

President of American Association of Insurance Management Consultants (AAIMCo)

Washington Chapter Association of Corporate Counsel (President from 2006 – 2009)

PNW Chapter of Chartered Property Casualty Underwriters. (President Lake Washington Chapter 2006 – 2007, Board Member PNW Chapter – currently)

Washington State Bar Association

Washington Surplus Lines Association

Northwest Chapter of PLUS (current Board member)

Washington Chapter RIMS (current Board member)
It is hereby agreed and understood that the following In Witness Clause supercedes any and all other In Witness clauses in this policy.

All other provisions remain unchanged.

IN WITNESS WHEREOF, the Company has caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by a duly authorized representative of the Company.

Joseph Tocco
President

Toni Ann Perkins
Secretary
## SCHEDULE OF POLICY FORMS AND ENDORSEMENTS

Form(s) and Endorsement(s) made a part of this policy at time of issue.

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Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is and what is not covered. Throughout the Policy the words "You" and "Your" refer to the Named Insured. The words "We", "Us", "Our" and the "Company" refer to the Company providing this insurance.

This Policy is incomplete unless the Declarations and all applicable forms and endorsements are attached. Words and phrases that appear in bold have special meaning and are defined in Section E: DEFINITIONS. Singular words shall include the plural, and plural words shall include the singular.

A. INSURING AGREEMENTS

Subject to the Limits of Liability set forth in the Declarations, and all other terms and conditions of this Policy, We agree as follows:

1. Public Officials Liability
   a. Public Officials Wrongful Acts Coverage
      We will pay on behalf of an Insured Loss that the Insured becomes legally obligated to pay as a result of a Claim first made against an Insured during the Policy Period or applicable Extended Reporting Period for a Public Officials Wrongful Act occurring on or after the Retroactive Date and before the end of the Policy Period.
   b. Non-Monetary Relief - Defense Only Coverage
      We will reimburse Defense Expenses incurred by an Insured in connection with a Claim exclusively seeking Non-Monetary Relief at all stages of the Claim, where such Claim is first made against an Insured during the Policy Period or applicable Extended Reporting Period for a Public Officials Wrongful Act occurring on or after the Retroactive Date and before the end of the Policy Period.

2. Employment Practices Liability and Third Party Liability Coverage
   We will pay on behalf of an Insured Loss that the Insured becomes legally obligated to pay as a result of a Claim first made against an Insured during the Policy Period or any applicable Extended Reporting Period for an Employment Practices Wrongful Act or Third Party Wrongful Act occurring on or after the Retroactive Date and before the end of the Policy Period.

3. Public Officials Crisis Management Coverage
   We will pay on behalf of an Insured those Crisis Management Expenses Incurred by the Insured in response to a Public Crisis Event first taking place during the Policy Period and reported to Us in accordance with Section F.6 of this Policy.

4. Supplemental Payments
   We will pay on behalf of an Insured, in addition to the Limits of Liability set forth in the Declarations, all reasonable expenses incurred by the Insured at Our request to assist Us in the investigation or defense of any Claim, including actual loss of earnings of any Insured, because of time off from work; provided that the most We will pay will be $500 per day, per Insured. Such "expenses" shall not include salaries paid to Your Employees.
For purposes of this Section, a Claim will be deemed to have been made when an Insured receives notice of the Claim.

B. DEFENSE AND SETTLEMENT

1. We will have the right and duty to defend any Claim made against an Insured for a Wrongful Act covered under Insuring Agreements A.1.a. or A.2., even if the allegations of such Claim are groundless, false or fraudulent. We will have no obligation to pay any Loss or Defense Expenses, or to defend any Claim after the applicable Limit of Liability set forth in Item 3. of the Declarations has been exhausted.

2. For any Claim We defend under Section B.1., We will have the right to make investigations, conduct negotiations and enter into the settlement of any such Claim as We deem appropriate, with the consent of the Insured. If the Insured refuses to consent to a settlement acceptable to the claimant in accordance with Our recommendation, then, subject to the applicable Limit of Liability, Our liability for such Claim will not exceed:
   a. The amount for which such Claim could have been settled by Us plus Defense Expenses up to the date the Insured refused to settle such Claim; plus
   b. Sixty percent (60%) of any Loss or Defense Expenses in excess of the amount in Section B.2.a. above, incurred in connection with such Claim.

3. It shall be the duty of the Insured, and not Us, to defend any Claim covered under Insuring Agreement A.1.b. The Insured shall have the right to select defense counsel for the investigation and defense of any such Claim, subject to Our consent and approval, which shall not be unreasonably withheld.

4. We shall have no duty to continue to reimburse Defense Expenses after the applicable Limit of Liability for Claims arising under Insuring Agreement A.1.b. has been exhausted by the reimbursement of Defense Expenses.

C. LIMITS OF LIABILITY / RETENTIONS

Regardless of the number of Claims, Insureds or claimants, Our liability under this Policy is limited as follows:

1. Public Officials Liability
   a. The amount set forth in Item 3.(a) of the Declarations is the most We will pay for all Loss in excess of the Retention set forth in Item 4. of the Declarations resulting from each Claim covered under Insuring Agreement A.1.a. The payment of Defense Expenses shall be in addition to, and will not reduce, the applicable Limits of Liability.
   b. The amount set forth in Item 3.(b)(1) of the Declarations is the most We will reimburse for all Defense Expenses in excess of the Retention set forth in Item 4.(b) of the Declarations resulting from each Claim covered under Insuring Agreement A.1.b.
   c. The amount set forth in Item 3.(b)(2) of the Declarations is the most We will reimburse for all Defense Expenses in excess of the Retention set for in Item 4.(b) of the Declarations resulting from all Claims covered under Insuring Agreement A.1.b.

2. Employment Practices Liability and Third Party Liability

   The amount set forth in Item 3.(c) of the Declarations is the most We will pay for all Loss resulting from each Claim covered under Insuring Agreement A.2. The payment of Defense Expenses shall be in addition to, and will not reduce, the applicable Limits of Liability.
3. **Policy Aggregate**

The amount set forth in Item 3.(d) of the Declarations is the most We will pay for all Loss resulting from all Claims covered under Insuring Agreements A.1.a. and A.2., and for all Defense Expenses resulting from all Claims covered under Insuring Agreement A.1.b.

4. **Public Officials Crisis Management Coverage**

In addition to the Policy Aggregate Limit of Liability, the amount set forth in Item 3.(e) of the Declarations is the most We will pay for all Crisis Management Expenses resulting from all Public Crisis Events covered under Insuring Agreement A.3.

5. **Multiple Insuring Agreements**

If a Claim covered under Insuring Agreement A.1.b. subsequently becomes a Claim for both monetary and Non-Monetary Relief covered under Insuring Agreements A.1.a. or A.2., such Claim shall become subject to the increased Retention and Limit of Liability applicable to Insuring Agreement A.1.a. or A.2., whichever is higher. Defense Expenses incurred in connection with such Claim shall be applied against the applicable Retention and shall reduce the applicable Limit of Liability.

6. **Retention**

Our obligation to pay or reimburse Loss or Defense Expenses under this Policy will only be in excess of the applicable Retention set forth in Item 4. of the Declarations. We will have no obligation to pay all or any portion of any Retention amount on behalf of any Insured, although We may, at Our sole discretion, advance such amount, in which event the Insureds agree to repay any amounts so advanced upon written request.

**D. EXCLUSIONS**

This Policy shall not apply to any Claim arising from or relating to:

1. The performance of any willful misconduct or dishonest, fraudulent, criminal or malicious act, error or omission by an Insured; the willful violation by an Insured of any law, statute, ordinance, rule or regulation; or an Insured gaining any profit, remuneration or advantage to which such Insured is not legally entitled.

   Notwithstanding the above, We will defend the Insured or pay or reimburse Defense Expenses in connection with a Claim otherwise covered by this Policy until and unless the Insured admits, is adjudged or is otherwise proven to have committed any act, error or omission subject to this exclusion, in which case the Insured shall reimburse Us for any Defense Expenses advanced to or paid on behalf of such Insured.

2. Loss or Defense Expenses covered under Insuring Agreements A.1.a. or A.2., if Insuring Agreement A.1.b. also applies.

3. A Claim, other than one alleging an Employment Practices Wrongful Act, that is brought by, on behalf of, or in the name or right of You or any of Your duly elected, appointed or employed directors, officers, or officials, or any member of a commission, board or other unit operated by You and under Your jurisdiction, and within the apportionment of Your operating budget in the Application; provided that this exclusion shall not apply to a cross-claim or third-party complaint arising from a Claim made against such director, officer, official, or member that is otherwise covered under this Policy. Notwithstanding the above, this exclusion shall also not apply to a Claim brought by a former director, officer, official, or member who has not served in that capacity for at least three (3) years prior to the date such Claim is first made and where such Claim is brought
and maintained without the support, solicitation, assistance, participation or intervention of the Named Insured or an Insured not otherwise subject to this exception.

4. An actual or alleged violation of the Fair Labor Standards Act, the National Labor Relations Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, any workers’ compensation, unemployment insurance, social security, or disability benefits law, other similar provisions of any federal, state or local statutory or common law or any rules or regulations promulgated under any of the foregoing; provided that this exclusion shall not apply to the extent that a Claim for an Employment Practices Wrongful Act alleges retaliatory action by an Insured in response to an Employee’s exercise of rights under such statute or law.

5. Damage to, destruction of or loss of use of tangible property, Bodily Injury, corporal punishment, sickness, disease or death.


7. Sexual Abuse and Molestation, including the allowance of or failure to prevent, stop, detect or reveal Sexual Abuse and Molestation.

8. The actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, seepage, migration, release, growth, Infestation, spread, escape, treatment, removal or disposal of, any Pollutant, or any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any Pollutant, or any action taken in contemplation or anticipation of any such regulation, order, direction or request.

9. A Benefit Plan Act, provided that this exclusion shall not apply to any Claim for actual or alleged retaliation with regards to benefits paid or payable. We will defend a Claim otherwise subject to this exclusion subject to a $25,000 Limit of Liability for all Defense Expenses in excess of the applicable Retention set forth in Item 4. of the Declarations. Defense Expenses payable under this section are part of and not in addition to the applicable Limits of Liability set forth in Item 3. of the Declarations, and payment of such Defense Expenses by Us will reduce such Limits of Liability.

10. An Insured’s liability under a contract or agreement, other than a manual of employment policies or procedures issued by You, unless such liability would have attached in the absence of such express contract or agreement. This exclusion shall not apply to the payment of Defense Expenses incurred in connection with a Claim for an Employment Practices Wrongful Act in the form of an actual or alleged breach of a contract to commence or continue employment with You.

11. A failure to obtain, implement, effect, comply with, provide notice under or maintain insurance, reinsurance, self-insurance, suretyship or bond.

12. Facts, circumstances, situations, transactions, events or Wrongful Acts:

a. Underlying or alleged in any mediation, arbitration, grievance proceeding, litigation or administrative or regulatory proceeding brought prior to and/or pending as of the Inception Date set forth in Item 2. of the Declarations:

(1) to which an Insured is or was a party; or

(2) with respect to which an Insured, as of the Inception Date set forth in Item 2. of the Declarations, knew or should reasonably have known that an Insured would be made a party thereto;
b. Which was the subject of any notice given prior to the Inception Date set forth in Item 2. of the Declarations under any other policy of insurance or plan or program of self-insurance; or

c. Which was the subject of any Claim made prior to the Inception Date set forth in Item 2. of the Declarations.

If, however, this Policy is a renewal of one or more policies issued by Us or an affiliate to You, and such coverage was in effect without interruption from the Inception Date of the first such policy to the Inception Date of this Policy, the reference in this exclusion to the Inception Date will be deemed to refer instead to the Inception Date of the first policy under which We or an affiliate began to provide You with the continuous and uninterrupted coverage of which this Policy is a renewal.

13. A lockout, strike, picket line, hiring of replacement workers, riot or civil commotion, or other similar actions in connection with labor disputes or labor negotiations.

14. The activities of an Insured as a law enforcement officer, police officer, police department or other law enforcement unit or agency; the operation of any jail cell, holding cell, detention or lock-up facility of any kind; or the activities of an Insured charged with the power to arrest, detain or interrogate another person, or to seize or confiscate the property of any individual or entity; provided; however; that this exclusion shall not apply to Claims arising out of the administrative functions or activities of an Insured in the enforcement of Your municipal code, laws or regulations, including but not limited to, the issuance of citations, fines, warnings, notices of violation, the issuance or denial of licenses or permits, or the inspection of property or buildings, by persons authorized to conduct such functions or activities on Your behalf. This exclusion shall also not apply to any Claim by or against a law enforcement officer or police officer in their capacity as an Employee under this Policy, for an Employment Practices Wrongful Act.

15. The operation of the laws and principles of eminent domain, condemnation, inverse condemnation, temporary or permanent taking, adverse possession or dedication by adverse use; however, We will defend such Claim subject to a $50,000 Limit of Liability for all Defense Expenses in excess of the applicable Retention set forth in Item 4. of the Declarations. Defense Expenses payable under this section are part of and not in addition to the applicable Limits of Liability set forth in Item 3. of the Declarations; and payment of such Defense Expenses by Us will reduce such Limits of Liability.

16. The Securities Act of 1933, the Securities Exchange Act of 1934, any state "blue sky" law, or any other federal, state or local securities law, or any rule or regulation promulgated under any of the foregoing; or any provision of the common law imposing liability in connection with the offer, sale or purchase of securities.

17. The sale or offering of securities by You, whether or not such securities are exempt from registration by the SEC; Your actual or proposed filing for an Initial Public Offering; or a debt offering or debt financing, including but not limited to bonds, notes, debentures and guarantees of debt.

18. Tax credits or tax incentives or the application thereof; the formulation of tax rates; the assessment, appraisal or valuation of property; the assessment of taxes or other fees; the collection of taxes, fees or other amounts; and the disbursement of tax refunds.

19. War, whether or not declared, or any act or condition incidental to war, including civil war, insurrection, rebellion or revolution; or Terrorism.

20. Construction, architectural, engineering, procurement, security or other professional services, including any contract or agreement pertaining to such services.
21. Legal services including those services performed by any individual as a lawyer, arbitrator, mediator, title agent, notary public, administrator, conservator, receiver, executor, guardian, trustee or in any other fiduciary capacity.

22. Crisis Management Expenses arising from any Public Crisis Event based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
   a. War, whether or not declared, or any act or condition incidental to war, including civil war, Terrorism, insurrection, rebellion or revolution;
   b. Actual or attempted suicide;
   c. Actual or attempted kidnapping or extortion;
   d. Acts, whether intentional or not, by members of the Victim's immediate family members or members of the Victim's household; or
   e. The activities of any person as a law enforcement officer, police officer, correctional officer, member of a police department or other law enforcement unit or agency; or the activities of any person charged with the powers to arrest, detain or interrogate another person, seize or confiscate the property of any individual or entity.

E. DEFINITIONS

Whenever used in this Policy, the term:

1. Application means all Applications submitted to Us, including any and all attachments and other materials submitted to Us in connection with the underwriting of this Policy or for any other policy of which this Policy is a renewal.

2. Benefit Plan Act means a Claim alleging liability under a pension, profit sharing, welfare benefit or other employee benefit program established in whole or part for the benefit of an Insured, or based upon, arising out of or in any way involving the Employee Retirement Security Act of 1974 (except Section 510 thereof) or any amendments thereto or regulations promulgated thereunder or similar provisions of any federal, state or local law or common law.

3. Bodily Injury means physical injury, sickness or disability of a person, including mental incapacity or death resulting from any of these at any time.

4. Business Invitee means a natural person, solely in their capacity as one who is invited to enter into and remain on any Premises for a purpose directly or indirectly connected with Your business or commercial dealings therein. A Business Invitee does not include a trespasser or any person who enters any Premises without Your knowledge or permission, or any Employee, student or minor.

5. Claim means:
   a. A written demand for monetary damages or Non-Monetary Relief;
   b. A written request to toll or waive any statute of limitations, or to waive any contractual time bar, relating to a potential suit against an Insured for a Wrongful Act;
   c. A civil proceeding in a court of law or equity, including any appeal therefrom, which is commenced by the filing of a complaint, motion for judgment, or similar proceeding;
   d. A criminal proceeding that is commenced by the return of an indictment or similar document;
e. An administrative or regulatory proceeding or investigation, including a proceeding brought by or before the Equal Employment Opportunity Commission or similar state or local agency, commenced by the filing of a notice of charges, formal order of investigation or similar document; or

f. An arbitration proceeding or other alternative dispute resolution proceeding, to which the Insured must submit or does submit with Our consent.

Claim shall not include any labor grievance, arbitration or other proceeding brought pursuant to a collective bargaining agreement.

6. Crisis Management Expenses means Public Relations Expenses, Travel/Printing Expenses, Family Travel Expenses and Post-Crisis Expenses; provided, however, that Crisis Management Expenses shall not include:

a. Your overhead expenses or any salaries, wages, fees or benefits of Employees;

b. The cost of medical, psychiatric or counseling services, even if provided by a Crisis Management Firm; or

c. Any fees or expenses related to civil, administrative or criminal investigations, proceedings or litigation.

7. Crisis Management Firm means a public relations firm, Crisis Management Firm or law firm hired or appointed by You to perform Crisis Management Services in connection with a Public Crisis Event. It shall be the duty of the Insured to select and retain the Crisis Management Firm.

8. Defense Expenses means reasonable legal fees and expenses We incur for the investigation, defense and appeal of a Claim by attorney(s) retained by Us, as well as all other fees, costs or expenses resulting from the investigation, adjustment, defense and appeal of such Claim by Us, or by You with Our prior, written consent. Defense Expenses does not include any expenses incurred by You prior to the date a Claim is first reported to Us, nor does it include the time and expense incurred by You in resolving a Claim, including but not limited to the costs of Your in-house counsel.

9. Emergency Response Plan means:

a. A formal written and adopted public safety and crisis response manual that details Your policies and procedures in the event of a Public Crisis Event; or

b. In the absence of such formal written manual, any applicable federal, state or local law, ordinance or statute that authorizes You to take emergency action or specifically describes the Your obligations in the event of a public emergency.

10. Employee means the following natural persons, but only for Wrongful Acts committed while acting within the scope of employment for You:

a. Full-time, part-time, seasonal and temporary Employees; and

b. All persons who perform services for You on a volunteer basis and under Your direction and control.

Employee shall not include persons providing services to You under a mutual aid agreement or any similar agreement.
11. **Employment Practices Wrongful Act** means any of the following, when alleged by any of Your past or present Employees or any applicant for employment with You, in connection with that person's actual or proposed employment relationship with You:

   a. Wrongful dismissal, discharge or termination of employment, whether actual or constructive;

   b. Harassment (including sexual harassment whether "quid pro quo," hostile work environment or otherwise);

   c. Discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy or disability or any basis prohibited by federal, state or local laws;

   d. Breach of any manual of employment policies or procedures issued to the Insureds by You;

   e. Retaliatory action in response to that Employee's:

      (1) disclosure or threat of disclosure of any act by an Insured alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder;

      (2) actual or attempted exercise of any right that Employee has under law;

      (3) filing of any Claim under the Federal False Claims Act or any other federal, state, local or foreign "whistleblower" law;

   f. Misrepresentation, libel, slander, humiliation, defamation, invasion of privacy, infliction of emotional distress or mental anguish;

   g. Wrongful failure to employ or promote, wrongful deprivation of career opportunity, including tenure, wrongful demotion or evaluation or wrongful discipline; or

   h. Breach of a contract to commence or continue employment with You.

An Employment Practices Wrongful Act shall not include a **Public Officials Wrongful Act**.

12. **Family Travel Expenses** means reasonable and necessary expenses incurred by any natural or adoptive parent, legal guardian, spouse, or child of a Victim within thirty (30) days after a Public Crisis Event to travel to the location of the Public Crisis Event, so long as the Public Crisis Event took place on an official trip sponsored by You. For the purpose of this definition, coach air transportation or ground transportation and standard class hotel accommodations shall be deemed reasonable expenses.

13. **Insured** means:

   a. You;

   b. Your past, present or future duly elected, appointed or employed officials, directors, officers, or members of commissions, boards or other units operated by You and under Your jurisdiction, within the apportionment of Your operating budget in the Application; provided that an Insured shall not include the following boards, commissions or units, or any officials, directors, officers, members or Employees thereof: schools, airports, transit authorities, hospitals, nursing homes, housing authorities, port authorities or any type of utility companies, unless otherwise provided in an Endorsement attached hereto;
c. **Employees;**

d. Persons providing services to **You** under a mutual aid or similar agreement that is disclosed on the **Application**, but solely while acting in that capacity; however, such persons are not Insureds with respect to Claims for Employment Practices Wrongful Acts or Third Party Wrongful Acts;

e. In the event of the death, incapacity or bankruptcy of a natural person Insured, such Insured’s estate, heirs, legal representatives or assigns, but only in connection with a **Claim** for an alleged **Wrongful Act** by such natural person Insured; and

f. The lawful spouse or domestic partner of any individual Insured identified in the paragraphs above, but only with respect to liability arising out of **Wrongful Acts** committed by such individual, and provided that such spouse or domestic partner is represented by the same counsel as such individual with respect to any **Claim**.

14. **Loss** means damages, pre-judgment interest, post-judgment interest, front pay and back pay, judgments, settlements, punitive or exemplary damages where insurable under applicable law or other amounts that an **Insured** is legally obligated to pay as a result of a **Claim**.

Loss will not include:

a. **Defense Expenses**;

b. **Non-Monetary Relief**;

c. Any amount representing the value of diminished or lost retirement, health care or other benefits;

d. Fines, taxes, penalties;

e. The cost of disaster response activities conducted by the **Insured** as required by the **Federal Emergency Management Agency (FEMA)**;

f. Amounts due under any contract to commence, continue or separate from employment with **You**, including but not limited to the value of any compensation or employment benefits lost, or the cost of specific performance in connection with any such contract; or

g. The multiplied portion of a multiple damages award; provided that Loss will include any multiplied damages awarded pursuant to the Age Discrimination in Employment Act or the Equal Pay Act ("**Specified Multiplied Damages**") that an **Insured** is obligated to pay as a result of a **Claim**, but only if such Specified Multiplied Damages are insurable under applicable law.

For the purpose of determining the insurability of punitive damages, exemplary damages or Specified Multiplied Damages under this Policy, the laws of the jurisdiction most favorable to the insurability of such damages shall control, provided that such jurisdiction:

- (1) is the location of the court which awarded or imposed such punitive or exemplary damages or Specified Multiplied Damages;

- (2) is where **You** are incorporated or otherwise organized or has a place of business; or

- (3) is where **We** are incorporated or have **Our** principal place of business.

15. **Named Insured** means the public entity set forth in Item 1. of the Declarations.
16. **Non-Monetary Relief** means relief or redress in any form other than compensatory or monetary damages, including: the costs of complying with any injunctive, declaratory or equitable relief, remedy or order; the costs of compliance with the Americans with Disabilities Act or any similar provisions of federal, state or local statutory or common law; and any award of claimant’s or plaintiff’s attorneys fees or costs, whether or not provided for by statute, but only with respect to **Claims** seeking such Non-Monetary Relief. Non-Monetary Relief shall not include the cost of disaster response activities conducted by the **Insured** as required by the Federal Emergency Management Agency (FEMA).

17. **Personal Injury** means the following, when alleged against an **Insured** by an entity or a person who is not a past or present **Insured**, or applicant for employment with the **Insured**, libel, slander, or other defamation; invasion of privacy, false arrest, erroneous service of process, wrongful detention or imprisonment, malicious prosecution, wrongful entry or eviction, subject to Exclusion D.14., infringement of copyright or trademark, or other unauthorized use of title, or plagiarism or misappropriation of ideas.

18. **Policy Period** means the period from the Inception Date of this Policy set forth, in Item 2. of the Declarations, to the Expiration Date of this Policy set forth in Item 2. of the Declarations, or to any earlier cancellation date of this Policy.

19. **Pollutant** means any of the following:

   a. Smoke, vapors, scot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials (including medical or pharmaceutical supplies and materials which are intended to be or have been recycled, reconditioned or reclaimed) or other irritants, Pollutants or contaminants;

   b. Mold(s), mildew(s), fungi and/or spore(s); or any materials, goods or products containing, harboring or nurturing any such mold(s), mildew(s), fungi and/or spore(s);

   c. Lead, silica or asbestos, whether or not airborne as a particle, contained in or formed as part of a product, structure or other real or personal property, ingested or inhaled or transmitted in any fashion, or found in any form whatsoever; or

   d. Nuclear reaction, radioactive contamination or any radiation of any kind, including but not limited to nuclear radiation and electromagnetic radiation.

20. **Post-Crisis Expenses** means reasonable costs incurred by **You** within sixty (60) days after a **Public Crisis Event** to purchase equipment or make property improvements that are not covered by other insurance and that relate directly to the security of **Your Premises** and may assist in prevention or mitigation of future **Public Crisis Events**.

21. **Premises** means the following, if located in the continental United States:

   a. A building, facility or other real property including adjoining ways, which **You** own, rent or lease and is used by **You** to conduct **Your** business, including administration, maintenance and recreational facilities;

   b. A building, facility, or other real property being visited by **Your** elected, appointed or employed officials, directors, officers, members of commissions, boards or other units operated by **You** and under **Your** jurisdiction, or **Employees**, on an official business trip on **Your** behalf;
c. A vehicle that You own or lease pursuant to a written contract, but solely if being used in the transportation of Your elected or appointed or employed officials, directors, officers, members of commissions, boards or other units operated by You and under Your jurisdiction, or Employees.

Premises does not include any location for an event independently organized by Employees or others without Your knowledge or approval.

22. Public Crisis Event means:

a. A violent act of a criminal nature taking place on Your Premises that causes Bodily Injury to a Victim; or

b. A credible threat communicated to You of a violent act of a criminal nature taking place on Your Premises which You reasonably believe may imminently cause Bodily Injury to a Victim;

in response to which You: (1) implement Your Emergency Response Plan; (2) contact federal, state or local police authorities for assistance; and (3) invoke an emergency succession plan due to Bodily Injury to a Victim, or the credible threat thereof.

Public Crisis Events involving a sequence or series of related violent acts or threats will be deemed to have taken place at the time the first violent act began or threat occurred. Continuous or repeated exposure to substantially the same acts or threats, regardless of how many Victims by the same perpetrator, or two or more perpetrators acting in concert, shall be considered one Public Crisis Event.

23. Public Officials Wrongful Act means:

a. An actual or alleged act, error, omission, misstatement, misleading statement or breach of duty, including any Personal Injury, by any Insured, if committed in the performance of his or her duties for You;

b. An actual or alleged violation of civil rights protected under 42 USC § 1981 et seq., or any similar federal, state or local law, by any Insured, if committed in the performance of his or her duties for You;

c. Any matter claimed against an Insured solely by reason of his or her status as an Insured during the Policy Period, if committed in the performance of his or her duties for You; or

d. Any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by a natural person Insured while serving, at the direction or request of You, in his or her capacity as a board member or committee member of a not-for-profit organization, other than You, which is exempt from taxation under Section 501(c) (3) of the Internal Revenue Code, as the same may be amended from time to time, at Your direction or request.

Coverage available pursuant to subsection d. shall be excess of and not contribute with any other insurance plan or program of self-insurance carried by such not-for-profit organization, and any contribution or indemnification to which a natural person Insured is entitled from such not-for-profit organization.

A Public Officials Wrongful Act shall not include an Employment Practices Wrongful Act or a Third Party Wrongful Act.
24. **Public Relations Expenses** means the reasonable and necessary fees and expenses incurred by You in response to a **Public Crisis Event**, within one hundred twenty (120) days after such **Public Crisis Event** took place, for services performed by a **Crisis Management Firm** to minimize potential harm to Your name or reputation as a result of such **Public Crisis Event**, including but not limited to maintaining and restoring public confidence in You and providing advice to Insureds.

25. **Related Claims** means all **Claims** based upon, arising out of, resulting from, or in any way involving the same or related facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances situations, transactions or events, whether related logically, casually or in any other way. All Related Claims will be deemed to be a single **Claim** for purposes of Section C. LIMITS OF LIABILITY / RETENTIONS and F. CONDITIONS, Item 5. Notice; Timing; and Interrelationship of Claims.

26. **Retroactive Date** means the applicable date set forth in Item 7. of the Declarations.

27. **Sexual Abuse and Molestation** means any actual or alleged conduct, physical act, gesture or spoken or written word of a sexual nature directed by an **Insured**, or by any person for whom an **Insured** is legally responsible, toward any person under the care, custody or control of any **Insured**, including without limitation any actual, alleged or threatened sexual intimacy (even if allegedly consensual), sexual molestation, sexual assault or battery, exploitation or any other sexual act.

28. **Terrorism** means “Certified Acts” as defined by the Terrorism Risk Insurance Act of 2002, or any subsequent amendments or reauthorizations of such Act (TRIA).

29. **Third Party Wrongful Act** means any of the following, when alleged against an **Insured** by Your **Business Invitee** or by a third party individual (other than another **Insured**, student or minor) with whom an **Insured** interacts outside of the Premises for the purpose of conducting official business on Your behalf:

   a. Harassment (including sexual harassment);
   b. Discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy or disability or any basis prohibited by federal, state or local laws; or
   c. Invasion of privacy.

   A Third Party Wrongful Act shall not include a **Public Officials Wrongful Act**.

30. **Travel/Printing Expenses** means reasonable and necessary expenses incurred by You in response to a **Public Crisis Event** within one hundred twenty (120) days after such **Public Crisis Event** took place for printing, advertising, mailing materials, or travel by any **Insured** or the **Crisis Management Firm** in connection with such **Public Crisis Event**.

31. **Victim** means:

   a. An elected, appointed or employed officials, directors, officers, members of commissions, boards or other units operated by You and under Your jurisdiction;
   b. A **Business Invitee**; or
   c. An **Employee**;

   who sustain(s) a **Bodily Injury**.
Victim shall not include independent contractors or subcontracted personnel working on the Premises or any person who has or is alleged to have made any attempt at, or knowingly participated in, or encouraged any Public Crisis Event.


**F. CONDITIONS**

1. **Other Insurance:**

   Insurance provided under this Policy will be excess of and will not contribute with other valid and collectible insurance, including but not limited to any insurance under which there is a duty to defend, unless such other insurance is specifically stated to be in excess of this Policy by reference in such other policy to the Policy number of this Policy. This Policy will not be subject to the terms of any other insurance.

   In the event that coverage is available for a Claim under any other insurance policy that applies to Claims for Bodily Injury, Personal Injury or property damage, We will have no duty to defend such Claim, or to pay any Defense Expenses incurred by You or on Your behalf, or to contribute to or reimburse Defense Expenses incurred by such other insurance policy in connection with such Claim.

2. **Cooperation:**

   In the event of a Claim, the Insured will provide Us with all information, assistance and cooperation that We reasonably request, and will do nothing that may prejudice Our position or potential or actual rights of recovery. The Insured shall not make any payment, admit any liability, settle any Claim, assume any obligation, or incur any expense without Our consent. At Our request, the Insured will assist in any actions, suits, or proceedings, including but not limited to attending hearings, trials and depositions, securing and giving evidence, and obtaining the attendance of witnesses, and will also assist in making settlements.

3. **Subrogation:**

   We will be subrogated to the extent of any payment We make under this Policy to all of the rights of recovery of the Insured. The Insured will execute all papers and do everything necessary to secure such rights, including the execution of any documents necessary to enable Us effectively to bring suit in their name. The obligations of the Insured under this condition will survive the expiration or cancellation of the Policy.

4. **Extended Reporting Period:**

   a. If this Policy is cancelled or non-renewed for any reason other than nonpayment of premium, the Named Insured will have the right to:

   (1) a seventy-five (75) day Automatic Extended Reporting Period, beginning on the effective date of such cancellation or non-renewal, for no additional premium charge; and

   (2) to purchase an Additional Extended Reporting Period, beginning on the effective date of the cancellation or non-renewal, for an additional premium; provided that the Named Insured elects to purchase the Additional Extended Reporting Period in writing and provides Us any additional premium due within thirty (30) days of the effective date of cancellation or non-renewal, subject to the available options as set forth in subparagraph c.
5. Notice; Timing; and Interrelationship of Claims:

a. As a condition precedent to any right to payment under this Policy, the Insured must give Us written notice of such Claim, with full details, as soon as practicable after any of Your public officials or administrators becomes aware of such Claim and in no event later than seventy-five (75) days after the expiration of the Policy Period.

b. If, during the Policy Period, the Insured first becomes aware of any Wrongful Act that may subsequently give rise to a Claim and, as soon as practicable thereafter but before the expiration or cancellation of this Policy:

(1) gives Us written notice of such Wrongful Act, including a description of the Wrongful Act in question, the identities of the potential claimants, the consequences which have resulted or may result from such Wrongful Act, the damages that may result from such Wrongful Act and the circumstances by which the Insured first became aware of such Wrongful Act; and

(2) requests coverage under this Policy for any subsequently resulting Claim for such Wrongful Act;

then We will treat any such subsequently resulting Claim as if it had been first made during the Policy Period.

c. All notices under this condition must be sent in writing to the address or email address set forth in Item 5. of the Declarations.

d. All Related Claims will be treated as a single Claim made when the earliest of such Related Claims was first made, or when the earliest of such Related Claims is treated as having been made in accordance with Condition 5.b., whichever is earlier.
6. Notice of Crisis Management Expenses; Inspection of Property:

   a. As a condition precedent to coverage under Insuring Agreement A.3. of this Policy, You must notify Us in writing as soon as practicable during the Policy Period, but in no event more than ten (10) days after the Public Crisis Event first took place. The written notice must be as complete as possible, stating how, when, and where the Public Crisis Event took place and the Bodily Injury or damage arising therefrom, and providing a summary of the Crisis Management Expenses incurred or expected to be incurred.

   b. To be eligible for coverage, Crisis Management Expenses must be submitted to Us no later than ninety (90) days after such Crisis Management Expenses are incurred.

   c. We will be permitted, but not obligated, to inspect Your property and operations and to review the Emergency Response Plan at any time, upon reasonable notice. Neither Our right to make such inspection or review nor the making of any such inspection or review shall constitute an undertaking on behalf of or for the benefit of the Insured or others to determine or warrant that such property and operations are safe or that the Emergency Response Plan is adequate, effective or legal.

7. Cancellation; No Obligation to Renew:

   a. We may not cancel this Policy except for Your failure to pay a premium when due. We will deliver or mail by first class, registered or certified mail to You at Your last known address, written notice of cancellation at least twenty (20) days before the effective date of cancellation. Such notice shall state the reason for cancellation. A copy of such notice shall be sent to the agent of record.

   b. You may cancel this Policy by mailing to Us written notice stating when, not later than the Expiration Date set forth in Item 2. of the Declarations, such cancellation will be effective. In such event, return premium will be computed as 0.90 times the pro rata unearned premium shown in Item 6. of the Declarations and rounded to the nearest whole dollar. Premium adjustment may be made either at the time that cancellation by You is effective or as soon as practicable thereafter. If the Policy Aggregate Limit of Liability, as set forth Item 3.(d) of the Declarations, is exhausted by the payment of Loss or Defense Expenses, the entire premium will be deemed fully earned.

   c. We will not be required to renew this Policy upon its expiration. If We elect not to renew this Policy, We will deliver or mail by first class, registered or certified mail to You at Your last known address, written notice to that effect at least sixty (60) days before the Expiration Date set forth in Item 2. of the Declarations. Such notice shall state the specific reason(s) for non-renewal. A copy of such notice shall be sent to the agent of record.

8. Representations:

   The Named Insured represents that the statements contained in the Application are true, accurate and complete, and agrees that this Policy is issued in reliance upon the truth thereof, which are deemed to be incorporated into and to constitute a part of this Policy.

9. Separation of Insureds; Protection of Innocent Insureds:

   a. In the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the Application, this Policy will be void:

         (1) with respect to any natural person Insured who knew of such untruth, misrepresentation or omission; and
(2) with respect to **You**, if, and only if, **Your** elected or appointed official, or the highest ranking member of any of **Your** boards, commissions or units, or any other person in a functionally equivalent position, knew of such untruth, misrepresentation or omission.

b. No act, error or omission of any **Insured** will be imputed to any other **Insured** to determine the application of any exclusion set forth in Section D. EXCLUSIONS of this Policy. If it is determined that an exclusion applies to an **Insured** in connection with a **Claim**, no coverage shall be available under this Policy for such **Insured**, however, coverage shall continue in effect under this Policy for any other **Insured**, subject to all other terms, conditions, and exclusions herein.

10. **No Action against Us:**

   a. No action may be taken against **Us** unless, as conditions precedent thereto, there has been full compliance with all of the terms of this Policy and the amount of the **Insured's** obligation to pay has been finally determined either by judgment against the **Insured** after adjudicatory proceedings, or by written agreement of the **Insured**, the claimant and **Us**.

   b. No person or entity will have any right under this Policy to join **Us** as a party to any **Claim** to determine the liability of any **Insured**; nor may **We** be impleaded by an **Insured** or his, her or its legal representative in any such **Claim**.

11. **Insolvency of Insured:**

   **We** will not be relieved of any of **Our** obligations under this Policy by the bankruptcy or insolvency of an **Insured**.

12. **Non-Accumulation of Limits:**

   If coverage is provided under this Policy and any other policy or policies underwritten or reinsured by **Us** to **You**, the maximum amount payable in the aggregate under this Policy and all such other policies shall not exceed the single highest **Limit of Liability** available under all such policies. Only one retention or deductible will apply, which shall be the retention or deductible corresponding to the **Limit of Liability** applied to the **Claim**;

13. **Territory:**

   This Policy applies to **Wrongful Acts** committed by an **Insured**, or to any **Claim** brought against an **Insured**, anywhere in the world.

14. **Authorization and Notices:**

   The **Insureds** agree that **You** will act on their behalf with respect to receiving any notices and return premiums from **Us**.

15. **Changes:**

   This Policy contains all the agreements between any and all **Insureds** and **Us** concerning this insurance. The **Named Insured** is authorized on behalf of all **Insureds** to make changes in the terms of this Policy with **Our** consent. **This Policy's terms can be amended or waived only by endorsement issued by **Us** and made part of this Policy.**

16. **Assignment:**

   No assignment of interest under this Policy will bind **Us** without **Our** consent.
17. **Entire Agreement:**

The **Insured** agrees that this Policy, including the **Application** and any endorsements, constitutes the entire agreement between every **Insured** and Us or any of Our agents relating to this insurance.

18. **Choice of Law:**

All matters arising hereunder, including but not limited to questions related to the validity, interpretation, performance and enforcement of this Policy, shall be determined in accordance with the law and practice of the State of New York, notwithstanding New York's conflicts of law rules.

19. **Premium:**

The **Named Insured** shall be responsible for payment of all premiums and will be the payee of any return premium. The Policy premium may be changed at any time if the Policy terms and conditions are changed by, among other things, adding additional insureds, changing limits of liability or extending the **Policy Period**. The **Named Insured** or its designee agrees to pay all increased premiums promptly in accordance with the Company's invoices.

20. **Conformity to Statute:**

All terms of this Policy that conflict with any applicable laws or regulations are hereby amended to conform to such laws or regulations.

21. **Headings:**

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

In witness whereof, the Insurer has caused this Policy to be executed on the Declarations Page.
This Policy is issued by the stock insurance company listed above.

THIS POLICY IS A CLAIMS MADE AND REPORTED POLICY. EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS POLICY COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSUREDS AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF APPLICABLE, AND WHICH ARE THE RESULT OF WRONGFUL ACTS COMMITTED BEFORE THE END OF THE POLICY PERIOD. PLEASE READ THIS POLICY CAREFULLY.

THE LIMITS OF LIABILITY AVAILABLE TO PAY INSURED DAMAGES SHALL BE REDUCED BY AMOUNTS INCURRED FOR CLAIMS EXPENSES. FURTHER NOTE THAT AMOUNTS INCURRED FOR DAMAGES AND CLAIMS EXPENSES SHALL ALSO BE APPLIED AGAINST THE RETENTION AMOUNT.

TERMS THAT APPEAR IN BOLD FACE TYPE HAVE SPECIAL MEANING. PLEASE REFER TO SECTION II, DEFINITIONS.

<table>
<thead>
<tr>
<th><strong>Policy No.</strong></th>
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<tbody>
<tr>
<td><strong>Item 1. Public Entity:</strong></td>
</tr>
<tr>
<td><strong>Principal Address:</strong></td>
</tr>
<tr>
<td><strong>Item 2. Policy Period:</strong></td>
</tr>
<tr>
<td>From 12:01 a.m. To 12:01 a.m. (Local time at the address shown in Item 1)</td>
</tr>
<tr>
<td><strong>Item 3. Limits of Liability Each Claim and in the Aggregate for all Claims including Claims Expenses:</strong></td>
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<td>$</td>
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<tr>
<td><strong>Item 4. Retention</strong></td>
</tr>
<tr>
<td>A. For <strong>Damages</strong> and <strong>Claims Expenses</strong> under Insuring Agreement IA.1: $ Zero each Claim</td>
</tr>
<tr>
<td>B. For <strong>Damages</strong> and <strong>Claims Expenses</strong> under Insuring Agreement IA.2 and IB: $ each Claim</td>
</tr>
<tr>
<td>C. For <strong>Damages</strong> and <strong>Claims Expenses</strong> under Insuring Agreement IC: $ each Claim</td>
</tr>
</tbody>
</table>
Item 5. Notice to **Insurer**:

A. Notice of **Claim** or **Wrongful Act**:

[Company]
[Address]
[Address]
[Fax Number]

B. All other notices:

Chief Underwriting Officer
[Company]
[Address]
[Address]

Item 6. **Policy** Premium: $

Item 7. **Extended Reporting Period**:

A. Additional Premium: ____% of Annual Premium

B. Additional Period: _____________________________

Item 8. **Crisis Management Fund**:

$25,000

IN WITNESS WHEREOF, the **Insurer** has caused this **Policy** to be countersigned by a duly authorized representative of the **Insurer**.

DATE: _________________________________   _____________________________________________________

Authorized Representative
In consideration of the payment of the premium, in reliance upon the Application, and subject to the Declarations and the terms and conditions, limit of liability and other provisions of this Policy, the Insureds and the Insurer agree as follows:

I. INSURING AGREEMENTS

A. Public Entity Management Liability

1. Public Officials’ Liability

The Insurer will pay on behalf of the Insured Persons all Damages and Claims Expenses for which the Insured Persons are not indemnified by the Public Entity and which the Insured Persons become legally obligated to pay by reason of a Claim first made against the Insured Persons and reported to the Insurer during the Policy Period or, if elected, the Extended Reporting Period, for any Wrongful Act taking place prior to the end of the Policy Period.

2. Public Entity Reimbursement

The Insurer will pay on behalf of the Public Entity all Damages and Claims Expenses for which the Public Entity has indemnified the Insured Persons and which the Insured Persons become legally obligated to pay by reason of a Claim first made against the Insured Persons and reported to the Insurer during the Policy Period or, if elected, the Extended Reporting Period, for any Wrongful Act taking place prior to the end of the Policy Period.

B. Public Entity Liability

The Insurer will pay on behalf of the Public Entity all Damages and Claims Expenses for which the Public Entity becomes legally obligated to pay by reason of a Claim first made against the Public Entity and reported to the Insurer during the Policy Period or, if elected, the Extended Reporting Period, for any Wrongful Act taking place prior to the end of the Policy Period.

C. Employment Practices Liability

The Insurer will pay on behalf of the Insureds all Damages and Claims Expenses for which the Insureds becomes legally obligated to pay by reason of a Claim first made against them and reported to the Insurer during the Policy Period or, if elected, the Extended Reporting Period, for any Wrongful Act taking place prior to the end of the Policy Period.

D. Public Entity Crisis Management Coverage

The Insurer will pay on behalf of the Public Entity the Crisis Management Expense for which the Public Entity becomes legally obligated to pay by reason of a Crisis Event first occurring during the Policy Period, but only up to the limit of liability for the Crisis Management Fund.

II. DEFENSE

A. The Insurer shall have the right and duty to defend any covered Claim made against the Insured and reported to the Insurer during the Policy Period or, if elected, the Extended Reporting Period, for any Wrongful Act taking place prior to the end of the Policy Period, even if such Claim is groundless, false or fraudulent. The Insured shall not admit or assume liability or settle or negotiate to settle any Claim or incur any Claims Expenses without the prior written consent of the Insurer, and the Insurer shall have
the right to appoint counsel and to make such investigation and defense of a covered Claim as it deems necessary.

B. Solely with respect to Insuring Agreements I.A.2, Public Entity Reimbursement, and I.B, Public Entity Liability, the Insurer shall not settle any Claim without the written consent of the Public Entity. The Insurer shall have the right to settle any Claim at its sole discretion with respect to all other Insuring Agreements. If the Public Entity refuses to consent to a settlement or a compromise recommended by the Insurer and acceptable to the claimant, then the Insurer’s Limit of Liability under this Policy with respect to such Claim shall be reduced to (1) the amount of Damages for which the Claim could have been settled plus all Claims Expenses incurred until the date of such refusal, and (2) 50% of all subsequent covered Claims Expenses in excess of such amount, which sum shall not exceed the unexhausted Limits of Liability specified in Item 3 of the Declarations. The remaining 50% of Claims Expenses and all subsequent Damages shall be borne uninsured by the Insureds and at their own risk. In such event, the Insurer shall tender a check to the Insured for the recommended settlement amount, and shall be relieved of any further duty or obligation, except as otherwise stated in this subsection B.

C. The Insurer shall not be obligated to investigate, defend, pay or settle, or continue to investigate, defend, pay or settle, any Claim after any applicable Limit of Liability specified in Item 3 of the Declarations has been exhausted by payment of Damages and Claims Expenses, or by any combination thereof, or after the Insurer has deposited the remainder of any unexhausted applicable Limit of Liability into a court of competent jurisdiction. In such case, the Insurer shall withdraw from the investigation, defense, payment or settlement of such Claim and shall tender the investigation, defense and control of such Claim to the Insured.

D. The Insureds shall cooperate with the Insurer, and provide to the Insurer all information and assistance which the Insurer reasonably requests including but not limited to attending hearings, depositions and trials and assistance in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and conducting the defense of any Claim covered by this Policy. The Insureds shall do nothing that may prejudice the Insurer’s position. The Insureds shall immediately forward to the Insurer, at the address indicated in Item 5A of the Declarations, every demand, notice, summons, or other process or pleadings received by the Insured or its representatives.

III. DEFINITIONS

When used in this Policy:

A. Adverse Publicity means the publication of unfavorable information regarding the Public Entity which can reasonably be considered to materially reduce public confidence in the competence, integrity or viability of the Public Entity to conduct business. Such publication must occur in a report about an Insured appearing in:

1. a daily newspaper of general circulation; or
2. a radio or television news program.

B. Application means all applications, including any attachments thereto, and all other information and materials submitted by or on behalf of the Insureds to the Insurer in connection with the Insurer underwriting this Policy or any Policy of which this Policy is a direct or indirect renewal or replacement or which it succeeds in time. All such applications, attachments, information and materials are deemed attached to and incorporated in this Policy.

C. Bodily Injury means physical injury to the body, physical pain, sickness, disease, and death. Bodily Injury also means mental distress, mental injury, mental anguish, mental tension, pain and suffering, shock and humiliation (collectively “Mental Distress”), but only if such Mental Distress arises from and is accompanied by injury to the claimant’s body, sickness, disease or death.
D. **Claim** means:

1. a written demand against any **Insured** for monetary **Damages** or non-monetary or injunctive relief;

2. a civil proceeding against any **Insured** seeking monetary **Damages** or non-monetary or injunctive relief, commenced by the service of a complaint or similar pleading;

3. a binding arbitration proceeding, only if the **Insurer** has provided its prior written consent to such proceeding, against any **Insured** seeking monetary **Damages** or non-monetary or injunctive relief;

4. a civil, administrative or regulatory proceeding against any **Insured** commenced by the issuance of a notice of charge or formal investigative order, including without limitation any such proceeding by or in association with the Equal Employment Opportunity Commission or any other similar federal, state or local governmental authority located anywhere in the world;

5. a civil, administrative or regulatory investigation against any **Insured**, commenced by the service upon or other receipt by any **Insured** of a written notice or subpoena from the investigating authority identifying any **Insured** as an individual against whom a civil, administrative or regulatory investigation or proceeding is to be commenced; or

6. solely with respect to coverage provided under Insuring Agreement I.C, a written request of the **Insured** to toll or waive a statute of limitations applicable to a **Claim** described in paragraphs 1 through 5 above.

including any appeal therefrom. However, **Claim** shall not include a labor or grievance arbitration or proceeding which is subject or pursuant to a collective bargaining agreement

E. **Claims Expenses** means:

1. reasonable and necessary attorneys' fees, expert witness fees and other fees and costs incurred by the **Insurer**, or by the **Insured** with the **Insurer's** prior written consent, in the investigation and defense of covered **Claims**;

2. reasonable and necessary premiums for any appeal bond, attachment bond or similar bond, provided the **Insurer** shall have no obligation to apply for or furnish such bond; and

3. prejudgment and post-judgment interest awarded in any **Claim**.

**Claims Expenses** shall not include wages, salaries, fees or costs of directors, officers or **Employees** of the **Insurer** or the **Insured** or **Crisis Management Expenses**.

F. **Crisis Event** means one of the following, except where coverage is otherwise excluded under Exclusions H and R of the **Policy**.

1. Management Event: The incapacity, death or state or federal criminal indictment of an **Insured Person** for whom the **Public Entity** has purchased and continues to maintain key individual life insurance;

2. Funding Cancellation: The cancellation, withdrawal or revocation of $500,000 or more in funding, donation(s), grant(s) or bequest(s) by a non-government entity or person to the **Public Entity**;

3. Bankruptcy: The disclosure by the **Public Entity** of (a) its intention to file or its actual filing for protection under federal bankruptcy laws, or (b) a third-party’s intention to file or its actual filing of an involuntary bankruptcy petition under federal bankruptcy laws with respect to the **Public Entity**;

4. Employment Event: The disclosure by the **Public Entity** of the threatened or actual commencement by a third-party of an action, audit or investigation alleging a **Wrongful Employment Practice** by the **Public Entity** which has caused or is reasonably likely to cause **Adverse Publicity**; and
5. Material Event: Any other material event which, in the good faith opinion of the Public Entity, has caused or is reasonably likely to result in Adverse Publicity, but only if such material event is scheduled for coverage by written endorsement to this Policy.

G. Crisis Management Expense means the following expenses incurred by the Public Entity during a period beginning ninety (90) days prior to and in reasonable anticipation of a Crisis Event and ending ninety (90) days after an actual or reasonably anticipated Crisis Event, irrespective of whether a Claim is actually made with respect to the subject Crisis Event; provided, however, that the Insurer must have been notified of the Crisis Management Expense within thirty (30) days of the date the Public Entity first incurs the subject Crisis Management Expense:

1. The reasonable and necessary expenses directly resulting from a Crisis Event which the Public Entity incurs for Crisis Management Services provided to the Public Entity by a Crisis Management Firm, and

2. The reasonable and necessary expenses directly resulting from a Crisis Event which the Public Entity incurs for (a) advertising, printing, or the mailing of matter relevant to the Crisis Event, and (b) out of pocket travel expenses incurred by or on behalf of the Public Entity or the Crisis Management Firm; provided, however, Crisis Management Expense does not include those amounts which otherwise would constitute compensation, benefits, fees, overhead, charges or expenses of an Insured or any of the Insured’s Employees.

H. Crisis Management Firm means a marketing firm, public relations firm, law firm, or other professional services entity retained by the Insurer, or by the Public Entity with the Insurer’s prior written consent, to perform Crisis Management Services arising from a Crisis Event.

I. Crisis Management Fund means the amount specified in Item 8 of the Declarations.

J. Crisis Management Services means the professional services provided by a Crisis Management Firm in counseling or assisting the Public Entity in reducing or minimizing the potential harm to the Public Entity caused by the public disclosure of a Crisis Event.

K. Damages means compensatory damages, judgments, any award of prejudgment and post-judgment interest, and settlements which the Insured becomes legally obligated to pay on account of any Claim first made against any Insured during the Policy Period or, if elected, the Extended Reporting Period, for Wrongful Acts to which this Policy applies. Such damages include punitive and exemplary damages and the multiple portion of any multiplied damage award, if and to the extent such damages are insurable under the law of the applicable jurisdiction most favorable to the insurability of such damages.

With respect to any Claim arising out of a Wrongful Employment Practice, Damages shall also mean:

1. front-pay and back-pay, except as otherwise stated below; and

2. liquidated damages awarded pursuant to the Age Discrimination in Employment Act or the Equal Pay Act.

Damages shall not include:

1. any amount for which the Insured is not financially liable or legally obligated to pay;

2. taxes, fines or penalties;

3. matters uninsurable under the laws pursuant to which this Policy is construed;

4. employment-related benefits, retirement benefits, perquisites, vacation and sick days, medical and insurance benefits, deferred cash incentive compensation or any other type of compensation other than salary, wages, bonuses, commissions and non-deferred cash incentive compensation;
5. the cost to comply with any injunctive or other non-monetary or declaratory relief, including specific performance, or any agreement to provide such relief;

6. any liability or costs incurred to modify any building or property to make it more accessible or accommodating to any person, or any liability or costs in connection with any educational, sensitivity or other corporate program, policy or seminar;

7. Crisis Management Expenses; or

8. liquidated damages, except to the extent specifically included as Damages above.

L. Employee means any natural person whose labor or services are engaged and directed by the Public Entity (including any part-time, seasonal and temporary employee or volunteer), but only while acting in his or her capacity as such, and any natural person who is leased to the Public Entity, but only if the Public Entity provides indemnification to such leased person in the same manner as is provided to the Public Entity’s employees.

M. Extended Reporting Period means the period for the extension of coverage, if elected, described in Section VII, Extended Reporting Periods.

N. Incidental Medical Malpractice means injury arising out of emergency medical services rendered or which reasonably should have been rendered to any person or persons during the Policy Period by any duly certified emergency medical technician, paramedic or nurse who is an Employee of the Public Entity or acting on its behalf to provide such services, but is not employed, either full-time or part-time, at a hospital, clinic or nursing home facility. Incidental Medical Malpractice also includes injury arising out of the dispensation of prescribed medicine.

O. Insured means the Public Entity and any Insured Persons;

P. Insured Persons means the following, but only to the extent such persons are acting solely in their capacities as legally authorized representatives of the Public Entity:

1. all persons who were, now are or shall be lawfully elected or duly appointed officials or Employees;

2. commissions, boards, or other units, and members and Employees thereof, operated by and under the jurisdiction of such Public Entity and within an apportionment of the total operating budget indicated in the application for this Policy;

3. volunteers acting for or on behalf of, and at the written request and under the direction of, the Public Entity;

4. elected or duly appointed officials and Employees of the Public Entity duly appointed at the written request of the Public Entity to serve with an outside tax exempt entity;

5. any person providing services for the Public Entity under a mutual aid or similar written agreement; and

6. elected or duly appointed officials and Employees of the Public Entity as a director or officer of a non-profit organization created and operated under Section 501c(3) of the Internal Revenue code of 1988, amended, for any Wrongful Acts they have committed in their respective capacities as a director or officer of such non-profit organization, provided that: (1) the appointment of the elected or duly appointed official or Employee to such non-profit organization is based solely upon the person’s being an elected or duly appointed official or Employee of the Public Entity; and (2) such elected or duly appointed official or Employee is directed in writing by the Public Entity to serve as a director or officer of such non-profit organization prior to beginning such service.

Q. Insurer means the insurance company providing this insurance.
R. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.

S. **Personal Injury** means injury arising out of one or more of the following offenses:

1. false arrest, detention or imprisonment;
2. malicious prosecution;
3. libel, slander or other defamatory or disparaging material;
4. publication or an utterance in violation of an individual’s right to privacy; and
5. wrongful entry or eviction, or other invasion of the right to private occupancy.

T. **Policy** means, collectively, the Declarations, the **Application**, this **Policy**, including any endorsements.

U. **Policy Period** means the period of time specified in Item 2 of the Declarations, subject to prior termination pursuant to Section XIV, Termination of the **Policy**.

V. **Pollutants** means any substance exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by the United States Environmental Protection Agency or any federal, state, county, municipal or local counterpart thereof or any foreign equivalent. Such substances shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalies, chemicals or waste materials, including materials to be recycled, reconditioned, or reclaimed. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, noise, fungus (including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi) and electric or magnetic or electromagnetic field.

W. **Property Damage** means:

1. physical injury to, or loss or destruction of, tangible or intangible property, including the loss of use thereof; and
2. loss of use of tangible or intangible property which has not been physically injured, lost, damaged or destroyed.

X. **Public Entity** means the municipality, governmental body, department or unit which is named in Item 1 of the Declarations.

Y. **Retaliation** means retaliatory treatment on account of:

1. the actual or attempted exercise by an **Employee** of any rights of such an **Employee** under law, including workers’ compensation laws, the Family and Medical Leave Act, and the Americans with Disabilities Act;
2. the filing of any claim under any statute, rule or regulation to protect an **Employee** from discrimination by his or her employer if such **Employee** discloses or threatens to disclose to a superior or a governmental agency, or if such **Employee** gives testimony relating to, any activity within such employer’s operations which may be in violation of a statute, rule or regulation or any professional codes of ethics, including the Federal False Claims Act;
3. the disclosure or threat of disclosure by an **Employee** of the **Public Entity** to a superior or to any governmental agency of any act by an **Insured** which act is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder;
4. an **Employee** assisting, cooperating or testifying in any proceeding or investigation into whether an **Insured** violated any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; or

5. any strike of any **Employee** of the **Public Entity**

**Z. Sexual Abuse and Molestation** means any actual, attempted or alleged criminal sexual conduct of a person by another person, or persons acting in concert, which causes physical and/or mental injuries. **Sexual Abuse and Molestation** includes: sexual molestation, sexual assault, sexual exploitation or sexual injury. **Sexual Abuse and Molestation** does not include **Sexual Harassment**.

**AA. Sexual Harassment** means any actual or alleged unwelcome sexual advances, requests for sexual favors or other conduct of a sexual nature, of a person by another person, or persons acting in concert, which causes physical and/or mental injuries. **Sexual Harassment** includes:

1. the above conduct when submission to or rejection of such conduct is made either explicitly or implicitly a condition of a person’s employment, or a basis for employment decisions affecting a person; or

2. the above conduct when such conduct has the purpose or effect of unreasonably interfering with a person’s work performance or creating an intimidating, hostile, or offensive work environment.

**Sexual Harassment** does not include **Sexual Abuse and Molestation**.

**BB. Wrongful Act** means:

1. with regard to Insuring Agreements I.A.1 and 1.A.2, any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty by an **Insured Person** while acting in his or her capacity as such and on behalf of the **Public Entity**;

2. with regard to Insuring Agreements I.B., any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty by the **Public Entity**;

3. with regard to Insuring Agreement I.C:

   a. solely with respect to **Claims** brought and maintained by or on behalf of any **Employee** or applicant for employment with the **Public Entity**, **Wrongful Act** means a **Wrongful Employment Practice** committed or attempted by the **Public Entity** or by any **Insured Person** in his or her capacity as such and on behalf of the **Public Entity**; or

   b. with respect to all other **Claims**, **Wrongful Act** means only, or a violation of discrimination laws, including but not limited to, violations based on race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, military status, or a violation of a natural person’s civil rights relating to such discrimination or **Sexual Harassment**, in either case, whether direct, indirect, intentional or unintentional, committed by an **Insured Person** in his or her capacity as such and on behalf of the **Public Entity**.

**CC. Wrongful Employment Practice** means any actual or alleged:

1. wrongful dismissal or discharge or termination, whether actual or constructive;

2. employment-related misrepresentation;

3. any violation of employment discrimination laws anywhere in the world, including but not limited to violations based on race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, or military status;

4. **Sexual Harassment** or unlawful workplace harassment;
5. wrongful deprivation of a career opportunity or wrongful demotion;
6. failure to employ or promote;
7. wrongful discipline;
8. Retaliation;
9. negligent evaluation;
10. employment-related libel, slander, defamation, humiliation, invasion of privacy, or the giving of negative or defamatory statements in connection with an Employee reference;
11. failure to grant tenure; and
12. with respect to paragraphs S.1 through S.11 above, inclusive, negligent hiring, retention, training or supervision; infliction of emotional distress or mental anguish; failure to provide or enforce adequate or consistent corporate policies and procedures; or violation of an individual's civil rights;

of any past, present or prospective full-time, part-time, seasonal and temporary Employee or volunteer or leased Employee(s) or applicant for employment of the Public Entity.

The foregoing definitions shall apply equally to the singular and plural forms of the respective words.

IV. EXCLUSIONS

Except as limited under Insuring Agreement I.D, Public Entity Crisis Management Coverage, the Insurer shall not be liable for Damages or Claims Expenses on account of any Claim:

A. alleging, based upon, arising out of or attributable to any dishonest, fraudulent, criminal or malicious act, error or omission, or any intentional or knowing violation of the law by an Insured ("Excluded Conduct"); however, this exclusion shall not apply: (1) unless and until there is an adverse admission by, finding of fact, or final adjudication against any Insured as to such Excluded Conduct, at which time the Insured shall reimburse the Insurer for all Damages and Claims Expenses paid or incurred on account of such Claim; or (2) to any Claim alleging any Wrongful Employment Practice.

B. alleging, based upon, arising out of or attributable to the gaining in fact of any profit, remuneration or advantage to which any Insured was not legally entitled; however, this exclusion shall not apply to any Claim alleging any Wrongful Employment Practice.

C. seeking relief or redress in any form other than monetary damages, or Claims Expenses for a Claim seeking injunctive or other non-monetary relief. However, the Insurer shall defend such a Claim in accordance with Section II, Defense, subject to a Policy Period aggregate limit of liability of $100,000. This limit shall be part of the Limit of Liability stated in Item 3 of the Declarations.

D. alleging, based upon, arising out of or attributable to any:

1. Bodily Injury, other than Mental Distress arising out of a Wrongful Employment Practice;
2. Property Damage;
3. Personal Injury, other than libel, slander or defamation in any form arising out of a Wrongful Employment Practice; or
4. any allegation relating to the foregoing D.1, D.2 and D.3 that an Insured negligently employed, investigated, supervised or retained a person, or based on an alleged practice, custom or policy and including, without limitation, any allegation that the violation of a civil right caused or resulted form such Damages, Claims Expenses or Claim.

E. alleging, based upon, arising out of or attributable to the operation of the laws, and principles of eminent domain, condemnation, inverse condemnation, temporary or permanent taking, adverse possession or dedication by adverse use.
F. alleging, based upon, arising out of or attributable to strikes, riots or civil commotions;

G. alleging, based upon, arising out of or attributable to the failure to effect or maintain any insurance or bond, which shall include, but not be limited to, insurance provided by self-insurance arrangements, pools, self-insurance trusts, captive insurance companies, retention groups, reciprocal exchanges or any other plan or agreement of risk transfer or assumption. However, this exclusion shall not apply to Claims Expenses.

H. alleging, based upon, arising out of or attributable to:
   1. the actual, alleged or threatened discharge, dispersal, release, escape, seepage, migration or disposal of Pollutants; or
   2. any direction or request that any Insured test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Pollutants, or any voluntary decision to do so.

I. alleging, based upon, arising out of or attributable to the planning, construction, maintenance, operation or use of any nuclear reactor, nuclear waste storage or disposal site or any other nuclear facility; the transportation of nuclear material; or any nuclear reaction or radiation, or radioactive contamination, regardless of its cause.

J. brought by or on behalf of any Insured; provided, however, with respect to any Claim alleging any Wrongful Employment Practice, this exclusion shall only apply to cross-claims or counter-claims brought by one Insured against another Insured.

K. alleging, based upon, arising out of or attributable to:
   1. breach of any express, implied, actual or constructive contract, warranty, guarantee or promise, However, this subsection of this exclusion shall not apply to any Claim alleging any Wrongful Employment Practice; or
   2. any construction, architectural or engineering contracts and/or agreements or the actual or alleged liability assumed by the Insured under any express, implied, actual or constructive contract or agreement, unless such liability would have attached to the Insured even in the absence of such contract or agreement.

L. alleging, based upon, arising out of or attributable to any misappropriation of any trade secret or infringement of patent, collective mark, certification mark, registered mark, service mark, trademark, trade dress, trade name, domain, title, slogan, copyright or service name.

M. alleging, based upon, arising out of or attributable to the operation of or activities of any schools, hospitals, clinics, nursing homes or other health care operations, jails or detention facilities, law enforcement agencies or fire fighting authorities.

N. alleging, based upon, arising out of or attributable to the rendering or failure to render:
   1. medical services, including Incidental Medical Malpractice, or
   2. professional services provided by any lawyer, architect, engineer or accountant to any person or entity other than the Public Entity.

O. alleging, based upon, arising out of or attributable to any Insured’s activities as a trustee or fiduciary as respects any type of Employee benefit plan, including any pension, savings, or profit sharing plan or to any amounts or benefits due under any fringe benefit program, retirement program, incentive program, perquisite program, entitlement program or other benefits owed to any Employee, including, but not limited to any actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, any similar state or local laws, and any rules and regulations promulgated thereunder and amendments thereto.
P. alleging, based upon, arising out of or attributable to the improper administration or collection of taxes, or loss that reflects any tax obligations.

Q. alleging, based upon, arising out of or attributable to:

1. any prior or pending litigation or administrative or regulatory proceeding, or any U.S. Equal Employment Opportunity Commission or similar state, local or foreign agency proceeding or investigation, filed on or before the effective date of the first policy issued and continuously renewed by the Insurer, or the same or substantially the same Wrongful Act, fact, circumstance or situation underlying or alleged therein; or

2. any other Wrongful Act whenever occurring which, together with a Wrongful Act underlying or alleged in such prior or pending proceeding, would constitute Interrelated Wrongful Acts.

R. alleging, based upon, arising out of, or attributable to:

1. any Wrongful Act, fact, circumstance or situation which has been the subject of any written notice given under any other policy of which this Policy is a renewal or replacement or which it succeeds in time; or

2. any other Wrongful Act whenever occurring which, together with a Wrongful Act which has been the subject of such notice, would constitute Interrelated Wrongful Acts.

S. alleging, based upon, arising out of or attributable to any Wrongful Act prior to the inception date of the first policy issued by the Insurer or any affiliate thereof, and continuously renewed and maintained, if, on or before such date, any Insured knew or could have reasonably foreseen that such Wrongful Act could lead to a Claim.

T. solely with respect to any Claim arising out of a Wrongful Employment Practice:

1. alleging, based upon, arising out of or attributable to any violation of the responsibilities, obligations or duties imposed by any worker’s compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law; However, this exclusion shall not apply to that part of any Claim for Retaliation;

2. for an actual or alleged violation of: (1) the Employee Retirement Income Security Act of 1974 (except section 510 thereof); (2) the Fair Labor Standards Act (except the Equal Pay Act), (3) the National Labor Relations Act, (4) the Worker Adjustment and Retraining Notification Act, (5) the Consolidated Omnibus Budget Reconciliation Act, (6) the Occupational Safety and Health Act; or any similar federal, state or local laws, and any rules and regulations promulgated thereunder and amendments thereto anywhere in the world. However, this exclusion shall not apply to that part of any Claim for Retaliation;

3. alleging, based upon, arising out of or attributable to any costs or liability incurred by any Insured to provide any reasonable accommodations required by, made as a result of, or to conform with the requirements of, the Americans With Disabilities Act of 1992, as amended, or any similar federal, state or local law, regulation or ordinance, including the modification of any building, property or facility to make it more accessible or accommodating to any disabled person; or

4. alleging, based upon, arising out of, or attributable to improper payroll deductions or any Claims for unpaid wages or overtime pay for hours actually worked or labor actually performed by any Employee of a Public Entity, or any violation of any federal state, local or foreign statutory law or common law that governs the same topic or subject, and any rules, regulations and amendments thereto. However, this exclusion shall not apply to that part of any Claim for Retaliation.

The Wrongful Act of any Insured Person shall not be imputed to any other Insured Person for the purpose of determining the applicability of Exclusions IV.A. and IV.B. above.
V. CRISIS MANAGEMENT COVERAGE PROVISIONS

A. There shall be no Retention applicable to Crisis Management Expenses and the Company shall pay such Crisis Management Expenses from the first dollar subject to all other terms and conditions of this policy, including the Policy limit.

B. An actual or anticipated Crisis Event shall be reported to the Company as soon as practicable, but in no event later than thirty (30) days after the Public Entity first incurs Crisis Management Expenses for which coverage will be requested under this Policy.

VI. ESTATES, LEGAL REPRESENTATIVES AND SPOUSES

The estates, heirs, legal representatives, assigns, spouses and legally recognized domestic partners of Insureds shall be considered Insureds under this Policy; but coverage is afforded to such estates, heirs, legal representatives, assigns, spouses and legally recognized domestic partners only for a Claim arising solely out of their status as such and, in the case of a spouse or legally recognized domestic partner, where the Claim seeks damages from marital community property, jointly held property or property transferred from a natural person Insured to the spouse or legally recognized domestic partner. No coverage is provided for any Wrongful Act of an estate, heir, legal representative, assign, spouse or legally recognized domestic partner. All of the terms and conditions of this Policy including, without limitation, the Retention applicable to Damages and Claims Expenses incurred by Insureds shown in Item 4 of the Declarations, shall also apply to Damages and Claims Expenses incurred by such estates, heirs, legal representatives, assigns, spouses and legally recognized domestic partners.

VII. EXTENDED REPORTING PERIODS

If the Insurer terminates or does not renew this Policy (other than for failure to pay a premium when due), or if the Public Entity terminates or does not renew this Policy and does not obtain replacement coverage as of the effective date of such cancellation or non-renewal, the Public Entity shall have the right, upon payment of the additional premium described below, to continuation of the coverage granted by this Policy for at least one Extended Reporting Period as follows:

A. Automatic Extended Reporting Period

The Public Entity shall have continued coverage granted by this Policy for a period of 60 days following the effective date of such termination or nonrenewal, but only for Claims first made during such 60 days and arising from Wrongful Acts taking place prior to the effective date of such termination or nonrenewal. This Automatic Extended Reporting Period shall immediately expire upon the purchase of replacement coverage by the Public Entity.

B. Optional Extended Reporting Period

The Public Entity shall have the right, upon payment of the additional premium set forth in Item 7A of the Declarations, to an Optional Extended Reporting Period, for the period set forth in Item 7B of the Declarations following the effective date of such cancellation or nonrenewal, but only for Claims first made during such Optional Extended Reporting Period and arising from Wrongful Acts taking place prior to the effective date of such termination or nonrenewal.

This right to continue coverage shall lapse unless written notice of such election is given by the Public Entity to the Insurer, and the Insurer receives payment of the additional premium, within 30 days following the effective date of termination or nonrenewal.

The first 60 days of the Optional Extended Reporting Period, if it becomes effective, shall run concurrently with the Automatic Extended Reporting Period.

C. The Insurer shall give the Public Entity notice of the premium due for the Extended Reporting Period as soon as practicable following the date the Public Entity gives such notice of such election, and such
premium shall be paid by the Public Entity to the Insurer within 10 days following the date of such notice by the Insurer of the premium due. The Extended Reporting Period is not cancelable and the entire premium for the Extended Reporting Period shall be deemed fully earned and non-refundable upon payment.

D. The Extended Reporting Period, if elected, shall be part of and not in addition to the Limit of Liability for the immediately preceding Policy Period. The purchase of the Extended Reporting Period shall not increase or reinstate the Limit of Liability, which shall be the maximum liability of the Insurer for the Policy Period and Extended Reporting Period, combined.

E. A change in Policy terms, conditions, exclusions and/or premiums shall not be considered a nonrenewal for purposes of triggering the rights to the Automatic or Optional Extended Reporting Period.

VIII. LIMITS OF LIABILITY

A. Payment of Claims Expenses without reduction of the Limit of Liability

1. The Insurer shall pay Claims Expenses in excess of the applicable Retention and up to an aggregate amount equal to the Limit of Liability stated in Item 3 of the Declaration without reduction of the applicable Limit of Liability. The total amount of such Claims Expense payments by the Insurer shall be capped at the amount of the Limit of Liability, and is not on a per Claim basis.

2. Once the Insurer has paid the amount set forth in Item 3. of the Declarations in aggregate Claims Expenses arising from or relating to any and all matters, all further payments by the Insurer of Claims Expenses shall reduce the applicable Limit of Liability.

B. Limit of Liability

1. Except as otherwise stated in section VIII.A, the Insurer's maximum liability for the sum of all Damages and all Claims Expenses because of all Claims, (including all Claims alleging any Interrelated Wrongful Acts) first made and reported during the Policy Period shall never exceed the amount stated in Item 3 of the Declarations.

2. All Claims arising out of the same Wrongful Act and all Interrelated Wrongful Acts of the Insureds shall be deemed to be one Claim, and such Claim shall be deemed to be first made on the date the earliest of such Claims is first made, regardless of whether such date is before or during the Policy Period. All Damages and all Claims Expenses resulting from a single Claim shall be deemed a single Damage and Claims Expense and shall be allocable to the policy in effect on the date the Claim is first made, regardless or whether such date is before or during the Policy Period.

3. Except as otherwise stated in section VIII.A, any payment of Damages and/or Claims Expenses by the Insurer will reduce the Limit of Liability stated in Item 3 of the Declarations.

4. The Insurer is entitled to pay Damages and Claims Expenses as they become due and payable by the Insureds, without consideration of other future payment obligations.

5. Once the Limit of Liability has been exhausted by payments of any Damages (regardless of whether the payment by the Insurer of Claims Expenses under section VIII.A. has exhausted, reached or exceeded the amount set forth in Item 3 of the Declarations), the obligations of the Insurer under this Policy shall be completely fulfilled and extinguished.

6. The Crisis Management Fund is the Insurer's maximum liability for all Crisis Management Expenses arising from any and all Crisis Events occurring during the Policy Period. This limit shall be the Insurer's maximum liability under this policy regardless of the number of Crisis Events reported during the Policy Period. The Insurer's obligation to pay Crisis Management Expense terminates and ends upon the exhaustion of the Crisis Management Fund. The Crisis Management Fund shall be in addition to the aggregate Limit of Liability set forth in Item 3 of the Declarations.
IX. RETENTION

A. The liability of the **Insurer** shall apply only to that part of **Damages** and **Claims Expenses** which are in excess of the applicable Retention amount shown in Item 4 of the Declarations. Such Retention shall be borne uninsured by the **Public Entity** and at the risk of all **Insureds**.

B. A single Retention amount shall apply to **Damages** and **Claims Expenses** arising from all **Claims** alleging **Interrelated Wrongful Acts**.

C. If different parts of a single **Claim** are subject to different Retentions, the applicable Retention shall be applied separately to each part of the **Damages** and **Claims Expenses**, but the sum of such Retentions shall not exceed the largest applicable Retention.

X. NOTICE

For coverage under this **Policy** (other than coverage for a **Crisis Event**):

A. The **Insured** shall, as a condition precedent to their rights under this **Policy**, give to the **Insurer** written notice of any **Claim** as soon as practicable, but in no event later than 30 days after: (1) the end of the **Policy Period**, or (2) with respect to **Claims** first made during any applicable Automatic or Optional **Extended Reporting Period**, the end of such Automatic or Optional **Extended Reporting Period**.

B. If, during the **Policy Period**, any **Insured** becomes aware of any specific **Wrongful Act** which may reasonably give rise to a future **Claim** covered under this **Policy**, and if the **Insureds** give written notice to the **Insurer** during the **Policy Period**, the Automatic **Extended Reporting Period**, or, if elected, the Optional **Extended Reporting Period** of:

   1. the identity of the potential claimants;

   2. a description of the anticipated **Wrongful Act** allegations;

   3. the identity of the **Insureds** allegedly involved;

   4. the circumstances by which the **Insureds** first became aware of the **Wrongful Act**;

   5. the consequences which have resulted or may result; and

   6. the nature of the potential monetary damages;

then any **Claim** which arises out of such **Wrongful Act** shall be deemed to have been first made at the time such written notice was received by the **Insurer**. No coverage is provided for fees, expenses and other costs incurred prior to the time such **Wrongful Act** results in a **Claim**.

C. All notices under any provision of this **Policy** shall be in writing and given by prepaid express courier, certified mail or facsimile transmission properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Public Entity** at the address shown in Item 1 of the Declarations. Notice to the **Insurer** of any **Claim** or **Wrongful Act** shall be given to the **Insurer** at the address set forth in Item 5A of the Declarations. All other notices to the **Insurer** under this **Policy** shall be given to the **Insurer** at the address set forth in Item 5B 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.
XI. PRESUMPTIVE INDEMNIFICATION

A. The Public Entity agrees to indemnify the Insured Persons to the fullest extent permitted by law, taking all steps necessary or advisable in furtherance thereof, including the making in good faith of any application for court approval. The Public Entity further agrees to advance Defense Costs actually and reasonably incurred by any Insured Person in defending any threatened, pending or contemplated action, suit or proceeding prior to a final disposition of any such action, suit or proceeding and shall not require any determination or adjudication, interim or final, of the entitlement of the Insured Person to indemnification, where permitted by law to do so. The financial ability of any Insured Person to make repayment shall not be a prerequisite to the making of such an advance, and the right to receive advancement of Claims Expenses herein is a contractual right. The agreements contained in this paragraph are binding upon the Public Entity and enforceable by the Insurer or the Insured Persons.

B. Notwithstanding anything in this section to the contrary, the Public Entity’s indemnification obligations under this section shall not apply in the event the Public Entity is neither permitted nor required to grant such indemnification either because of 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 Public Entity, or because of the Public Entity becoming a debtor-in-possession.

XII. OTHER INSURANCE

If any Damages or Claims Expenses covered under this Policy are covered under any other valid and collectible insurance, then this Policy shall cover such Damages or Claims Expenses, subject to its terms and conditions, only to the extent that the amount of such Damages or Claims Expenses are 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 by this Policy.

XIII. REPRESENTATIONS

A. The Insureds represent and acknowledge that the statements and information contained in the Application are true and accurate and:

1. are the basis of this Policy and are to be considered as incorporated into and constituting a part of this Policy; and

2. shall be deemed material to the acceptance of this risk or the hazard assumed by the Insurer under this Policy.

B. It is understood and agreed that this Policy is issued in reliance upon the truth and accuracy of such representations.

C. It is understood and agreed that if such representations or such information are not true, accurate and complete, this Policy shall be null and void in its entirety and the Insurer shall have no liability hereunder as to: (1) any Insured Person who knew the facts misrepresented or omitted, whether or not such Insured Person knew of the Application or this Policy; and (2) the Public Entity. For purposes of this subsection C, the knowledge of any Insured Person shall not be imputed to any other Insured Person.

XIV. TERMINATION OF THE POLICY

A. This Policy shall terminate at the earliest of the following times:

1. the effective date of termination specified in a prior written notice by the Public Entity to the Insurer;

2. 60 days after receipt by the Public Entity of a written notice of termination from the Insurer;

3. 10 days after receipt by the Public Entity of a written notice of termination from the Insurer for failure to pay a premium when due, unless the premium is paid within such 10 day period;
4. upon expiration of the Policy Period as set forth in Item 2 of the Declarations; or

5. at such other time as may be agreed upon by the Insurer and the Public Entity.

B. If the Policy is terminated by the Public Entity, or by the Insurer, the Insurer shall refund the unearned premium computed pro rata. Payment or tender of any unearned premium by the Insurer shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.

XV. TERRITORY AND VALUATION

A. All premiums, limits, retentions, Damages, Claims Expenses 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 Damages and Claims Expenses under this Policy is stated in a currency other than United States of America dollars, payment under this Policy shall be made in United States dollars at the applicable rate of exchange as published in The Wall Street Journal as of the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of Damages or Claims Expenses is due, respectively or if not published on such date, the next date of publication of The Wall Street Journal.

B. Coverage under this Policy shall extend to Wrongful Acts taking place or Claims made or Damages or Claims Expenses sustained anywhere in the world, provided the Claim is made within the jurisdiction of and subject to the laws of the United States of America, Canada or their respective territories or possessions.

XVI. SUBROGATION

In the event of any payment under this Policy, the Insurer shall be subrogated to the extent of such payment to all the rights of recovery of the Insureds. 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 Insurer effectively to bring suit or otherwise pursue subrogation rights in the name of the Insureds.

XVII. ACTION AGAINST THE INSURER AND BANKRUPTCY

Except as set forth below in Section XX, Alternative Dispute Resolution, no action shall lie against the Insurer. No person or organization shall have any right under this Policy to join the Insurer as a party to any action against any Insured to determine the liability of the Insured nor shall the Insurer be impleaded by any Insured or its legal representatives. Bankruptcy or insolvency of any Insured or of the estate of any Insured shall not relieve the Insurer of its obligations nor deprive the Insurer of its rights or defenses under this Policy.

XVIII. AUTHORIZATION CLAUSE

By the acceptance of this Policy, the Public Entity agrees to act on behalf of all Insureds with respect to the giving and receiving of notice of Claim, the giving or receiving of notice of termination or non renewal, the payment of premiums and the receiving of any premiums that may become due under this Policy, the agreement to and acceptance of endorsements, consenting to any settlement, exercising the right to the Extended Reporting Period, and the giving or receiving of any other notice provided for in this Policy, and all Insureds agree that the Public Entity shall so act on their behalf.

XIX. ALTERATION, ASSIGNMENT AND HEADINGS

A. 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 nor prevent the Insurer from asserting any right under the terms of this Policy.
B. 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 signed by an authorized representative of the Insurer.

C. The titles and headings to the various parts, sections, subsections and endorsements of the Policy are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of such parts, sections, subsections or endorsements.

XX. ALTERNATIVE DISPUTE RESOLUTION

The Insureds and the Insurer shall submit any dispute or controversy arising out of or relating to this Policy or the breach, termination or invalidity thereof to the alternative dispute resolution ("ADR") process set forth in this section.

Either an Insured or the Insurer may elect the type of ADR process discussed below; provided, however, that the Insured shall have the right to reject the choice by the Insurer of the type of ADR process at any time prior to its commencement, in which case the choice by the Insured of ADR process shall control.

There shall be two choices of ADR process:

A. non-binding mediation administered by any mediation facility to which the Insurer and the Insured mutually agree, in which the Insured and the Insurer shall try in good faith to settle the dispute by mediation in accordance with the then-prevailing commercial mediation rules of the mediation facility; or

B. arbitration submitted to any arbitration facility to which the Insured and the Insurer mutually agree, in which the arbitration panel shall consist of three disinterested individuals.

In either mediation or arbitration, the mediator or arbitrators shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. In the event of arbitration, the decision of the arbitrators shall be final and binding and provided to both parties, and the award of the arbitrators shall not include attorneys' fees or other costs.

In the event of mediation, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until at least 60 days after the date the mediation shall be deemed concluded or terminated. In all events, each party shall share equally the expenses of the ADR process.

Either ADR process may be commenced in New York, New York or in the state indicated in Item 1 of the Declarations as the principal address of the Public Entity. The Public Entity shall act on behalf of each and every Insured in connection with any ADR process under this section.

XXI. INTERPRETATION

The terms and conditions of this Policy shall be interpreted and construed in an evenhanded fashion as between the parties. If the language of this Policy is deemed to be ambiguous or otherwise unclear, the issue shall be resolved in the manner most consistent with the relevant terms and conditions, without regard to authorship of the language, without any presumption or arbitrary interpretation or construction in favor of either the Insureds or the Insurer and without reference to the reasonable expectations of either the Insureds or the Insurer.
**ExecPro**

*Directors', Officers', Insured Entity and Employment Practices Liability Insurance Policy*

Great American Insurance Company - Executive Liability Division: 1515 Woodfield Road, Suite 500, Schaumburg, IL 60173

**General Terms and Conditions**

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General Terms and Conditions

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

Section I. Terms and Conditions

Except for the General Terms and Conditions or unless stated to the contrary in any Coverage Part, 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. 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. A Coverage Part shall only apply if designated as “Included” in the Declarations and attached hereto.

Section II. Discovery Period

With respect solely to the Liability Coverage Parts (Coverage Parts A-C):

A. In the event the Insurer refuses to renew this Policy or the Named Entity chooses to cancel or not renew this Policy, the Named Entity shall have the right, upon payment of one hundred percent (100%) of the annual premium, (or if the Policy Period is other than annual, one hundred percent (100%) of the annualized premium), to an extension of the coverage provided by this Policy with respect to any Liability Claim(s) first made against any Insured during the period of twelve (12) months after the end of the Policy Period, but only with respect to any Wrongful Act committed or alleged to have been committed before the end of the Policy Period. This twelve (12) month period shall be referred to in this Policy as the “Discovery Period”.

B. As a condition precedent to the right to purchase the Discovery Period, the total premium for this Policy must have been paid, and a written request together with payment of the appropriate premium for the Discovery Period must be provided to the Insurer no later than thirty (30) days after the end of the Policy Period.

C. The purchase of the Discovery Period shall not in any way increase the Limit(s) of Liability stated in Item 3 of the Declarations. For purposes of the Limit(s) of Liability, the Discovery Period is part of, and not in addition to, the Policy Period.

Section III. Definitions

A. “Company” shall mean the Named Entity and any Subsidiary.

B. “Costs of Defense” shall mean reasonable and necessary legal fees, costs and expenses incurred in the investigation, defense or appeal of any Liability Claim including the costs of an appeal bond, attachment bond or similar bond (but without obligation on the part of the Insurer to apply for or furnish such bonds). However, Costs of Defense shall not include salaries, wages, overhead or benefit expenses accruing to any Insured Person.
C. "Financial Insolvency" shall mean the Company becoming a debtor in possession, or the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the Company.

D. "Insured" and "Insured Person" shall have the meaning as such terms are defined in each Included Coverage Part.

E. "Liability Claim" shall mean a Claim as that term is defined in each Liability Coverage Part if such Coverage Part is Included.

F. "Liability Coverage Part" shall mean Coverage Part A (Directors and Officers and Entity Coverage); Coverage Part B (Employment Practices Liability Coverage); and Coverage Part C (Fiduciary Liability Coverage); as if such Coverage Parts are Included.

G. "Loss" shall mean a Loss as that term is defined in each Liability Coverage Part if such Coverage Part is Included.

H. "Named Entity" shall mean the entity named in Item I of the Declarations.

I. "Non-Liability Coverage Event" shall mean a Coverage Event as that term is defined in the Non-Liability Coverage Part, if such Coverage Part is Included.

J. "Non-Liability Coverage Part" shall mean Coverage Part D (Commercial Crime Coverage), if such Coverage Part is Included.

K. "Policy Period" shall mean the period from the inception date of this Policy to the expiration date of this Policy as set forth in Item 2 of the Declarations, or its earlier termination if applicable.

L. "Related Wrongful Acts" shall mean Wrongful Acts which are logically or causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event or decision.

M. "Single Loss" shall mean:

   (1) all Loss arising from any Liability Claim(s) involving the same Wrongful Act or Related Wrongful Acts;

   (2) all loss or losses caused by a Non-Liability Coverage Event.

N. "Subsidiary" shall mean any entity in which the Named Entity owns, directly or indirectly, more than fifty percent (50%) of the voting stock:

   (1) on or before the inception date of this Policy;

   (2) subsequent to the inception date of this Policy by reason of being created or acquired by the Company after such date, if the entity's total assets do not exceed twenty five percent (25%) of the total consolidated assets of the Named Entity as of the inception date of this Policy; or

   (3) subsequent to the inception date of this Policy by reason of being created or acquired by the Company other than as described in (2) above, if theNamed Entity, within ninety (90) days, provides the Insurer with written notice thereof and agrees to any premium adjustment and/or coverage revision required by the Insurer.

O. "Wrongful Act" shall mean a Wrongful Act as that term in defined in each Liability Coverage Part if such Coverage Part is Included.
Section IV. Limits of Liability

A. The Liability Coverage Parts of this Policy are offered with either a Single Limit of Liability applicable in the aggregate to all Liability Coverage Parts or a Separate Limit of Liability for each Liability Coverage Part as set forth in Item 3 of the Declarations (and the COVERAGE SCHEDULE), but never with both.

(1) If a Single Limit of Liability is designated in Item 3 of the Declarations:
   i. The Insurer's maximum aggregate Limit of Liability for all Loss under this Policy, regardless of the number of Coverage Parts Included or Liability Claims, shall be the amount shown in Item 3 of the Declarations;
   ii. The Insurer's obligations under this Policy shall be deemed completely fulfilled and extinguished if the Limit of Liability is exhausted by payment of Loss regardless of the time of payment or the number of Liability Claims; and
   iii. The Insurer shall be liable to pay all Loss in excess of the applicable Retention amount set forth in Column 4 of the COVERAGE SCHEDULE pursuant to Item 3 of the Declarations up to the applicable Limit of Liability stated in Item 3 of the Declarations.

(2) If Separate Limits of Liability are designated in Item 3 of the Declarations, the separate amounts set forth in Column 3 of the COVERAGE SCHEDULE shall be the Separate Limit of Liability for each Coverage Part Included. Each such Separate Limit of Liability shall be the maximum aggregate Limit of Liability for all Loss pursuant to each respective Coverage Part regardless of the number of Liability Claims made against the Insureds under such Coverage Part.

(3) Costs of Defense shall be part of, and not in addition to, the applicable Limit of Liability and such Costs of Defense shall serve to reduce the Limit of Liability. Once the applicable Limit of Liability has been exhausted by the payment of Loss, the Insurer's duty to defend Liability Claim(s) shall cease.

B. The Non-Liability Coverage Part of this Policy is offered with either a Single Limit of Liability applicable in the aggregate to all Insuring Agreements or a Separate Limit of Liability for each Insuring Agreement as set forth in Item 3 of the Declarations (and the COVERAGE SCHEDULE), but never with both.

(1) If a Single Limit of Liability is designated in Item 3 of the Declarations:
   i. The Insurer's maximum aggregate Limit of Liability for all Loss under this Policy, regardless of the number of Insuring Agreements Included or Non-Liability Coverage Events, shall be the amount shown in Item 3 of the Declarations;
   ii. The Insurer's obligations under this Policy shall be deemed completely fulfilled and extinguished if the Limit of Liability is exhausted by payment of loss regardless of the time of payment or the number of Non-Liability Coverage Events; and
   iii. The Insurer shall be liable to pay all loss in excess of the applicable Retention amount set forth in Column 4 of the COVERAGE SCHEDULE pursuant to Item 3 of the Declarations up to the applicable Limit of Liability stated in Item 3 of the Declarations.
Section V. Retention

A. The Retention(s) for the Liability Coverage Parts are set forth in the COVERAGE SCHEDULE attached pursuant to Item 3 of the Declarations.

B. The Insurer shall pay one hundred percent (100%) of a Single Loss in excess of the applicable Retention, if any, up to the applicable Limit of Liability stated in Item 3 of the Declarations. The Company shall be responsible for, and shall hold the Insurer harmless from, any amount within the Retention.

C. In the event more than one Retention applies to the Loss, only the highest Retention shall be applied.

D. More than one Liability Claim involving the same Wrongful Act or Related Wrongful Acts, regardless of the number of Insureds involved, shall be considered a Single Loss, and only one Retention shall be applicable to such Single Loss.

E. For purposes of the application of the Retention, Loss applicable to Liability Claims against Insured Persons includes that for which indemnification is legally permissible, whether or not actual indemnification is granted. In the event the Company is unable to indemnify the Insured Persons solely by reason of its Financial Insolvency, the Insurer shall, pursuant to the terms and conditions of Section VIII.F. below, advance Costs of Defense incurred by the Insured Persons without first requiring payment of the Retention applicable to Liability Claims made against Insured Persons. The certificate of incorporation, charter or other organizational documents of the Company or Employee Benefit Plan, including by-laws and resolutions, shall be deemed to require indemnification and advancement of Loss to the Insured Persons to the fullest extent permitted by law.

F. With respect solely to any Securities Claim covered under Coverage Part A, the Retention shall apply only to Costs of Defense.

G. With respect solely to Coverage Part D:

1. The Insurer will not pay for loss due to any one Coverage Event unless the amount of loss exceeds the Retention. The Insurer then will pay the amount of loss in excess of the Retention, up to the Limit of Liability. In the event more than one Retention could apply to loss, only the highest Retention shall be applied.

2. For loss covered under Insuring Agreement A, the Insured must:
   a. give the Insurer notice as soon as possible even if the loss falls entirely within the Retention; and
   b. upon the Insurer's request, give the Insurer a statement describing the loss.

3. The Retention does not apply to loss sustained by any Employee Benefit Plan(s).
Section VI. Allocation

If:

(A) There is a Liability Claim made against any Insured, or there is a Non-Liability Coverage Event, and such Liability Claim or Non-Liability Coverage Event includes both covered and uncovered matters pursuant to this Policy; or

(B) Coverage is extended for a Liability Claim made against an Insured, or Non-Liability Coverage Event occurs, and such Liability Claim or Non-Liability Coverage Event is also made against others (including Insureds who are not extended coverage for such Liability Claim or Non-Liability Coverage Event),

the Insured and the Insurer recognize and agree there must be an allocation between the insured and uninsured portion of any Single Loss. The Insureds and the Insurer shall use their best efforts to agree upon a fair and proper allocation.

Section VII. Coordination Among Liability Coverage Parts

In the event any Liability Claim is covered under more than one Liability Coverage Part, any Loss payable by the Insurer shall first be paid under, and subject to, the Limit of Liability and Retention applicable to:

(A) Coverage Part B (Employment Practices Liability Coverage), if such Claim falls within Coverage Part B and Coverage Part B is Included in the COVERAGE SCHEDULE; or

(B) Coverage Part A (Directors and Officers and Entity Coverage), if such Claim does not fall within Coverage Part B, but does fall within Coverage Part A and Coverage Part A is Included in the COVERAGE SCHEDULE.

If Separate Limits of Liability are provided pursuant to Item 3 of the Declarations, it is further understood and agreed the maximum Limit of Liability for any Liability Claim covered under more than one Liability Coverage Part shall not exceed the highest available remaining Limit of Liability of the applicable Liability Coverage Parts. This provision in no way increases the Limit of Liability available under any individual Coverage Part.

Section VIII. Defense and Settlement

A. The Insurer shall assume the duty to defend any Liability Claim covered under any Liability Coverage Part.

B. The Insureds shall at all times have the right to associate with the Insurer in the investigation, defense or settlement of any Liability Claim to which coverage under this Policy may apply.

C. The Insureds have the right to assume the defense of any Liability Claim against them. The Named Entity shall exercise this option in writing on behalf of all Insureds within thirty (30) days of the reporting of the Liability Claim to the Insurer. If this option is exercised, the Insurer shall not re-assume the defense of the Liability Claim. However, the Insurer shall at all times have the right to associate with the Insured in the investigation, defense or settlement of any Liability Claim to which coverage under this Policy may apply.
D. The Insurer has the right to settle any Liability Claim. In the event the Insurer recommends a settlement and the Insured refuses to consent thereto, the Insurer's liability for such Liability Claim is limited to the amount in excess of the Retention which the Insurer would have contributed to the settlement had the Insured consented to settlement, the Costs of Defense covered by the Policy and incurred prior to the date of such refusal to settle, and fifty percent (50%) of any additional covered Loss, including Costs of Defense, incurred subsequent to such refusal and subject to the Limit of Liability.

E. The Insureds shall not retain counsel, incur Costs of Defense, admit liability, offer to settle, or agree to any settlement in connection with any Liability Claim without the express prior written consent of the Insurer, which consent shall not be unreasonably withheld. The Insureds shall provide the Insurer with all information and particulars it may reasonably request in order to reach a decision as to such consent. Any Loss resulting from any Costs of Defense incurred, admission of liability, or any offer or agreement to settle prior to the Insurer's consent shall not be covered.

F. In the event the Insured assumes the defense of any Liability Claim, the Insurer shall advance Costs of Defense prior to the final disposition of any Liability Claim, provided such Liability Claim is covered by this Policy. Any advancement shall be on the condition that:

1. the appropriate Retention has been satisfied;
2. any amounts advanced by the Insurer shall serve to reduce the Limit of Liability stated in Item 3 of the Declarations to the extent they are not in fact repaid;
3. the Insureds and the Insurer have agreed upon the allocated portion of the Costs of Defense attributable to covered Liability Claims against the Insureds; and
4. in the event it is established that the Insurer has no liability under the Policy for such Loss, the Insureds will repay the Insurer upon demand all Costs of Defense advanced.

Section IX. Notice

A. With respect to any Liability Claim for which coverage is provided under any Liability Coverage Part, the Insureds shall, as a condition precedent to their rights under this Policy, give the Insurer notice in writing of such Liability Claim:

1. as defined in subparagraph (1) of the definition of Claim in the applicable Liability Coverage Part, which is made during the Policy Period. Such notice shall be given prior to the end of the Policy Period; or
2. as defined in subparagraph (2) of the definition of Claim in the applicable Liability Coverage Part, which is made during the Policy Period. Such notice shall be given as soon as practicable, but in no event later than ninety (90) days after the end of the Policy Period.

The Insureds failure to report a Claim pursuant to (1) above shall not negate the right to report a Claim pursuant to (2) above under this Policy or any renewal thereof.

B. If, during the Policy Period or Discovery Period, any Insured first becomes aware of a specific Wrongful Act and gives notice to the Insurer of:

1. the specific Wrongful Act;
(2) the injury or damage which has or may result therefrom; and

(3) the circumstances by which the Insured first became aware thereof;

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

C. All Liability Claims constituting a Single Loss shall be deemed to have been made on the earlier of the following dates: (1) the earliest date on which any such Liability Claim was first made; or (2) the earliest date on which any such Wrongful Act or Related Wrongful Act was reported under this Policy or any other policy providing similar coverage.

D. In addition to furnishing notice of any Liability Claim as provided in paragraphs IX. A and IX. B, the Insureds shall give to the Insurer any such assistance, cooperation and information as the Insurer may reasonably require, including copies of reports, investigations, pleadings and other papers in connection therewith.

E. With respect to Coverage Part D, Commercial Crime Coverage:

(1) Discovery of loss occurs when the Insured first becomes aware of facts which would cause a reasonable person to assume a loss covered by this insurance has been or will be incurred, even though the exact amount or details of loss may not then be known. Discovery also occurs when the Insured receives notice of an actual or potential claim alleging facts that, if true, would constitute a covered loss under this Coverage Part.

(2) After discovery of a loss or a situation that may result in loss of, or loss from damage to Money, Securities or Other Property, the Insureds shall, as a condition precedent to their rights under this Policy:

(a) notify the Insurer, as soon as possible, not to exceed sixty (60) days after the date of discovery;

(b) give the Insurer a detailed, sworn proof of loss within 120 days after the date of discovery;

(c) submit to examination under oath at the request of the Insurer and give the Insurer a signed statement of the Insured's answers; and

(d) cooperate with the Insurer in the investigation and settlement of any loss under Coverage Part D.

F. Notice to the Insurer as required under Section IX.A., B and E. shall be given to:

GREAT AMERICAN INSURANCE COMPANIES
EXECUTIVE LIABILITY DIVISION
CLAIMS DEPARTMENT
P.O. BOX 66943 CHICAGO, IL 60666.
Section X. Pollution Exclusion

The **Insurer** shall not be liable under any Coverage Part to make any payment for Loss based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged seepage, pollution, radiation, emission, contamination or irritant of any kind, including but not limited to smoke, vapor, dust, fibers, mold, spores, fungi, gems, soot, fumes, acids, alkalis, asbestos, chemicals, or waste. This exclusion shall not apply to a derivative suit by a security holder of the **Company** if the security holder bringing such Claim is acting totally independent of, and without the solicitation, assistance, active participation or intervention of any Director or Officer or the Company if such Claim is otherwise covered under Coverage Part A if included.

Section XI. Cancellation or Non-Renewal

A. This Policy may be canceled by the **Named Entity** at any time by written notice to the **Insurer**. Upon cancellation, the **Insurer** shall retain the customary short rate portion of the premium.

B. This Policy may only be canceled by the **Insurer** if the **Named Entity** does not pay the premium when due.

C. If the **Insurer** elects not to renew this Policy, the **Insurer** shall provide the **Named Entity** with no less than sixty (60) days advance notice thereof.

Section XII. Proposal Forms

With respect to any **Liability Coverage Part**, it is agreed by the **Company** and the **Insured Persons** that the particulars and statements contained in the Proposal Forms and any information provided therewith (which shall be on file with the **Insurer** and be deemed attached hereto as if physically attached) are the basis of this Policy and are to be considered as incorporated in and constituting a part of this Policy. It is further agreed by the **Company** and the **Insured Persons** that the statements in the Proposal Forms or any information provided therewith are their representations, they are material, and this Policy is issued in reliance upon the truth of such representations; provided, however, that except for material facts or circumstances known to the person(s) who signed the Proposal Forms, any misstatement or omission in such Proposal Forms or information provided therewith in respect of a specific **Wrongful Act** by a particular **Insured Person** or their cognizance of any matter which they have reason to suppose might afford grounds for a future **Liability Claim** against them shall not be imputed to any other **Insured Person** for purposes of determining the validity of this Policy as to such other **Insured Person**.

Section XIII. Action Against the Insurer

A. With respect to any **Liability Coverage Part**, no action shall be taken against the **Insurer** unless, as a condition precedent thereto, there has been full compliance with all the terms of this Policy, and until the **Insured**'s obligation to pay has been finally determined by an adjudication against the **Insured** or by written agreement of the **Insured**, claimant and the **Insurer**.

B. With respect to any **Non-Liability Coverage Part**, no action shall be taken against the **Insurer** unless, as a condition precedent thereto, there has been full compliance with all the terms of this Policy, and until 90 days after the **Insured** has given the **Insurer** notice and has provided the **Insurer** with an affirmative proof of loss with full particulars and unless brought within two (2) years from the date the **Insured** discovers the loss.

C. No person or organization shall have any right under this Policy to join the **Insurer** as a party to any action against the **Insureds** nor shall the **Insurer** be impleaded by any **Insured** or their legal representative in any such action.
Section XIV. Merger or Acquisition

A. If, during the Policy Period, the Company acquires the assets of another entity, by merger or otherwise, and the acquired assets of such other entity exceed twenty-five percent (25%) of the assets of the Named Entity as of the inception date of the Policy, written notice thereof shall be given to the Insurer as soon as practicable, but in no event later than ninety (90) days from the effective date of the transaction, together with such information as the Insurer may request. Premium adjustment and coverage revisions shall be effected as may be required by the Insurer.

B. There is no coverage for any Wrongful Act of any Subsidiary or the Insured Persons of such Subsidiary or any entity that merges with the Company or the Insured Persons of such entity that merges with the Company occurring:

1. prior to the date such entity became a Subsidiary or was merged with the Company;
2. subsequent to the date such entity became a Subsidiary or was merged with the Company which, together with a Wrongful Act occurring prior to the date such entity became a Subsidiary or was merged with the Company, would constitute Related Wrongful Acts; or
3. subsequent to the date the Named Entity ceased to own, directly or indirectly, more than fifty percent (50%) of the voting stock of such Subsidiary;

C. With respect to Coverage Part D, if through consolidation or merger with, or purchase or acquisition of assets or liabilities of, some other entity, any additional persons become Employees, or the Insured acquires the use and the control of any additional Premises:

1. the Insured must give the Insurer written notice and obtain the Insurer’s written consent to extend this insurance to such additional Employees or Premises. The Insurer may condition its consent upon payment of an additional premium; but
2. for the first sixty (60) days after the effective date of such consolidation, merger or purchase or acquisition of assets or liabilities, any insurance afforded for Employees or Premises also applies to these additional Employees or Premises for acts committed or events occurring within the sixty (60) day period.

Section XV. Conversion to Run-Off Coverage

If, during the Policy Period, a transaction occurs wherein another entity gains control of the Named Entity through the ownership of more than fifty percent (50%) of the voting stock of the Named Entity; the Named Entity merges into another entity or consolidates with another entity such that the Named Entity is not the surviving entity; or the Named Entity’s responsibilities for the Administration of, or as a fiduciary of, any Employee Benefit Plan are assumed by another person or entity; then:

(A) the Named Entity must give written notice of such transaction to the Insurer within ninety (90) days after the effective date of such transaction and provide the Insurer with such information in connection therewith as the Insurer may deem necessary;

(B) this Policy shall only apply to any Wrongful Acts actually or allegedly committed on or before the effective date of such transaction, or any Non-Liability Coverage Event discovered before the effective date of such transaction, and shall be excess of any other insurance available;
(C) if the change of control arises in connection with the appointment of a receiver, conservator, liquidator, trustee, rehabilitator, or similar official to take control of, supervise, manage, or liquidate the Named Entity; or any other taking over of, or taking control of the Named Entity by any governmental agency, body or representatives; or the Named Entity becoming a debtor-in-possession under United States bankruptcy law, there shall be no coverage under a Non-Liability Coverage Part for any event reported after the effective date of the change of control; and

(D) the entire premium for this Policy shall be deemed earned as of the date of such transaction.

Section XVI. Coverage Extensions

A. Spousal Provision

The coverage provided by this Policy shall also apply to the lawful spouse of an Insured Person, but only for Liability Claims arising out of any actual or alleged Wrongful Acts of an Insured Person.

B. Estates and Legal Representatives

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

C. Worldwide Provision

The coverage provided under this Policy shall apply worldwide, unless a territory is specifically excluded within a Coverage Part.

D. Created, Acquired or Merged Plans

With respect to Coverage Part C, any Employee Benefit Plan (other than an Employee Stock Ownership Plan as defined in ERISA, or in any related or similar state, local or foreign law or regulation) which, subsequent to the effective date of this Policy, is created or acquired by the Company, or merged with any Employee Benefit Plan which was afforded coverage under this Policy prior to such merger, shall be included as an Insured as of the date of creation, acquisition or merger unless the created, acquired, or merged Employee Benefit Plan is a Pension Plan whose assets exceed ten percent (10%) of the assets of all Pension Plans of the Company as of the inception date of the Policy. In that event, if written notice thereof is given to the Insurer within ninety (90) days of such creation, acquisition, or merger, and the Insured agrees to any premium adjustments and/or coverage revision as may be required by the Insurer, then such Pension Plan shall be included as an Insured as of the date of creation, acquisition or merger. In any event, coverage shall only be afforded for Wrongful Acts actually or allegedly occurring after the date of such creation, acquisition or merger unless the Insurer agrees by written endorsement to provide coverage for Wrongful Acts actually or allegedly occurring at an earlier date.

Section XVII. Subrogation

In the event of any payment under this Policy, the Insurer shall be subrogated to all of the Insurees' rights of recovery. The Insurees shall execute all papers required and shall do everything necessary to secure such rights, including the execution of such documents necessary to enable the Insurer to effectively bring suit in the name of any Insured. With respect to Coverage Part C, if the premium for such Coverage Part is paid for by an Employee Benefit Plan, the Insurer may seek recourse against a fiduciary in the case of a breach of fiduciary duty.
Section XVIII. Assignment

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

Section XIX. Conformity to Statute

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

Section XX. Entire Agreement

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

Section XXI. Named Entity Represents Insureds

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

Section XXII. Representative of the Insurer

Great American Insurance Companies, Executive Liability Division, P.O. Box 66943, Chicago, Illinois 60666 shall act on behalf of the Insurer for all purposes including, but not limited to, the giving and receiving of all notices and correspondence, the cancellation or non-renewal of this Policy, the payment of premiums, and the receipt of any return premiums that may be due under this Policy.

Section XXIII. Arbitration

It is agreed that any disputes or disagreements which arise in connection with this Policy and cannot be resolved through negotiation shall be resolved through final and binding arbitration. The dispute shall be submitted to the American Arbitration Association for resolution pursuant to its then prevailing commercial arbitration procedures. The panel shall consist of one arbitrator selected by the Corporation, one arbitrator selected by the Insurer and a third independent arbitrator selected by the first two arbitrators. Each party will bear its own legal fees and expenses. The costs and expenses of the arbitration procedure shall be split equally by the parties.

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

GREAT AMERICAN INSURANCE COMPANIES

[Signature]
President

[Signature]
Secretary

D 15100 (12/03)
ExecPro®

Directors', Officers', Insured Entity and Employment Practices Liability Insurance Policy

Great American Insurance Company - Executive Liability Division:
1515 Woodfield Road, Suite 500, Schaumburg, IL 60173

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COVERAGE PART A
DIRECTORS' AND OFFICERS' AND ENTITY COVERAGE

Section I. Insuring Agreements

A. The Insurer shall pay on behalf of the Insured Persons all Loss which the Insured Persons shall be legally obligated to pay as a result of a Claim first made against the Insured Persons during the Policy Period or the Discovery Period for a Wrongful Act, except for any Loss which the Company actually pays as indemnification.

B. The Insurer shall pay on behalf of the Company all Loss which the Insured Persons shall be legally obligated to pay as a result of a Claim first made against the Insured Persons during the Policy Period or the Discovery Period for a Wrongful Act, but only to the extent the Company is required or permitted by law to indemnify the Insured Persons.

C. The Insurer shall pay on behalf of the Insured Entity all Loss which the Insured Entity shall be legally obligated to pay as a result of a Claim first made against the Insured Entity during the Policy Period or the Discovery Period for a Wrongful Act.

D. Insuring Agreements A and B above are extended to cover Loss in connection with Claims made against the Insured Persons arising out of their services as a director, officer, trustee, regent or governor for Outside Entity(ies) provided that: (a) such service is provided with the consent or direction of the Company; (b) such Insured Persons are legally entitled to indemnification by the Company as of the date of the occurrence of the alleged Wrongful Act; and also provided that:

1. this coverage is available only to the extent that the Insured Persons are not indemnified by the Outside Entity(ies);
2. this coverage is to be in excess of any other insurance including but not limited to Directors' and Officers' Liability Insurance and/or Directors' and Officers' Reimbursement Insurance provided for, to, or by the Outside Entity(ies); and
3. in the event the Executive Liability Division of the Great American Insurance Group provides Directors' and Officers' Liability Insurance for the Outside Entity: (a) all Loss incurred from all Claims submitted under this Policy and the Outside Entity's Policy (hereinafter referred to as "Respective Policy(ies)") that arises out of the same Wrongful Act or fact, circumstance or situation, or any Related Wrongful Acts or facts, circumstances or situations, or one or more series of any similar, repeated or continuous Wrongful Acts shall be considered a single Loss; and (b) the maximum annual aggregate Limit of Liability available for such single Loss shall be no greater than the highest Limit of Liability of such Respective Policies, with such Limit of Liability being part of, and not in addition to, the Limits of Liability of the Respective Policies previously referenced.

Section II. Definitions

A. "Claim" shall mean:

1. a written demand for monetary or non-monetary relief made against any Insured; or
(2) a civil, criminal, administrative or arbitration proceeding made against any Insured seeking monetary or non-monetary relief and commenced by the filing of a complaint or similar pleading, the return of an indictment, or the filing of notice of charges or similar document, or a Securities Claim.

B. "Employee" shall mean any individual whose labor or service is engaged and directed by the Company in the ordinary course of the Company’s business including past, present, future, part-time, seasonal, temporary or leased employees. However, Employee shall not mean independent contractors unless specifically included by written endorsement to this policy.

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

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

E. "Insured Persons" shall mean

(1) all persons who were, now are, or shall be directors, officers, management committee members, members of the Board of Managers or natural person general partners of the Company; and

(2) all Employees.

F. "Loss" shall mean compensatory damages, punitive or exemplary damages, the multiple portion of any multiplied damage award, settlements and Costs of Defense, provided, however, Loss shall not include criminal or civil fines or penalties imposed by law, taxes, or any matter which may be deemed uninsurable under the law pursuant to which this Policy shall be construed. It is understood and agreed that the enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for punitive or exemplary damages or the multiple portion of any multiplied damage award. Loss shall also not include any portion of damages, judgments or settlements arising out of any Claim alleging that the Company paid an inadequate price or consideration for the purchase of any securities.

G. "Outside Entity" shall mean any not for profit entity classified under Section 501(c)(3) of the Internal Revenue Code of 1986 and any amendments thereto.

H. "Securities Claim" shall mean any Claim (including a civil lawsuit or criminal proceeding brought by the Securities and Exchange Commission) made against an Insured alleging a violation of any federal, state, local or foreign securities law, regulation or rule, whether statutory or common law, which is:

(1) brought by any person or entity alleging, arising out of, based upon or attributable to, in part or in whole, the: (a) purchase or sale of, or (b) offer or solicitation of an offer to purchase or sell, any securities of the Company that are in fact in law exempt from registration under the Securities Act of 1933 and any amendments thereto or any rules or regulations promulgated thereunder, or

(2) brought by a security holder of the Company, arising solely with respect to such security holder’s interest in such securities of the Company, whether directly, by class action, or derivatively on behalf of the Company.
I. "Wrongful Act(s)" shall mean:

(1) any actual or alleged act, omission, error, misstatement, misleading statement, neglect or breach of duty, by any Insured Persons in their capacity with the Company;

(2) with respect only to Insuring Agreement I.C., any actual or alleged act, omission, error, misstatement, misleading statement, neglect or breach of duty by the Insured Entity;

(3) any matter claimed against any Insured Persons solely by reason of their status with the Company; or

(4) with respect only to Insuring Agreement I.D., any matter claimed against any Insured Persons arising out of their service as a director, officer, trustee or governor of an Outside Entity, but only if such service is with the consent or direction of the Company.

Section III. Exclusions

1. With respect to all Insuring Agreements, the Insurer shall not be liable to make any payment for Loss in connection with any Claim made against any Insured:

A. brought about or contributed to by:

(1) any Insureds gaining any profit, advantage or remuneration to which they were not legally entitled; or

(2) the deliberately fraudulent or criminal acts of any Insureds;

provided, however, that this exclusion shall only apply if it is finally adjudicated that such conduct in fact occurred, the Wrongful Act(s) of any Insured Person shall not be imputed to any other Insured Person, and only the Wrongful Act(s) of any past, present or future chairman of the board, president, chief executive officer, chief operating officer or chief financial officer of the Company shall be imputed to the Insured Entity.

B. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any Wrongful Act(s) or Related Wrongful Act(s) or any fact, circumstance or situation which has been the subject of any notice given or Claim reported under any other policy of which this Policy in whole or in part is a direct or indirect renewal or replacement;

C. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any prior and/or pending civil, criminal, administrative, arbitration or investigative proceeding involving the Company and/or any Insured Persons as of the date stated in Item 4 of the Declarations, or any fact, circumstance or situation underlying or alleged in such proceeding;

D. for any actual or alleged:

(1) bodily injury, sickness, disease, or death of any person;
(2) damage to or destruction of any tangible property, including the loss of use thereof; or

(3) mental anguish, emotional distress, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, libel or slander;

E. for any Wrongful Act of any Insured in connection with any pension or welfare plans of the Company;

F. by or on behalf of the Company, or any security holder of the Company, or any Insured Person, provided, however, this exclusion shall not apply to:

(1) any Claim brought by any Insured Person where such Claim is in the form of a cross-claim or third party claim for contribution or indemnity which is part of and results directly from a Claim which is not otherwise excluded by the terms of this Policy; or

(2) any Claim brought by any security holder of the Company whether directly or derivatively, if the security holder bringing such Claim is acting totally independent of, and without the solicitation, assistance, active participation or intervention of any past or present director, officer, management committee member, member of the Board of Managers or natural person General Partner of the Company, or the Company;

G. which is insured in whole or in part by another valid policy or policies (except with respect to any excess beyond the amount or amounts of coverage under such other policy or policies) whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise;

H. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving the filing of a Registration Statement under the Securities Act of 1933 including particularly an allegation that a Prospectus, as it is declared effective, contained an untrue statement of a material fact, or omitted a statement of material fact required to be stated therein or deemed necessary to make the statements therein not misleading; provided, however, that this exclusion shall not apply if, no later than thirty (30) days prior to the effective date of the Registration Statement, the Insured provides written notice of the proposed sale or offering together with all information requested by the Insurer relating thereto, and the Insured accepts the terms, conditions, limitations, and additional premium the Insurer may require with respect to such sale or offering.

2. With respect to Insuring Agreements A-C, the Insurer shall not be liable to make any payment for Loss in connection with any Claim made against any Insured for any Wrongful Act of any Insured Persons serving as a director, officer, trustee, Regent or governor of any entity other than the Company, including but not limited to an Outside Entity, even if directed or requested to serve as a director, officer, trustee or governor of such entity.

3. With respect to Insuring Agreement C, the Insurer shall not be liable to make any payment for Loss in connection with any Claim made against the Insured Entity:

A. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged breach by the Insured Entity of an express or implied contract or agreement;
B. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving charges of price fixing, restraint of trade, monopolization or unfair trade, or any actual or alleged violation of the Federal Trade Commission Act, the Sherman Antitrust Act, the Clayton Act, or any other federal statutory provision involving antitrust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities, or any rules or regulations promulgated under or in connection with such statutes, or any similar provision or any state, federal or local statutory law or common law;

C. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged plagiarism or infringement of copyright, patent, trademark or trade name, or misappropriation of ideas or trade secrets;

D. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged, defect, deficiency, inadequacy or dangerous condition of any of the Insured Entity's products, including warranties or representations made at any time with respect to the fitness, quality, curability, performance or use of such products;

E. for the performance or actual or alleged failure to perform, any services for others for a fee or other consideration, and caused by any act, error or omission; provided, however, this exclusion shall only apply to any Claim brought by or on behalf of any individual(s) and/or entity(ies) and/or affiliates of such individual(s) and/or entity(ies) for whom such services were, now are or shall be performed; and this exclusion shall not apply to any Securities Claim.

4. With respect to Insuring Agreement D, the Insurer shall not be liable to make any payment for Loss in connection with any Claim made against any Insured:

A. by or at the behest of the Outside Entity, or any affiliate of the Outside Entity or any director or officer of the Outside Entity; or

B. by any security holder of the Outside Entity, whether directly or derivatively, unless such security holder bringing such Claim is acting totally independent of, and totally without the solicitation of, or assistance of, or intervention of, any director or officer, or the Outside Entity, or any affiliate of the Outside Entity.
**ExecPro®**

Directors', Officers', Insured Entity and Employment Practices Liability Insurance Policy

Great American Insurance Company - Executive Liability Division:  
1515 Woodfield Road, Suite 500, Schaumburg, IL 60173

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SPECIMEN
COVERAGE PART B.
EMPLOYMENT PRACTICES LIABILITY COVERAGE

Section I. Insuring Agreement

The Insurer shall pay on behalf of the Insureds all Loss which the Insureds shall be legally obligated to pay as a result of a Claim first made against and Insured during the Policy Period or the Discovery Period for a Wrongful Act by an Insured or any person for whom the Insured is legally responsible even if the allegations of such Claim are groundless, false or fraudulent.

Section II. Definitions

A. "Claim" shall mean:

(1) a written demand for monetary or non-monetary relief made against any Insured; or

(2) a civil, criminal, administrative or arbitration proceeding made against any Insured seeking monetary or non-monetary relief and commenced by the filing of a complaint or similar pleading, the return of an indictment, or the filing of notice of charges or similar document, including any proceeding initiated against any Insured before the Equal Employment Opportunity Commission (EEOC) or any similar governmental body.

In no event shall the term "Claim" include any labor or grievance proceeding which is subject to a collective bargaining agreement.

B. "Claimant" shall mean all Employees and prospective Employees of the Company, any natural person independent contractor treated as an employee of the Company under applicable law, or any governmental agency acting on behalf of an Employee or prospective Employee.

C. "Employee" shall mean any individual whose labor or service is engaged and directed by the Company in the ordinary course of the Company's business including past, present, future, part-time, seasonal, temporary or leased employees. However, Employee shall not mean independent contractors unless specifically included by written endorsement to this Policy.

D. "Insured(s)" shall mean the Company and all Insured Persons.

E. "Insured Persons" shall mean:

(1) all persons who were, now are, or shall be directors, officers, management committee members, members of the Board of Managers or natural person General Partners of the Company; and

(2) all Employees.

F. "Loss" shall mean judgments, compensatory damages, punitive or exemplary damages, the multiple portion of any multiplied damage award, settlements and Costs of Defense. Loss shall not include criminal or civil fines or penalties imposed by law, taxes, or any matter deemed uninsurable under the law pursuant to which this Policy shall be construed. The enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for punitive or exemplary damages or the multiple portion of any multiplied damage award.
G. "Wrongful Act" shall mean any of the following acts but only if alleged by or on behalf of a Claimant:

1. wrongful dismissal, discharge or termination of employment, whether actual or constructive, or breach of an implied employment contract;
2. employment related misrepresentation;
3. workplace harassment of any kind including sexual harassment;
4. discrimination;
5. wrongful failure to employ or promote;
6. wrongful discipline;
7. wrongful demotion or deprivation of career opportunity, including defamatory statements made in connection with an employee reference;
8. failure to grant tenure;
9. negligent evaluation;
10. failure to provide and enforce adequate workplace or employment policies and procedures;
11. wrongful retaliation; or
12. employment related libel, slander, defamation, or invasion of privacy.

Section III. Exclusions

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

A. brought about or contributed to by:

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

provided, however, that

1. this exclusion shall only apply if it is finally adjudicated that such conduct in fact occurred; and
2. the Wrongful Act(s) of any Insured shall not be imputed to any other Insured.

B. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any Wrongful Act(s) or Related Wrongful Act(s) or any fact, circumstance or situation which has been the subject of any notice given or Claim reported under any other policy of which this Policy in whole or in part is a direct or indirect renewal or replacement;
C. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any prior and/or pending civil, criminal, administrative, arbitration or investigative proceeding involving any Insured, including any proceeding brought by or before the EEOC or any similar state, local or foreign agency, as of the date stated in Item 4 of the Declarations, or any fact, circumstance or situation underlying or alleged in such proceeding;

D. for any actual or alleged:

(1) bodily injury, sickness, disease, or death of any person with the exception of mental anguish or emotional distress;

(2) damage to or destruction of any tangible property, including the loss of use thereof; or

(3) non-employment related invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, libel or slander;

E. for any Wrongful Act(s) of any Insured Persons in their capacity as a director, officer, trustee, Regent or governor of any entity other than the Company, even if directed or requested to serve as a director, officer, trustee or governor of such entity;

F. which is insured in whole or in part by another valid policy or policies (except with respect to any excess beyond the amount or amounts of coverage under such other policy or policies) whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise;

G. for any actual or alleged violation by an Insured of the Employee Retirement Income Security Act of 1974 (except Section 510), the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act or any rules or regulations promulgated under these acts or any similar provisions of any federal, state, local or foreign law except a Claim alleging retaliation for the exercise of any rights under such laws;

H. other than Costs of Defense:

(1) for any obligation of the Company as a result of a Claim seeking relief or redress in any form other than money damages, including but not limited to any obligation of the Company to modify any building or property; or

(2) for any obligation of the Company to pay:

(a) salary, wages or other employment-related benefits to any Employee under an express contract unless such obligation would exist absent the contract; or

(b) compensation earned by an Employee in the course of employment but not paid by the Company including any unpaid salary, bonus, wages, severance pay, retirement benefits, vacation days or sick days. This exclusion shall not apply to front pay and back pay.
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FIDUCIARY LIABILITY COVERAGE

Section I. Insuring Agreement

The Insurer shall pay on behalf of the Insureds all Loss which the Insureds shall be legally obligated to pay as a result of a Claim first made against an Insured during the Policy Period or the Discovery Period for a Wrongful Act by an Insured or any person for whom the Insured is legally responsible even if the allegations of such Claim are groundless, false or fraudulent.

Section II. Definitions

A. "Administration" shall mean giving counsel to, interpreting and handling records associated with, or enrolling or canceling participation of employees of the Company.

B. "Claim" shall mean:

(1) a written demand for monetary or non-monetary relief made against any Insured; or

(2) a civil, criminal, administrative or arbitration proceeding made against any Insured seeking monetary or non-monetary relief and commenced by the filing of a complaint or similar pleading, the return of an indictment, or the filing of notice of charges or similar document, including any fact-finding investigation by the Department of Labor, the Internal Revenue Service, the Pension Benefit Guaranty Corporation, or other similar governmental agency located outside of the United States.

C. "Employee Benefit Plan" shall mean:

(1) any Pension Plan or Welfare Plan in existence at the inception date of this Policy or any policy of which this Policy is a renewal; and

(2) any other benefit plan not subject to Title I of ERISA which is sponsored solely by the Company for its employees.

D. "ERISA" shall mean the Employee Retirement Income Security Act of 1974 and any amendments thereto.

E. "Insured(s)" shall mean:

(1) the Company;

(2) any Employee Benefit Plan; and

(3) any Insured Person.

F. "Insured Person" shall mean any natural person who was, now is or shall be a director, officer, partner, trustee or employee of the Company or any Employee Benefit Plan.
G. "Loss" shall mean damages, punitive or exemplary damages, the multiple portion of any multiplied damage award, settlements, and Costs of Defense. Loss shall not include taxes, or any matter which may be deemed uninsurable under the law pursuant to which this Policy is construed, criminal or civil fines or penalties, except for the five percent (5%) or less civil penalty imposed upon an Insured under Section 502(i) of ERISA, and the twenty percent (20%) or less penalty imposed upon an Insured under Section 502(l) of ERISA, with respect to covered settlements or judgments. The enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for punitive or exemplary damages or the multiple portion of any multiplied damage award.

H. "Mandated Benefit Program" shall mean any government-mandated insurance program for workers' compensation, unemployment, social security, or disability benefits for employees of the Company including programs governed by the Consolidated Omnibus Budget Reconciliation Act of 1985, the Health Insurance Portability and Accountability Act of 1996, and any amendments thereto.

I. "Pension Plan" shall mean any employee pension benefit plan as defined in ERISA, with the exception of any multi-employer plans or trusts as defined by ERISA, or in any related or similar state, local or foreign law or regulation which provides for benefits or services to employees of the Company.

J. "Welfare Plan" shall mean any employee welfare benefit plan as defined in ERISA or in any related or similar state, local or foreign law or regulation which provides for benefits or services to employees of the Company.

K. "Wrongful Act" shall mean:

(1) with respect to an Employee Benefit Plan, any actual or alleged violation of any of the responsibilities, obligations, or duties imposed upon fiduciaries of an Employee Benefit Plan by ERISA or the common law or statutory law of any jurisdiction;

(2) any actual or alleged act, omission, error, misstatement, misleading statement, neglect or breach of duty in the Administration of any Employee Benefit Plan or Mandated Benefit Program; or

(3) any other matter claimed against any Insured solely by reason of their status as a fiduciary of any Employee Benefit Plan.

Section III. Exclusions

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

A. brought about or contributed to by:

(1) any Insureds gaining any profit, advantage or remuneration to which they were not legally entitled;

(2) the deliberately fraudulent or criminal acts of any Insureds; or

(3) the intentional non-compliance with any statute or regulation by an Insured or by a person for whose actions the Insured is legally responsible;
provided, however, that:

(1) this exclusion shall only apply if it is finally adjudicated that such conduct in fact occurred; and

(2) the Wrongful Act of any Insured shall not be imputed to any other Insured.

B. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any Wrongful Act or Related Wrongful Acts or any fact, circumstance or situation which has been the subject of any notice given or Claim reported under any other policy of which this Policy in whole or in part is a direct or indirect renewal or replacement;

C. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any prior and/or pending civil, criminal, administrative, arbitration or investigative proceeding involving any Insured as of the date stated in Item 4 of the Declarations, or any fact, circumstance or situation underlying or alleged in such proceeding;

D. for any actual or alleged:

(1) bodily injury, sickness, disease, or death of any person;

(2) damage to or destruction of any tangible property, including the loss of use thereof;

(3) mental anguish, emotional distress, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, libel or slander;

E. for any Wrongful Act of any Employee Benefit Plan, Subsidiary, entity that merges with the Company, or Insured Persons of such Employee Benefit Plan, Subsidiary or merged entity occurring:

(1) prior to the date such plan became an Employee Benefit Plan of the Company, or prior to the date such entity became a Subsidiary or was merged with the Company;

(2) subsequent to the date such plan became an Employee Benefit Plan of the Company, or subsequent to the date such entity became a Subsidiary or was merged with the Company, which together with a Wrongful Act occurring prior to such date, would constitute Related Wrongful Acts; or

(3) subsequent to the date the Named Entity ceased to own, directly or indirectly, more than fifty percent (50%) of the voting stock of such Subsidiary;

F. which is insured in whole or in part by another valid policy or policies (except with respect to any excess beyond the amount or amounts of coverage under such other policy or policies), whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise;

G. involving any Employee Benefit Plan that was sold, spun-off, merged, or terminated, except for any Wrongful Act committed or allegedly committed prior to the date of such sale, spin-off, merger, or termination;
H. other than Costs of Defense:

(1) for failure to collect contributions owed to any Employee Benefit Plan or Mandated Benefit Program or for the return of any assets to any employer if such amounts are or could be chargeable to any Employee Benefit Plan, unless such failure or return is due to the negligence of an Insured;

(2) for benefits paid or payable to a participant or beneficiary of any Employee Benefit Plan or Mandated Benefit Program if such benefits are paid or may be lawfully paid from the assets of any Employee Benefit Plan, unless and to the extent;

(a) such benefits are payable as a personal obligation of an Insured Person, and

(b) recovery of the benefits is based upon a covered Wrongful Act; or

(3) arising out of the failure to comply with any law concerning workers' compensation, unemployment insurance, social security, or disability benefits.
ExecPro®

Directors', Officers', Insured Entity and Employment Practices Liability Insurance Policy

Great American Insurance Company - Executive Liability Division:
1515 Woodfield Road, Suite 500, Schaumburg, IL 60173

Coverage Part D
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Section I. Insuring Agreements

In return for the payment of the premium, and subject to the Declarations, Insuring Agreements, Definitions, Exclusions, Conditions and other terms of this Policy, the Insurer will pay for loss that the Insured sustains resulting directly from acts committed or events occurring at any time and discovered by the Insured during the Policy Period.

A. Employee Theft

If Coverage Part D, Insuring Agreement A, is purchased, Insurer shall pay for loss of, and loss from damage to, Money, Securities and Other Property resulting directly from dishonest acts committed by an Employee, whether identified or not, acting alone or in collusion with other persons, with the manifest intent to:

1. cause the Insured to sustain loss; and also to
2. obtain financial benefit (other than employee benefits earned in the normal course of employment, including salaries, commissions, fees, bonuses, promotions, awards, profit sharing or pensions) for:
   a. the Employee; or
   b. any person or organization intended by the Employee to receive that benefit.

B. Forgery or Alteration

If Coverage Part D, Insuring Agreement B is purchased:

1. Insurer shall pay for loss resulting directly from Forgery or alteration of checks, drafts, promissory notes, or similar written promises, orders, or directions to pay a sum certain in Money that are:
   a. made or drawn by or drawn upon the Insured;
   b. made or drawn by one acting as the Insured's agent;
   or that are purported to have been so made or drawn.

2. If the Insured is sued for refusing to pay any instrument covered in Paragraph B.(1) on the basis that it has been forged or altered, and the Insured has the Insurer's written consent to defend against the suit, the Insurer will pay for any reasonable legal expenses incurred and paid in that defense. The amount the Insurer will pay is in addition to the Limit of Liability applicable to this Insuring Agreement.

C. Inside the Premises

If Coverage Part D, Insuring Agreement C is purchased:

1. Insurer will pay for loss of Money and Securities inside the Premises or Banking Premises resulting directly from Theft, disappearance or destruction.
insurer will pay for loss of, and loss from damage to other property:

(a) inside the premises resulting directly from an actual or attempted robbery of a custodian; or

(b) inside the premises in a safe or vault, resulting directly from an actual or attempted safe burglary.

(3) insurer will pay for:

(a) loss from damage to the premises or its exterior; or

(b) loss of, and loss from damage to, a locked safe, vault, cash register, cash box or cash drawer located in the premises;

resulting directly from an actual or attempted theft, robbery or safe burglary, if the insured is the owner of the premises or is liable for damage to it.

D. Outside the Premises

If coverage part D, insuring agreement D is purchased, insurer will pay for loss of, and loss from damage to, money, securities, and other property outside the premises while in the care and custody of a messenger or armored motor vehicle company:

(1) for money and securities resulting from theft, disappearance or destruction; and

(2) for other property resulting from an actual or attempted robbery.

E. Computer Fraud

If coverage part D, insuring agreement E is purchased, insurer will pay for loss of, and loss from damage to, money, securities and other property resulting directly from the use of any computer to fraudulently cause a transfer of such property from inside the premises or banking premises:

(1) to a person (other than a messenger) outside those premises; or

(2) to a place outside those premises.

F. Money Orders and Counterfeit Paper Currency

If coverage part D, insuring agreement F is purchased, insurer will pay the insured for loss resulting directly from the insured having accepted in good faith, in exchange for merchandise, money or services:

(1) money orders issued by any post office, express company or bank in the united states or canada that are not paid upon presentation; or

(2) counterfeit united states or canadian paper currency;

that is acquired during the regular course of business.

Section II. Definitions

For purposes of this coverage part D:

A. “banking premises” shall mean the interior of that portion of any building occupied by a banking institution or similar safe depository.

B. “counterfeit” shall mean an imitation of an actual valid original which is intended to deceive and to be taken as the original.
C. "Coverage Event" shall mean:

1. as respects Insuring Agreement A, 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. as respects Insuring Agreement B, all loss or losses caused by any person or in which that person is involved, whether the loss involves one or more instruments.

3. as respects all other Insuring Agreements, all loss or losses caused by:
   (a) an act, or series of related acts, involving one or more persons;
   (b) an act or acts involving a person or group of persons acting together; or
   (c) an act or event, or a series of related acts or events, not involving any identifiable person.

D. "Custodian" shall mean the Insured, any of the Insured’s partners, or any Employee while having care and custody of property inside the Premises, excluding any person while acting as a Watchperson or janitor.

E. "Employee" shall mean:

1. Any natural person:
   (a) while in the Insured’s service or for 30 days after termination of service; and
   (b) whom the Insured compensates directly, by salary, wages or commissions; and
   (c) whom the Insured has the right to direct and control while performing services for the Insured.

2. Any natural person who is furnished temporarily to the Insured to:
   (a) substitute for a permanent Employee as defined in (1) above who is on leave; or
   (b) meet seasonal or short-term workload conditions while that 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. Any natural person who is:
   (a) a trustee, officer, employee, administrator or manager, except an administrator or manager who is an independent contractor, of any Employee Benefit Plan(s) insured under this insurance; and
   (b) the Insured’s director or trustee while that person is handling Funds or Other Property of any Employee Benefit Plan(s) insured under this insurance.

4. Employee does not mean any:
(a) agent, broker, person leased to the Insured by a labor leasing firm, factor, commission merchant, consignee, independent contractor or representative of the same general character; or

(b) director or trustee except while performing acts within the scope of the usual duties of an employee.

E. "Employee Benefit Plan(s)" shall mean any welfare or pension benefit plan listed in the Declarations or scheduled by endorsement to this Policy that is subject to the Employee Retirement Income Securities Act of 1974 (ERISA).

F. "Forgery" shall mean the signing of the name of another person or organization with intent to deceive; it does not mean a signature which consists in whole or in part of one's own name signed with or without authority, in any capacity, for any purpose.

G. "Funds" shall mean Money and Securities.

H. "Insured" shall mean the Named Entity set forth in the Declarations.

I. "Insurer" shall mean the company providing this insurance as indicated in the Declarations.

J. "Messenger" shall mean the Insured, any of the Insured's partners or any Employee while having care and custody of Property outside the Premises.

K. "Money" shall mean:

(1) currency, coins and bank notes in current use and having a face value; and

(2) travelers checks, register checks and money orders held for sale to the public.

L. "Other Property" shall mean any tangible property other than Money and Securities that has intrinsic value but does not include any property excluded under this insurance.

M. "Premises" shall mean the interior of the portion of any building that the Insured occupies in conducting its business.

N. "Robbery" shall mean the taking of property from the care and custody of a person by one who has:

(1) caused or threatened to cause that person bodily harm; or

(2) committed an obviously unlawful act witnessed by that person.

O. "Safe burglary" shall mean the taking of:

(1) property from within a locked safe or vault 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.

P. "Securities" shall mean negotiable and nonnegotiable instruments or contracts representing either Money or property and includes:

(1) tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
(2) evidences of debt issued in connection with credit or charge cards, which cards are not issued by you;

but does not include Money.

Q. "Theft" shall mean any act of stealing.

R. "Watchperson" shall mean any person that the Insured retains specifically to have care and custody of property inside the premises and who has no other duties.

Section III. Exclusions

A. With respect to all Insuring Agreements, except as indicated, Insurer will not pay for:

(1) Loss resulting from any dishonest act committed by the Insured or any of the Insured's partners whether acting alone or in collusion with other persons.

(2) Loss resulting from any dishonest act committed by any of the Insured's Employees, directors, trustees or authorized representatives:

(a) acting alone or in collusion with other persons; or

(b) while performing services for the Insured or otherwise;

except when covered under Insuring Agreement A.

(3) Loss from damage to the Premises resulting from fire, however caused.

(4) Loss resulting from seizure or destruction of property by order of governmental authority.

(5) Loss that is an indirect result of any act or Coverage Event covered by this insurance including, but not limited to, loss resulting from:

(a) The Insured's inability to realize income that the Insured would have realized had there been no loss of, or loss from damage to, Money, Securities or Other Property.

(b) Payment of damages of any type for which the Insured is legally liable. But, the Insurer will pay compensatory damages arising directly from a loss covered under this insurance.

(c) Payment of costs, fees or other expenses that the Insured incurs in establishing either the existence or the amount of loss under this insurance.

(6) Expenses related to any legal action, except when covered under Insuring Agreement B.

(7) Loss resulting from nuclear reaction, nuclear radiation or radioactive contamination, or any related act or incident.

(8) Loss resulting from war, whether or not declared, warlike action, insurrection, rebellion or revolution, or any related act or incident.
B. With respect to the Insuring Agreements specified below, Insurer will not pay for:

(1) Under Insuring Agreement A:

Loss caused by any Employee of the Insured, or predecessor in interest of the Insured, for whom similar prior insurance has been canceled and not reinstated since the last such cancellation.

(2) Under Insuring Agreements A and E:

Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:

(a) an inventory computation; or
(b) a profit and loss computation.

(3) Under Insuring Agreement C and D:

(a) Loss resulting from accounting or arithmetical errors or omissions.

(b) Loss of 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.

(c) Loss of property after it has been transferred or surrendered to a person or place outside the Premises or Banking Premises:

i. on the basis of unauthorized instructions; or
ii. as a result of a threat to do:

(a) bodily harm to any person; or
(b) damage to any property.

Provided, however, that this exclusion does not apply under Insuring Agreement D to loss of Money, Securities and Other Property while outside the Premises or Banking Premises in the care and custody of a Messenger if the Insured:

i. had no knowledge of any threat at the time the conveyance began; or
ii. had knowledge of a threat at the time the conveyance began, but the loss was not related to the threat.

(d) Loss from damage to any property, safe, vault, or to the Premises or its exterior, by vandalism or malicious mischief.

(e) Loss resulting from the giving or surrendering of property in any exchange or purchase.

(f) Loss resulting from the Insured, or anyone acting on the Insured's express or implied authority, being induced by any dishonest act to part voluntarily with title to or possession of any property.
(4) Under Insuring Agreement D:

Loss of motor vehicles, trailers or semi-trailers or equipment and accessories attached to them.

Section IV.  Conditions

A.  Applicable to All Insuring Agreements

(1)  Extended Period to Discover Loss

(a)  The Insurer will pay for loss that the Insured sustained prior to the effective date of termination or cancellation of this Coverage Part, which is discovered by the Insured:

i.  Within 60 days following the date of termination or cancellation; and

ii.  As respects any Employee Benefit Plan(s), within one year following the date of termination or cancellation.

(b)  However, this extended period to discover loss terminates immediately upon the effective date of any other insurance obtained by the Insured replacing in whole or in part the insurance afforded by this Coverage Part whether or not such insurance provides coverage for loss sustained prior to its effective date.

(2)  Loss Covered Under More Than One Coverage of This Coverage Part D

With respect to Coverage Part D, Commercial Crime, if two or more coverages of Coverage Part D apply to the same loss, the Insurer will pay the lesser of:

(a)  the actual amount of loss; or

(b)  the highest single Limit of Liability applicable to those coverages.

(3)  Ownership of Property, Interests Covered

The property covered under this Coverage Part D is limited to property:

(a)  that the Insured owns or holds; or

(b)  for which the Insured is legally liable.

However, this insurance is for the Insured's benefit only. It provides no rights or benefits to any other person or organization.

(4)  Records

The Insured must keep records of all covered property so that the Insurer can verify the amount of any loss.

(5)  Recoveries

(a)  Any recoveries, less the cost of obtaining them, made after settlement of loss covered by this insurance will be distributed as follows:
i. to the Insured, until the Insured is reimbursed for any loss that it sustains that exceeds the Limit of Liability and the Retention, if any;

ii. then to the Insurer, until the Insurer is reimbursed for the settlement made;

iii. then to the Insured, until the Insured is reimbursed for that part of the loss equal to the Retention, if any.

(b) Recoveries do not include any recovery:

i. from insurance, suretyship, reinsurance, security or indemnity taken for the Insurer's benefit; or

ii. of original Securities after duplicates of them have been issued.

(6) Valuation - Settlement

(a) Subject to the applicable Limit of Liability provision the Insurer will pay for:

i. Loss of Money but only up to and including its face value. The Insurer may, at its option, pay for loss of Money issued by any country other than the United States of America:

(a) at face value in the Money issued by that country; or

(b) in the United States of America dollar equivalent determined by the rate of exchange on the day the loss was discovered.

ii. Loss of Securities but only up to and including their value at the close of business on the day the loss was discovered. The Insurer may, at its option:

(a) pay the value of such Securities, or replace them in kind, in which event the Insured must assign to the Insurer all its rights, title and interest in and to those Securities; or

(b) pay the cost of any Lost Securities Bond required in connection with issuing duplicates of the Securities. However, the Insurer 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:

i. value of the Securities at the close of business on the day the loss was discovered; or

ii. Limit of Liability.
iii. Loss of, or loss from damage to Other Property or loss from damage to the Premises or its exterior for the replacement cost of the property without deduction for depreciation. However, the Insurer will not pay more than the least of the following:

(a) the Limit of Liability applicable to the lost or damaged property;

(b) the cost to replace the lost or damaged property with property:
   i. of comparable material and quality; and
   ii. used for the same purpose; or

(c) the amount the Insured actually spends that is necessary to repair or replace the lost or damaged property.

iv. The Insurer will not pay on a replacement cost basis for any loss or damage:

(a) until the lost or damaged property actually is repaired or replaced; and

(b) unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.

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

(b) The Insurer may, at its option, pay for loss of, or loss from damage to, property other than Money.

   i. In the Money of the country in which the loss occurred; or

   ii. In the United States of America dollar equivalent of the Money of the country in which the loss occurred determined by the rate of exchange on the day the loss was discovered.

(c) Any property that the Insurer pays for or replaces becomes its property.

(7) Cancellation

(a) The Named Entity may cancel this Coverage Part by mailing or delivering to the Insured advance written notice of cancellation.

(b) The Insurer may cancel this Coverage Part by mailing or delivering to the Named Entity written notice of cancellation at least:

   i. 10 days before the effective date of cancellation if the Insurer cancels for nonpayment of premium; or

   ii. 30 days before the effective date of cancellation if the Insurer cancels for any other reason.

(c) The Insurer will mail or deliver notice to the Named Entity's last mailing address known to the Insurer.
(d) Notice of cancellation will state the effective date of cancellation. The Policy Period will end on that date with respect to this Coverage Part.

(e) If this Coverage Part is canceled, the Insurer will send the Named Entity any premium refund due. If the Insurer cancels, the refund will be pro rata. If the Named Entity cancels, the refund may be less than pro rata. The cancellation will be effective even if the Insurer has not made or offered a refund.

(f) If notice is mailed, proof of mailing will be sufficient proof of notice.

(8) Territory

This Coverage Part covers only acts committed or events occurring within the United States of America, U.S. Virgin Islands, Puerto Rico or Canada. In addition, under Insuring Agreement A, the Insurer will pay for loss caused by any employee while temporarily outside of said territories for a period of not more than 90 days.

(9) Employee Benefit Plan(s)

(a) If any Employee Benefit Plan(s) is insured jointly with any other entity under this insurance, the Insured or the plan administrator must select a Limit of Liability for Insuring Agreement A that is sufficient to provide a limit of liability for each plan that is at least equal to that required if each plan were separately insured.

(b) If the Named Entity is an entity other than a plan, any payment made to that Insured for loss sustained by any plan will be held by that Insured for the use and benefit of the plan(s) sustaining the loss.

(c) If two or more plans are insured under this insurance, any payment made for loss:
   i. Sustained by two or more plans; or
   ii. Of commingled Funds or Other Property of two or more plans; that arises out of one occurrence, is to be shared by each plan sustaining loss in the proportion that the limit of liability required for each such plan bears to the total of those limits.

(10) Joint Insured

(a) The first named Insured shown in the Declarations is responsible for the payment of all premiums and will be the payee for any return premiums.

(b) If more than one Insured is named in the Declarations, the first named Insured will act for itself and for every other Insured for all purposes of this insurance. If the first named Insured ceases to be covered, then the next named Insured will become the first named Insured.

(c) If any Insured or partner or officer of that Insured has knowledge of any information relevant to this insurance, that knowledge is considered knowledge of every Insured.
(d) An Employee of any Insured is considered to be an Employee of every Insured.

(e) If this insurance or any of its coverage is canceled or terminated as to any Insured, loss sustained by that Insured is covered only if discovered during the period of time provided in the Extended Period to Discover Loss Condition IV.A.(1). However, this extended period to discover loss terminates as to that Insured immediately upon the effective date of any other insurance obtained by that Insured replacing in whole or in part the insurance afforded by this Coverage Part whether or not such insurance provides coverage for loss sustained prior to its effective date.

(f) The Insurer will not pay more for loss sustained by more than one Insured than the amount the Insurer would pay if all the loss had been sustained by one Insured.

(11) Liberalization

If the Insurer adopts any revision that would broaden the coverage under this Coverage Part without additional premium within 45 days prior to or during the Policy Period, the broadened coverage will immediately apply to this Coverage Part.

(12) Non-Cumulation of Limit of Insurance

Regardless of the number of years this Coverage Part remains in force or the number of premiums paid, no Limit of Liability cumulates from year to year or Policy Period to Policy Period.

(13) Other Insurance

(a) This insurance does not apply to loss recoverable or recovered under other insurance or indemnity. However, if the limit of the other insurance or indemnity is insufficient to cover the entire amount of the loss, this insurance will apply to that part of the loss, other than that falling within any Retention amount, not recoverable or recovered under the other insurance or indemnity. However, this insurance will not apply to the amount of loss that is more than the applicable Limit of Liability shown in the Declarations.

(b) Under Insuring Agreement D., the Insurer will pay only for the amount of loss that the Insured cannot recover:

i. Under the Insured’s contract with the armored motor vehicle company; and

ii. From any insurance or indemnity carried by, or for the benefit of customers of, the armored motor vehicle company.

(14) Concealment, Misrepresentation or Fraud

This Coverage Part is void in any case of fraud by the Insured as it relates to this insurance at any time. It is also void if the Insured, at any time, intentionally conceals or misrepresents a material fact concerning:
(a) This insurance;
(b) the covered property;
(c) the Insured's interest in the covered property; or
(d) a claim under this insurance.

B. Applicable to Specific Insuring Agreements

(1) Insuring Agreement A

This insurance is cancelled as to any Employee:

(a) Immediately upon discovery by:
   i. the Insured; or
   ii. any of the Insured's partners, officers or directors not in collusion with the Employee; or
   iii. as to Employee Benefit Plan(s), any trustee, fiduciary or plan administrator not in collusion with the Employee;

   of any dishonest act committed by that Employee whether before or after becoming employed by the Insured.

   (b) On the date specified in a notice mailed to the Insured. That date will be at least 30 days after the date of mailing. The mailing of notice to the Insured at the last mailing address known to the Insurer will be sufficient proof of notice. Delivery of notice is the same as mailing.

(2) Insuring Agreement B

(a) Retention
   
   The Retention does not apply to legal expenses paid under Insuring Agreement B.

(b) Facsimile Signatures

   The Insurer will treat mechanically reproduced facsimile signatures the same as handwritten signatures.

(c) Proof of Loss

   The Insured 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) Territory

   The Insurer will cover loss that the Insured sustains anywhere in the world. The Territory Condition set forth in Section IV.A.(8) of this Coverage Part does not apply to Insuring Agreement B.
(3) Insuring Agreements C and D

(a) Special Limit of Insurance for Specified Property

The Insurer will pay up to $5,000 for any one Coverage Event of loss of, and loss from damage to:

i. precious metals, precious or semi-precious stones, pearls, furs, or completed or partially completed articles made or containing such materials that constitute the principal value of such articles; or

ii. manuscripts, drawings, or records of any kind or the cost of reconstructing them or reproducing any information contained in them.

(b) Duties in the Event of Loss

If the Insured has reason to believe that any loss of, or loss from damage to, Money, Securities or Other Property involves a violation of law, the Insured must notify the police.

(4) Insuring Agreement E

(a) Special Limit of Insurance for Specified Property

The Insurer will pay up to $5,000 for any one Coverage Event of loss of, and loss from damage to, manuscripts, drawings, or records of any kind or the cost of reconstructing them or reproducing any information contained in them.

(b) Duties in the Event of Loss

If the Insured has reason to believe that any loss of, or loss from damage to, Money, Securities or Other Property involves a violation of law, the Insured must notify the police.

(c) Territory

The Insurer will cover loss that the Insured sustains anywhere in the world. The Territory Condition set forth in Section IV.A.(8) of this Coverage Part does not apply to Insuring Agreement E.

(5) Insuring Agreement F

(a) Duties in the Event of Loss

The Insured must notify the police if it has reason to believe that it may have accepted a Counterfeit Money order or Counterfeit paper currency.
## 2018 Executive Committee Work Plan

### General Work Items

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<td>Review Committees/Charter and Close Committees</td>
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<td>2 Establish strategic priorities</td>
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<td>Confirm program goals for education</td>
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<td>3 program on emerging technology</td>
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<td>4 Strategize for call to action for tech (#4)</td>
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<td>5 Funding for technology grant program</td>
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<td>6 Review and approve catalog of tech (#4)</td>
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<td>Review progress on loss prevention goal 7 (1B)</td>
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<td>8 Avoidance Project</td>
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<td>9 Feedback on road show</td>
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<td>Review Protocol for Meetings policy at Annual Retreat</td>
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<td>11 Set the Work Plan for 2019</td>
<td>EC</td>
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<td>12 Provide direction on the budget to staff (see Budget Development Policy)</td>
<td>EC</td>
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<td>13 Salary Survey</td>
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<td>14 Employee Handbook / Personnel Policies</td>
<td>EC</td>
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<tr>
<td>15 Accounting RFP</td>
<td>Audit/Finance Cmte</td>
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### Subcommittees

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<th>Subcommittees</th>
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<tbody>
<tr>
<td>20 Audit/Finance Committee/Treasurer</td>
<td>Executive Committee/Treasurer</td>
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<tr>
<td>21 Board Development</td>
<td>Danette, Kevin H., Nick, Amy</td>
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<tr>
<td>22 Coverage Review Committee</td>
<td>Paul, Danette, Nick &amp; Diane</td>
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<td>22 Emerging Risks and Opportunities</td>
<td>Staci, Rob H., Ken, Amy, Jim Q, Mike B</td>
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<tr>
<td>23 Governance Policy</td>
<td>Diane, Staci &amp; Shonda</td>
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<tr>
<td>24 Nominations</td>
<td>Diane, Staci &amp; Shonda</td>
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<tr>
<td>25 Data Governance Committee</td>
<td>Kevin H., Mike B, Ken M., Laura M, Rob H., and others (ask Powell)</td>
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### Strategic Priorities Review

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<thead>
<tr>
<th>Strategic Priorities Review</th>
<th>Jan</th>
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<th>2019</th>
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<tbody>
<tr>
<td>SP1 Loss Prevention</td>
<td>See page 2</td>
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<td>SP2 Loss Control</td>
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<td>SP3 Board &amp; Staff Relationships</td>
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<td>SP4 Stable Rates</td>
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<tr>
<td>Develop Products &amp; Services to meet member needs</td>
<td>See page 2</td>
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**KEY:** * = start and SUN SYMBOL = end

Working Principles on Page 3
Mental Models on Page 4
<table>
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<tr>
<th>Strategic Priority Review</th>
<th>Who</th>
<th>2018</th>
<th>2019 Jan</th>
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<tr>
<td><strong>Adopt SMART Goals</strong></td>
<td>Executive Committee</td>
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<tr>
<td><strong>Loss Prevention</strong></td>
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<tr>
<td>Reduce claims resulting from rear-end collisions, passenger injuries from hard braking, and improper mobility device securement by 6% by December 31, 2018.</td>
<td>Kerrigan</td>
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<tr>
<td>By December 2022, have a minimum of a 50% reduction in claim frequency and severity of claims greater than $500K as compared to 2015.</td>
<td>Kerrigan</td>
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<tr>
<td>Reduce bus pedestrian/cyclist strikes to “zero” annually.</td>
<td>Kerrigan</td>
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<tr>
<td><strong>Loss Control</strong></td>
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<tr>
<td>Increase board member awareness of claim cost, root causes, and lessons learned as measured by distribution of serious loss reports for top areas or risk for claims that exceed a value of $100,000 annually.</td>
<td>Kerrigan</td>
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<tr>
<td><strong>Board and Staff Engagement</strong></td>
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<tr>
<td>Improve board engagement as measured by 85% participation in Board activities such as meetings, workshops, and member representative meetings annually.</td>
<td>Christianson</td>
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<td>Improve board engagement in out-of-state travel or joint programs with other stakeholders (WSTA, WSDOT) as measured by 60% participation by annually.</td>
<td>Christianson</td>
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<tr>
<td>Improve board knowledge and education as measured by 75% completion of the Behind the Curtain annually.</td>
<td>Christianson</td>
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<td><strong>Stable Rates</strong></td>
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<tr>
<td>Verify the WSTIP composite mileage rates are competitive as compared to private insurance market and/or other public entity pools for similar products and services on a tri-annual basis.</td>
<td>Christianson</td>
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<tr>
<td>Absent of the long-range strategic goal, maintain WSTIP’s composite liability rate ensuring rate increases or decreases are not greater than 5% of the previous years as evidenced by a rate review completed annually and reported to the Executive Committee by March of the following year.</td>
<td>Christianson</td>
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<td><strong>Develop Product &amp; Services</strong></td>
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<tr>
<td>Further explore options for a trainer academy and determine viability of academy by September 30, 2018 (in time for 2019 budget).</td>
<td>Kerrigan</td>
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<tr>
<td>Explore opportunities for other shared services</td>
<td>Kerrigan</td>
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<tr>
<td>Explore creation of process for WSTIP to aggregate funds to members for new technology projects designed to help mitigate risk on buses by September 30, 2018.</td>
<td>Kerrigan</td>
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2018 Executive Committee Work Plan

WORKING PRINCIPLES*
1 Strive for transparency about the role you are playing.
2 Instead of driving an issue, the Executive Committee will work from its work plan to decide what to do.
3 Operate under parliamentary procedures.
4 Be recognized before speaking.
5 Members will come prepared; read materials in advance and participate during the meeting.
6 Try not to dominate the conversation; let someone else have a turn.
7 Finish the meeting on time.
8 No side conversations.
9 Show respect by adhering to principles 4 and 8.
10 The President runs the meetings; not the Executive Director.
11 The Executive Committee can agree to allocate more time to discuss a topic.
12 The Executive Committee decides by majority rule, but strives for consensus. Consensus is defined as the ability for every Executive Committee member to be able to live with the decision.
13 The Executive Committee will flag "hot topics" for members to check in with members on.
14 Proposals to the Board are forwarded with Executive Committee endorsement. Proposals that require Board action, Executive Committee members can share their opinion if they disagree with the Executive Committee's recommendation.
15 The Executive Committee will review their work plan every month and identify what needs to be taken to members.
16 Make sure that communication to the Board is complete.


TRIBAL RULES*
1 Put the needs of WSTIP first.
2 Serve as member representative before taking a leadership role.
3 Provide a development track for members.
4 Expect people to take a leadership role.
5 Everyone who ran for Executive Committee office can come to the Executive Committee retreat.
6 No side deals -- raise your concerns with the entire Executive Committee
7 Everyone's views are heard. Once Board decision is made, support it.
8 Respect the office -- respect the roles each person takes.

*Tribal Rules added at 2012 retreat and unchanged since addition.
MENTAL MODELS

1. WSTIP Board will meet four times per year.
2. WSTIP will offer $25,000,000 in policy limits for Auto/General Liability.
3. All Members will receive the same Risk Management Grant of $2,500.
4. All members are assessed on the same rating methodology.
5. The Executive Director will be hired by the Board and evaluated annually.
6. General Counsel is hired by the EC and evaluated annually.
7. All best practices will be agreed to on a voluntary basis (exception: driver record monitoring).
8. Membership is restricted to Washington State transits of a minimum size and experience history.
9. WSTIP primary purpose is insurance.
10. No rail or ferry coverage will be offered.
11. General wage adjustments are subject to the action taken by Intercity Transit and approval by the Board.
12. Auto liability rates are determined by mileage and experience.
13. General/Public Officials (E & O)/Property rates are all determined by the actuary with no experience rating.
14. Claims will be resolved in a "fair, equitable and responsible" manner.
15. WSTIP offices will be located in Olympia.
16. WSTIP/WSTA relationship will be collaborative and mutual.
WSTIP’s 2018 Strategic Framework

Mission: To reduce member agencies’ cost of risk.


Strategic Priorities

SP 1) Loss Prevention

SP 2) Loss Control

SP 3) Board & Staff Engagement/Relationships

SP 4) Competitive & Stable Rates

SP 5) Develop Products & Services

WSTIP’s Goals – Desired Results

- Reduce claims resulting from aggressive braking, pedestrian/bicycle strikes and improper mobility device securement by 6% by December 31, 2018 as compared to 2015.
- By December 2022, have a minimum of a 50% reduction in claim frequency and severity of claims greater than $500K as compared to 2015.
- Reduce bus pedestrian/cyclist strikes to “zero” annually.

- Increase Board member awareness of claim cost, root causes, and lessons learned as measured by distribution of serious loss reports for top areas or risk for claims that exceed a value of $100,000 by March 2017.

- Improve Board engagement as measured by 88% participation in Board activities such as meetings, workshops, and member representative meetings annually.
- Improve Board engagement in out-of-state travel or joint programs with other stakeholders (WSTA, WSDOT) as measured by 60% participation by annually.
- Improve Board knowledge and education as measured by 75% completion of the Behind the Curtain annually.

- Verify the WSTIP composite mileage rates are competitive as compared to private insurance market and/or other public entity pools for similar products and services on a tri-annual basis.
- Absent of the long-range strategic goal, maintain WSTIP’s composite liability rate ensuring rate increases or decreases are not greater than 5% of the previous years as evidenced by a rate review completed annually and reported to the Executive Committee by March of the following year.

- Further explore options for a trainer academy and determine viability of academy by September 30, 2018 (in time for 2019 budget).
- Explore opportunities for other shared services.
- Explore creation of process for WSTIP to grant funds to members for new vehicle technology projects designed to help mitigate risk on buses by September 30, 2018.
WSTIP Core Values

The mission and vision is derived from the stated core values of the organization, which in turn support the implementation of the mission and vision:

**Integrity: Doing the right thing.** Member representatives and staff strive to always be honest and straightforward with each other, operating within the letter and spirit of the law, and utilizing all available tools to recognize, assess, and manage risk.

**Leadership: Vision, Focus, and Results.** Member representatives and staff have a clear vision of where the Pool is going, focusing resources on Board defined objectives and strategies, developing collaboration skills, and taking on assigned areas of responsibility with a deep commitment to deliver results.

**Ownership: We’re all in this together.** Member representatives place the interests of the Pool above the interests of their member systems, understanding that all members benefit most when the Pool is successful. This includes accepting responsibility for the entire Pool’s needs, and seeking not only to improve their own systems but others’ as well.

**Enthusiasm for Success: Determined to be great.** Member representatives and staff are determined to be the best at what matters most. They have a healthy dissatisfaction with the status quo, a compelling desire to improve and excel, and are committed to excellent customer service.

**Trust: Good people doing great work.** Member representatives and staff respect Pool colleagues, members, and stakeholders, treating them as they would want to be treated. They have confidence in each other’s capabilities and intentions, and believe people work best when there is a foundation of trust.
WASHINGTON STATE TRANSIT INSURANCE POOL

Strategic Plan

AN ORGANIZATIONAL DEVELOPMENT PROCESS

Adopted 04/26/2018
STRATEGIC PLAN

Introduction

Each year the Washington State Transit Insurance Pool (WSTIP) faces challenging issues. Many of these issues are directly related to the diversity of the operations of its members and the challenge of providing insuring and risk management products some of which are in competition with a global insurance industry. The members of WSTIP recognize that they are the best judges of their own operations, and that pooling their financial and knowledge resources offers them a potential level of service not available from commercial insurers. WSTIP recognizes that it must continually use its member knowledge, consultants and professional staff expertise, and sound risk management principles to continuously upgrade its products and services.

Mission/Vision Statement-Strategic Objectives

The mission of the Washington State Transit Insurance Pool is simple, broad and all encompassing. The mission is to reduce member agencies cost of risk.

The organization’s vision is to be the premier provider of high-quality, cost effective risk management products and services for its member agencies.

Core Values

The mission and vision is derived from the stated core values of the organization, which in turn support the implementation of the mission and vision:

- **Integrity: Doing the right thing.** Member representatives and staff strive to always be honest and straightforward with each other, operating within the letter and spirit of the law, and utilizing all available tools to recognize, assess, and manage risk.
- **Leadership: Vision, Focus, and Results.** Member representatives and staff have a clear vision of where the Pool is going, focusing resources on Board defined objectives and strategies, developing collaboration skills, and taking on assigned areas of responsibility with a deep commitment to deliver results.
- **Ownership: We’re all in this together.** Member representatives place the interests of the Pool above the interests of their member systems, understanding that all members benefit most when the Pool is successful. This includes accepting responsibility for the entire Pool’s needs and seeking not only to improve their own systems but others’ as well.
- **Enthusiasm for Success: Determined to be great.** Member representatives and staff are determined to be the best at what matters most. They have a healthy dissatisfaction with the status quo, a compelling desire to improve and excel, and are committed to excellent customer service.
- **Trust: Good people doing great work.** Member representatives and staff respect Pool colleagues, members, and stakeholders, treating them as they would want to be treated. They have confidence in each other’s capabilities and intentions, and believe people work best when there is a foundation of trust.
Long-Range Strategic Vision

The WSTIP Board has adopted a Financial Target Policy that essentially states...to the maximum extent feasible, in the adoption of the Pool’s annual budget, incorporate allocations and contributions which allow and support an optional self-insured retention for liability exposures of $5 million by 2023.

Strategic Planning-Implementing the WSTIP Policy Manual

In addition to the long-range strategic vision of this Strategic Plan lies the WSTIP Policy Manual. The policy manual provides for the Board's direction in the areas of foundational documents such as Governance, Operations, and Finance with measurable outcomes and assigned responsibilities.

Rather than engage in a process that is staff and paper intensive and duplicative of the Policy Manual, the WSTIP Board has concentrated on key strategic outcomes and emerging issues focused around several strategic objectives.

The broad strategic objectives incorporated herein are ongoing in nature. Each year, supporting operational plans will be developed to focus the staff and membership on continuously improving the outcomes in each broad area.

The Board recognizes that its role is to develop the strategic direction contained in the plan and evaluate the organization’s efforts to achieve that plan. The strategic and operational objectives are the centerpiece of each annual work plan implemented through the administrative budget. In this respect, the Board has committed to evaluating the progress of the Pool's Executive Director's and the implementation of the annual work plan.

WSTIP’s Five Strategic Priorities:

1. Loss Prevention
2. Loss Control
3. Board and Staff Engagement/Relationship
4. Competitive and Stable Rates
5. Develop Products and Services to Meet Member Needs
(1) **Loss Prevention – WSTIP desires to keep people and property safe. In keeping with that priority, WSTIP adopts the following three goals:**

1A: Reduce claims resulting from rear-end collisions, passenger injuries from hard braking, and improper mobility device securement by 6% by December 31, 2018 as compared to 2015.

1B: By December 2022, have a minimum of a 50% reduction in claim frequency and severity of claims greater than $500K as compared to 2015.

1C: Reduce bus pedestrian/cyclist strikes to “zero” annually.

**Action Items**

Document accountability and compliance to Best Practices with annual reporting to Board.

Data Governance Committee to define cause codes that identify passenger injuries from hard braking by June 30, 2018 (1A). Determine if data cleanup is necessary to ensure consistent information is available for high risk areas identified in 1A. If necessary, complete data cleanup by August 31, 2018.

Develop an education program on emerging technology (a.k.a. a road show) which includes a range of technology innovations (including using telematics, coaching, on-board technologies) on buses. (1A, 1B, 1C)

- Development of education program / pilot
  - Develop catalog of technology by mid-April, present to Executive Committee April 26
  - Work with Munich Re to incorporate advanced analytics to the story April 26
  - Develop communication program for members, pilot to Executive Committee May 24
  - Executive Committee help create call for action by May 24
  - Refine if necessary

- Pilot program with a transit agency by June 30, 2018
  - Refine if necessary

- Deliver program to larger pilot and obtain commitments for call for action by Dec 31, 2019

Identify resources needed for the 2019 budget.

Assist and facilitate Phase 2 of Collision Avoidance Project (scheduled for 24 months) which will roll out a larger test of warning system and a new test for adaptive braking (1A). Report outcomes to the Board by June 2020.

Provide annual progress reports to the Board for 1B. Provide final report to the Board for 1B by December 2022.
(2) Loss Control

2A: Increase Board member awareness of claim cost, root causes, and lessons learned as measured by distribution of serious loss reports for top areas or risk for claims that exceed a value of $100,000 annually.

**Action Items**
Provide at least four serious loss reports to the Board of Directors annually. Staff may distribute these reports via email, conduct webinars, provide in Board materials, or during work sessions or Member Representative meetings.

(3) Board and Staff Engagement

3A: Improve Board engagement as measured by 88% participation in Board activities such as meetings, workshops, and member representative meetings annually.

3B: Improve Board engagement in out-of-state travel or joint programs with other stakeholders (WSTA, WSDOT) as measured by 60% participation annually.

3C: Improve Board knowledge and education as measured by 75% completion of the Behind the Curtain annually.

**Action Steps**
Survey after each Board event for participation levels to determine baseline and success (3A). Report out to Executive Committee at each meeting and an annual report to the Board at the December quarterly Board meeting (3A).

Task Board Development Committee to find ways to increase participation in out-of-state events or joint training programs (3B).

Track completion of *Behind the Curtain* and report to Board Development Committee by November 31, 2018 (3C).

(4) Stable Rates

4A: Verify the WSTIP composite mileage rates are competitive as compared to private insurance market and/or other public entity pools for similar products and services on a tri-annual basis.

4B: Absent of the long-range strategic goal, maintain WSTIP’s composite liability rate ensuring rate increases or decreases are not greater than 5% of the previous years as evidenced by a rate review completed annually and reported to the Executive Committee by March of the following year.
**Action Steps**

Direct the broker to take appropriate number of members to market and present on findings by December of 2019 (4A).

Notify the Board annually if WSTIP is not meeting rate increases or no more than 5% of the previous year (4B).

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(5) **Develop Product and Services**

5A: Further explore options for a trainer academy and determine viability of academy by September 30, 2018 (in time for 2019 budget).

5B: Explore opportunities for other shared services.

5C: Explore creation of process for WSTIP to grant funds to members for new vehicle technology projects designed to help mitigate risk on buses by September 30, 2018.

---

**Action Steps**

Convene stakeholder group to explore curriculum options for a trainer academy (5A) by May 31, 2018. Explore grant funding opportunities for trainer academy by December 31, 2018 (5A).

Support shared services concept meetings when they arise via the ER&O Committee (5B).

Create a process or program for WSTIP to grant funds to members for new vehicle technology projects designed to help mitigate risk on buses by December 31, 2018. (5C)
October 18, 2018

TO: Executive Committee

FROM: Staci Jordan, Vice President

SUBJECT: Executive Committee Retreat

The Executive Committee Retreat is scheduled for January 16-18, 2019 at the Cedarbrook Lodge in SeaTac. Invitees include:

- newly elected Executive Committee Members,
- any new Board members (within the last year),
- any Board Member who runs for office on the Executive Committee but is not elected, and
- any Board member leaving the Executive Committee.

Registration is available on the WSTIP website. We are working on securing a facilitator(s).

Potential topics:

- Maintaining the momentum from last year’s retreat.
- Review the issue of “group think.”
- Staff benefits
- Further work on coverage documents. this one and the next ones.
- Driver Record Monitoring – looks like we might be headed for a re-vamp of the program
- Broker RFP
- Tool Coverage

Please submit topics you would like to be considered to me (Staci Jordan) or to the WSTIP staff. We will be soliciting topics at each meeting until the end of the year.

/ab
October 25, 2018

TO: WSTIP Executive Committee

FROM: Andrea Powell, Administrative Services Manager

SUBJECT: New Staff Position: Application Support Specialist

Action Requested:
Discussion only.

Background:
Included in the draft 2019 Budget is a request to add a new staff position entitled Application Support Specialist. The primary function of this position will work under supervision to maintain and configure custom solutions for the Origami application. This position will work with Origami support and WSTIP members to configure solutions that meet the members’ individual needs, including deployment of the mobile supervisor application for those that wish to utilize it. As many of you know, we have an unmet need in this area as several members wish to move forward with this application.

Prior to deciding to ask for a new position, staff reached out to Origami and other pools regarding the availability of contractors to fill a role such as this. Unfortunately, we did not find any contractors available, likely due to the relatively young age of Origami as a product and due to the unique ability of Origami to be customized for each agency. To be successful as a contractor, an individual or agency would need to know Origami first and then learn how Origami was customized for the client seeking services.

Staff anticipated this technical position when conducting the 2018 salary survey. We provided our consultant with an overview of job responsibilities and comparable positions from the State of Washington. The results of the salary survey placed this anticipated position with Band B (starting salary of $63,158 and ending salary of $80,353).

However, as we further developed the job description we took a closer look at the positions and responsibilities in the IT Specialist category of Washington State and compared our anticipated responsibilities with the comparable pools used in the salary survey. We found that the job responsibilities and the compensation to be too complex and rich, respectively, for the position we are developing. Specifically, this position will have very little network administration responsibilities.

For this reason, Staff is proposing this position be contained within the salary Band C (starting salary of $54,729 - $67,277). Attached is the job description for your information.

/ap
Application Support Specialist 1

Reports to: Administrative Services Manager
Status: Exempt, Salary

DESCRIPTION
The purpose of this position is to manage enterprise applications including configuration, documentation and user support. This position will work under supervision to gather user requirements and implement customized solutions on existing platforms and to research and recommend new products and technologies. The Application Support Specialist 1 does not supervise other positions.

ESSENTIAL JOB FUNCTIONS
1. Support and administer the Risk Management Information System (RMIS), Origami Risk. This is the Pool’s primary line of business application. You will provide support to Staff and Members; gather reporting requirements, design and manage reports and templates; act as a liaison with Origami support; manage permissions and user groups; and coordinate Member’s use of the mobile application.

2. Under supervision, gather requirements and configure system for member customizations to the Origami system. This task will require strong XML skills; ability to develop, document and maintain workflows; general understanding of relational databases; working knowledge of SQL and ability to modify existing queries and scripts. This is not a database administration or development position.

3. Maintain the enterprise content management system (Laserfiche), support miscellaneous applications including, but limited to Office 365 applications and websites. Research and recommend new web services and coordinate integrations.

4. Provide support for Staff. Troubleshoot desktop issues, and either resolve or assign to the contracted desktop support provider. Tasks will include, but are not limited to, troubleshooting and prioritizing technical issues, password resets, basic usability answers for Staff, reconfiguring software, etc. This position is not a dedicated help desk position.

5. Work with the Administrative Services Manager to develop the three-year workplan, research and recommend new technology applications, and stay current with industry trends.

6. Develop technical documentation and reference material.

7. Attend staff meetings, trainings, and seminars as requested.

8. Represent WSTIP on the WSTA Information Technology Committee.

9. Perform other duties as assigned.
STANDARDS OF PERFORMANCE
1. Strive to stay up to date through ongoing training, networking and regular reviews of current relevant trade journals
2. Report to work as scheduled.
3. Maintain confidentiality of all information related to members, staff, employees, and other information as appropriate.
4. Demonstrate positive interpersonal relations in dealing with fellow employees, WSTIP members, WSTA employees, and vendors so that productivity and positive relations are maximized.
5. Identify and work cooperatively with internal and external stakeholders on projects and communicate information and decisions through written communication and presentations.
6. Actively support and incorporate WSTIP’s vision, mission, core values, and strategic priorities into daily activities.

KNOWLEDGE, SKILLS AND ABILITIES

Required Technical Skills
- Strong XML / CSS experience.
- Proficiency with Microsoft Office 365 applications including Word, Excel, and PowerPoint;
- Familiarity with the principles of relational databases.
- Working knowledge of basic SQL queries and statements.
- Prior experience supporting Windows desktop applications.
- Awareness and practice of Network Security principles.

Desirable Skills
- Experience with Laserfiche or another Enterprise Content Management system (ECM)
- Familiarity with Azure
- Familiarity with a Citrix XenDesktop environment
- Project management experience
- Public sector experience
- Experience with Active Directory security and familiarity with Windows Server and basic networking
- Data analytics and reporting tools such as Tableau or Power BI.

Ability to:
- Work independently with limited supervision.
- Communicate effectively, both orally and in writing.
- Write clear, concise and accurate reports and correspondence.
- Speak in public and provide supporting visual information.
- Perform work accurately with strict attention to detail.
- Plan and organize work in an efficient, cost effective and results-focused manner.
- Work well under pressure and in high stress situations.
- Quickly switch from one task to another.
• Establish and maintain effective and cooperative working relationships with members, outside consultants, service providers, vendors and the public.
• Provide excellent customer service to the membership.
• Interact favorably with people and work effectively in a team environment.
• Learn to use proprietary software (in particular WSTIP’s risk management information system).
• Travel out of the area on occasion, including overnight stays.

Education and Experience:
• High school diploma or equivalent;
• Demonstrated experience with XLM; and
• Two years’ experience in an IT related position, preferably direct application and/or user support.

License and Certification:
• Valid Washington State driver’s license at the time of hire with excellent driving record and vehicle available for work-related travel.

WORKING CONDITIONS/PHYSICAL DEMANDS
Work is generally performed in a fast-paced office environment with frequent interruptions.

Strength: Lifting and carrying general office supplies and files; typically weighing less than 25 pounds.
Manual Dexterity: Ability to consistently perform moderately difficult manipulative skills such as typing and word processing.
Mobility: Ability to climb ladders, stairs, ramps, stoop, kneel, crouch, reach and move around in crawl spaces and areas with low ceilings while making on-site physical risk control inspections. Ability to walk at least ½ mile on variety of surfaces. Ability to sit for extended periods of time.
Visual Discrimination: Ability to consistently identify objects and persons at a distance; read fine print on records and forms.
Hearing: Ability to consistently distinguish normal sounds with some background noise; multiple sounds in a stimulated environment; and verbal language and tones on the telephone.
Speech: Ability to speak clearly and make one-self understood in a one-on-one basis with individuals and in group settings.

The statements contained herein reflect general details as necessary to describe the principal functions of this job, the level of knowledge and skill typically required and the scope of responsibility, but should not be considered an all-inclusive listing of work requirements. Individuals may perform other duties as assigned including work in other functional areas to cover absences or relief, to equalize peak work periods or otherwise to balance the workload. Furthermore, they do not establish a contract for employment and are subject to change at the discretion of the employer.
Trustees Errors & Omissions and Directors & Officers Coverage for Self Insured Pools
Frequently Asked Questions

1. Can you provide us with examples of claims that this coverage is intended to address?

- **Member Disputes over Coverage**: The pool’s employed or third party claims administrator denies a claim for a member and the member litigates over coverage.

- **Member Dispute over Withdrawal**: A member wishes to withdraw and believes the pool is treating them unfairly over return of equity, dividend or withdrawal notice terms.

- **Board Member vs. Board Member**: Two board members get upset over things said or done during a meeting – alleging defamation by the other board members or pool.

- **Employment Practices arising from Employees of the Pool (EPL)**: if the pool has employees and if the optional EPL coverage is purchased, coverage is provided for workplace torts.

- **Non-compliance with Statutes / Governing Documents**: if a member of the pool or member of the public complained that the pool was not operating in compliance with statutes (such as open meeting laws or public records request), or the pool’s own governing documents.

2. Why would a pool buy this coverage? Aren’t we already covered for these claims within the pool?

For most of the examples described above, yes, although claims involving violation of open meeting laws and public records requests would be excluded. That said, the pool may feel that some of the circumstances above are best left to a separate policy, separate defense, etc. so that any perceived conflict is avoided and financial consequences of losses are segregated from pool funds.

3. How much does it cost?

For smaller pools, where operations are entirely contracted out, premiums could be as low as $10,000 or less. For WSTIP, an organization that manages its own claims and has its own staff, we estimate a cost of between $30,000 and $35,000. This would be for $1M - $2M in coverage with a deductible of between $10,000 and $25,000.

4. What about limits?

*Limits typically start at $1M, and pools may buy as much as $5M. Higher limits are available.*

5. What about deductibles?

*Deductibles typically range from between $1,000 and $25,000.*

6. What carriers offer this coverage?

*There are at least three specialty programs designed to address this coverage. Two of which are via Lloyds of London, and the third through Genesis Underwriting Management Company.*
October 25, 2018

TO: WSTIP Executive Committee

FROM: Andrea Powell, Administrative Services Manager

SUBJECT: Building Reserve Fund

Action Requested:
Authorize increasing the annual allocation to the building reserve fund from $15,000 to $25,000.

Background:
The Board created a building reserve fund to be used to maintain the WSTIP office building in salable condition. Since it was established, the annual allocation has been $15,000. The costs for upkeep and improvements has increased over the years, however, the allocation amount has not.

In the past these funds were used for: installing new windows, replacing the roof, upgrades to the HVAC system, the 2017 remodel to create additional office space, etc. Funds that are allocated but not used accumulate year to year and are paid out as improvements are made. In the financials, this is recorded in the Statement of Net Position as “Unrestricted Building Reserve” and further explained in note 9:

“… As mentioned above, the Pool owns a building purchased for $479,000 in 2001. The Pool also dedicates $15,000 a year from its equity to a building reserve to save for any improvements or updates it needs to make to the building it owns. The WSTIP West Olympia office was remodeled in 2017 to create additional office space for new employees, decreasing the building reserve fund from $71,193 at 12/31/2016 to $17,786 at 12/31/2017.”

The WSTIP office remodel in 2017 to create additional office space for new employees decreased the building reserve fund to $17,786 at 12/31/2017. In 2018 these funds were exhausted during the update of the conference room (paint, carpet, AV system). In 2019 we hope to complete the paint and carpet for the remainder of the building.

Staff is requesting an increase to this allocation to $25,000 annually for expenses of this type.

/ap
Loss Trend Analysis
Events Over 100K
Executive Committee Meeting
October 25, 2018
Events vs Claims

- Something occurred.
- One event can have many claims or no claims.
- The event type can be:
  - Collision
  - Non-Collision
  - Security Incident
  - Other (general liability)
  - Employee Injury or Illness

- Cannot have a claim without an event.
- A claim is an individual occurrence that is attached to an event.
- There is a coverage type attached to a claim:
  - Auto liability: PD or BI
  - Auto Physical Damage
  - General liability: BI or PD
  - Public Officials
  - Crime
10 Year Liability Loss Review
1/1/2008 – 12/31/2017

34,747 total events in this time period
= $65,464,920

There are 111 events that are 100K or more each.
= $42,093,198

Review includes data on auto, general and public officials liability
 LOSS REVIEW RESULTS

Loss Areas with Highest Severity

• Collisions in Fixed Route
• Non-Collision Property Damage
• Passenger Events

➢ Collisions with vehicles, people, bicycles
➢ Non Collision property damage includes water damage, fires, bus fires
➢ Passenger events are mobility device securement, boarding and alighting, hard braking, near miss/sudden stops and passengers falling
Frequency of 100K Events

- Catastrophic Collisions: 2%
- Collisions: 65%
- Employment Practices: 10%
- Non-Collision Property Damage: 5%
- Non-Collision Passenger events: 25%

**Total Events:** 111

<table>
<thead>
<tr>
<th>Event Type</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Catastrophic</td>
<td>2</td>
</tr>
<tr>
<td>Collisions</td>
<td>65</td>
</tr>
<tr>
<td>Employment Practice</td>
<td>10</td>
</tr>
<tr>
<td>Non-Collision Property Damage</td>
<td>6</td>
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<tr>
<td>Non-Collision Passenger events</td>
<td>28</td>
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<tr>
<td><strong>Total</strong></td>
<td>111</td>
</tr>
</tbody>
</table>

**Collisions With:**
- Fixed Object: 5
- Other Vehicle: 46
- Pedal Cycle: 4
- Person: 10

**Total Collisions:** 65
### Severity of 100K Events

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Catastrophic</td>
<td>$282,585</td>
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<tr>
<td>Collisions</td>
<td>$28,886,094</td>
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<tr>
<td>Employment Practices</td>
<td>$1,766,975</td>
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<tr>
<td>Non-Collision Property Damage</td>
<td>$4,088,862</td>
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<td>Non-Collision Passenger events</td>
<td>$7,068,682</td>
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<td><strong>Total</strong></td>
<td><strong>$42,093,198</strong></td>
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</table>

### Collision Types

- **Collision With: Fixed Object**: $2,645,805
- **Collision With: Other Vehicle**: $15,763,356
- **Collision With: Pedal Cycle**: $4,944,740
- **Collision With: Person**: $5,532,193
- **Total**: $28,886,094

10/18/2018
### 100K Collisions by NTD Collision Type, Cause and Vehicle Activity

<table>
<thead>
<tr>
<th>NTD Collision Type</th>
<th>Frequency</th>
<th>Severity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Head-On</td>
<td>4</td>
<td>$5,174,571</td>
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<tr>
<td>Other Front Impact</td>
<td>20</td>
<td>$10,977,371</td>
</tr>
<tr>
<td>Other Rear Impact</td>
<td>2</td>
<td>$1,407,534</td>
</tr>
<tr>
<td>Rear Ended</td>
<td>4</td>
<td>$1,477,273</td>
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<tr>
<td>Rear-ending</td>
<td>25</td>
<td>$6,395,252</td>
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<tr>
<td>Side Impact</td>
<td>8</td>
<td>$1,924,839</td>
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<tr>
<td>Sideswipe</td>
<td>2</td>
<td>$1,529,254</td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td><strong>65</strong></td>
<td><strong>$28,886,094</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Cause</th>
<th>Frequency</th>
<th>Severity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Action of Other Driver/Ped/Cyclist/Animal</td>
<td>8</td>
<td>$5,626,393</td>
</tr>
<tr>
<td>Distance</td>
<td>9</td>
<td>$1,738,637</td>
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<tr>
<td>Lane Use</td>
<td>4</td>
<td>$3,415,432</td>
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<tr>
<td>Operator Action</td>
<td>14</td>
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<tr>
<td>Speed</td>
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<tr>
<td>Weather-Road Condition</td>
<td>2</td>
<td>$702,187</td>
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<tr>
<td>Yielding</td>
<td>16</td>
<td>$7,000,355</td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td><strong>65</strong></td>
<td><strong>$28,886,094</strong></td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Vehicle Activity</th>
<th>Frequency</th>
<th>Severity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Changing Lanes - Left</td>
<td>3</td>
<td>$2,250,046</td>
</tr>
<tr>
<td>Changing Lanes - Right</td>
<td>2</td>
<td>$224,319</td>
</tr>
<tr>
<td>Going Straight</td>
<td>31</td>
<td>$9,097,673</td>
</tr>
<tr>
<td>Making a Transit Stop</td>
<td>1</td>
<td>$112,033</td>
</tr>
<tr>
<td>Merging</td>
<td>1</td>
<td>$405,436</td>
</tr>
<tr>
<td>Negotiating a Curve to the Left</td>
<td>2</td>
<td>$3,374,452</td>
</tr>
<tr>
<td>Slowing in Traffic</td>
<td>4</td>
<td>$622,571</td>
</tr>
<tr>
<td>Slowing to Turn</td>
<td>2</td>
<td>$374,173</td>
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<tr>
<td>Stopped</td>
<td>1</td>
<td>$1,162,128</td>
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<tr>
<td>Sudden Stop</td>
<td>1</td>
<td>$121,369</td>
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<tr>
<td>Turning Left</td>
<td>13</td>
<td>$5,688,294</td>
</tr>
<tr>
<td>Turning Right</td>
<td>4</td>
<td>$5,453,599</td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td><strong>65</strong></td>
<td><strong>$28,886,094</strong></td>
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10/18/2018
For events over 100K, the average cost for:

- each collision costs $308,938;
- each rear end collision costs $278,647
- each passenger event costs $238,503
- each employment event costs $168,200

- each collision costs $444,401;
- each rear end collision costs $255,810
- each passenger event costs $252,453
- each employment event costs $176,698
Collisions by Event Type: Severity

- Collision With: Fixed Object: $2,645,805
- Collision With: Other Vehicle: $15,763,356
- Collision With: Pedal Cycle: $4,944,740
- Collision With: Person: $5,532,193

Total: $15,763,356
Non-Collisions by Event Type: Severity

- Non Collision: Passenger Event: $1,280,768
- Non Collision: Boarding & Alighting: $3,867,817
- Non Collision: Near Miss / Sudden Stop: $1,085,096
- Non Collision: Slip / Trip / Fall: $835,000
### Non-Collisions by Event Type and Cause: Severity

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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Non Collision: Passenger Event</td>
<td>$113,583</td>
<td>$109,994</td>
<td>$561,363</td>
<td>$2,078,715</td>
<td>$1,219,102</td>
<td>$195,000</td>
<td>$375,000</td>
<td>$921,960</td>
<td>$163,136</td>
<td>$225,000</td>
<td>$610,000</td>
</tr>
<tr>
<td>Non Collision: Boarding &amp; Alighting</td>
<td>$495,828</td>
<td></td>
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<tr>
<td>Non Collision: Near Miss / Sudden Stop</td>
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</tr>
<tr>
<td>Non Collision: Slip / Trip / Fall</td>
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10/18/2018
> 100K Losses by Mode

**Frequency**

- Demand Response: 10%
- Fixed Route: 60%
- Non-Revenue: 16%
- Vanpool: 14%

**Severity**

- Demand Response: 10%
- Fixed Route: 60%
- Non-Revenue: 16%
- Vanpool: 14%

**Frequency**

<table>
<thead>
<tr>
<th>Mode</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Demand Response</td>
<td>18</td>
</tr>
<tr>
<td>Fixed Route</td>
<td>65</td>
</tr>
<tr>
<td>Non-Revenue</td>
<td>19</td>
</tr>
<tr>
<td>Vanpool</td>
<td>9</td>
</tr>
<tr>
<td>Total</td>
<td>111</td>
</tr>
</tbody>
</table>

**Severity**

<table>
<thead>
<tr>
<th>Mode</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Demand Response</td>
<td>$ 3,981,691</td>
</tr>
<tr>
<td>Fixed Route</td>
<td>$ 25,406,371</td>
</tr>
<tr>
<td>Non-Revenue</td>
<td>$ 6,642,933</td>
</tr>
<tr>
<td>Vanpool</td>
<td>$ 6,062,202</td>
</tr>
<tr>
<td>Total</td>
<td>$ 42,093,197</td>
</tr>
</tbody>
</table>

10/18/2018
100K Losses by Member in Fixed Route
Final Words on Loss Trends

• Collision Avoidance or Driver Monitoring could help mitigate many of the collisions

• Training and operator remediation should be reinforced

• Attention to passenger events, boarding and alighting

• Collisions with pedestrians and bicyclist still a high priority to mitigate
Supplemental Data

Count of 100K Events Per Event Type

- Catastrophic (Fire / Flood / Earthquake): 2
- Collision With: Fixed Object: 5
- Collision With: Other Vehicle: 4
- Collision With: Pedal Cycle: 10
- Collision With: Person: 9
- Employment Practice: 1
- Errors & Omissions: 6
- Non Collision: Passenger Event: 16
- Non Collision: Boarding & Alighting: 4
- Non Collision: Near Miss / Sudden Stop: 6
- Non Collision: Property Damage: 2
- Non Collision: Slip / Trip / Fall: (blank)
Supplemental Data

Severity of 100K Events by Event Type

Collision With: Fixed Object
- $2,645,805

Collision With: Other Vehicle
- $15,763,356

Collision With: Pedal Cycle
- $4,944,740

Collision With: Person
- $5,532,193
## INTRODUCTION

The Washington State Transit Insurance Pool (Pool) is not an insurance company. It is an entity created pursuant to RCW 48.62. It is controlled and governed by applicable state statutes and regulations, the Interlocal Agreement through which the Pool was formed, and its own Bylaws and governance documents.

The state statutes and regulations which apply to insurance companies do not apply to the Pool. The Pool is not regulated by the state insurance commissioner. The judicial cases which apply to the construction and interpretation of insurance policies do not apply to this coverage document.

This coverage document shall be construed, applied, and interpreted in accordance with the Pool’s rules, regulations, and Bylaws.

Various provisions in this coverage document restrict coverage. Please read the entire document carefully to determine rights, duties, and what is and is not covered.

Throughout this policy the words “you” and “your” refer to member shown in the Coverage Declarations and any other person or organization.

<table>
<thead>
<tr>
<th>Proposed Language with Changes Highlighted</th>
<th>Pre-Existing Language</th>
<th>Annotation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>INTRODUCTION</strong></td>
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<td></td>
</tr>
<tr>
<td>The Washington State Transit Insurance Pool (Pool) is not an insurance company. It is an entity created pursuant to RCW 48.62. It is controlled and governed by applicable state statutes and regulations, the Interlocal Agreement through which the Pool was formed, and its own Bylaws and governance documents.</td>
<td>The Washington State Transit Insurance Pool (Pool) is not an insurance company. It is an entity created pursuant to RCW 48.62. It is controlled and governed by applicable state statutes and regulations, the Interlocal agreement through which the Pool was formed, and its own bylaws and governance documents.</td>
<td>Capitalization</td>
</tr>
<tr>
<td>The state statutes and regulations <strong>which that</strong> apply to insurance companies do not apply to the Pool. The Pool is not regulated by the state insurance commissioner. The judicial cases <strong>which that</strong> apply to the construction and interpretation of insurance policies do not apply to this coverage document.</td>
<td>The state statutes and regulations which apply to insurance companies do not apply to the Pool. The Pool is not regulated by the state insurance commissioner. The judicial cases which apply to the construction and interpretation of insurance policies do not apply to this coverage document.</td>
<td>Which / that word change</td>
</tr>
<tr>
<td>This coverage document shall be construed, applied, and interpreted in accordance with the Pool’s rules, regulations, and <strong>Bylaws</strong>.</td>
<td>This coverage document shall be construed, applied, and interpreted in accordance with the Pool’s rules, regulations, and bylaws.</td>
<td>Capitalization</td>
</tr>
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<td>Various provisions in this coverage document restrict coverage. Please read the entire document carefully to determine rights, duties, and what is and is not covered.</td>
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<td>No change.</td>
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<tr>
<td>Throughout this policy the words “you” and “your” refer to <strong>member</strong> shown in the Coverage Declarations and any other person or organization</td>
<td>Throughout this policy the words “you” and “your” refer to <strong>member</strong> shown in the Coverage Declarations and any other person or organization</td>
<td>No change.</td>
</tr>
<tr>
<td>Proposed Language with Changes Highlighted</td>
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<td>Annotation</td>
</tr>
<tr>
<td>------------------------------------------</td>
<td>----------------------</td>
<td>------------</td>
</tr>
<tr>
<td>qualifying as an additional covered party. The words “we,” “us,” “our,” “WSTIP” or “Pool” refer to the Washington State Transit Insurance Pool.</td>
<td>qualifying as an additional covered party. The words “we,” “us,” “our,” “WSTIP” or “Pool” refer to the Washington State Transit Insurance Pool.</td>
<td></td>
</tr>
<tr>
<td><strong>Words and phrases that appear in bold and italics have special meaning. Please refer to Definitions in Section 7.</strong></td>
<td><strong>Words and phrases that appear in italics have special meaning. Please refer to definitions in Section 7.</strong></td>
<td>Added “bold and” Capitalized Definitions and removed Section 7 reference as Definitions was moved to the front and is now part of the Introduction Increased font size for emphasis</td>
</tr>
</tbody>
</table>

**LAYERED COVERAGE**

The coverage provided by the Pool’s program is in layers. The first layer of coverage is funded by the Pool and its terms and conditions governing that coverage are set forth in this coverage document. Above the Pool’s layer of coverage are coverages provided by excess insurers or reinsurers. For the most part, the coverages provided by the excess insurers or reinsurers “follow the form” of the Pool’s coverage but there are some differences. Coverage for any loss above the Pool’s layer shall be determined by the terms, conditions, and exceptions as set forth in the excess or reinsurance coverage documents.

**LAYERED COVERAGE**

The coverage provided by the Pool’s program is in layers. The first layer of coverage is funded by the Pool and its terms and conditions are set forth in this coverage document. Above the Pool’s layer of coverage are coverages provided by excess or reinsurers. For the most part, the coverages provided by the excess or reinsurers “follow the form” of the Pool’s coverage but there are some differences. Coverage for any loss above the Pool’s layer shall be determined by the terms, conditions, and exceptions as set forth in the excess or reinsurance coverage documents.

Minor language changes for clarification.
<table>
<thead>
<tr>
<th>Proposed Language with Changes Highlighted</th>
<th>Pre-Existing Language</th>
<th>Annotation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>DEFINITIONS</strong></td>
<td><strong>DEFINITIONS</strong></td>
<td>Definitions were moved to the front as to be read first to aid in clarification of terms. Changes parties to party to make consistent. Section number updated.</td>
</tr>
<tr>
<td>The following terms are defined as follows:</td>
<td>The following terms are defined as follows:</td>
<td></td>
</tr>
<tr>
<td>A. <strong>Additional covered parties</strong> are those persons or entities set forth in Section 3B2B.</td>
<td>A. <strong>Additional covered parties</strong> are those persons or entities set forth in Section 3B.</td>
<td></td>
</tr>
<tr>
<td>B. <strong>Advertising injury</strong> means injury arising out of one or more of the following offenses committed in the course of advertising your goods, products, or services. 1. oral or written publication of material that slanders or libels a person or organization or disparages a person’s or organization’s goods, products, or services; 2. oral or written publication of material that violates a person’s right of privacy; 3. misappropriation of advertising ideas or style of doing business; or 4. infringement of copyright, title or slogan.</td>
<td>B. <strong>Advertising injury</strong> means injury arising out of one or more of the following offenses committed in the course of advertising your goods, products, or services. 1. oral or written publication of material that slanders or libels a person or organization or disparages a person’s or organization’s goods, products, or services; 2. oral or written publication of material that violates a person’s right of privacy; 3. misappropriation of advertising ideas or style of doing business; or 4. infringement of copyright, title or slogan.</td>
<td>No changes.</td>
</tr>
<tr>
<td>C. <strong>Bodily injury</strong> means physical injury, mental injury, shock, sickness, or disease sustained by a person, including death, resulting from any of these at any time.</td>
<td>C. <strong>Bodily injury</strong> means physical injury, mental injury, shock, sickness, or disease sustained by a person, including death, resulting from any of these at any time.</td>
<td>No changes.</td>
</tr>
<tr>
<td>D. <strong>Claim</strong> means written notice from any person or entity that it is his, her or its intention to hold <strong>member</strong> or <strong>additional covered party</strong> responsible for damages arising out of a <strong>wrongful act</strong>.</td>
<td>D. <strong>Claim</strong> means written notice from any person or entity that it is his, her or its intention to hold <strong>member</strong> or <strong>additional covered party</strong> responsible for damages arising out of a <strong>wrongful act</strong>.</td>
<td>No changes.</td>
</tr>
<tr>
<td>E. <strong>Claim expenses</strong> means:</td>
<td>E. <strong>Claim expenses</strong> means:</td>
<td>No changes.</td>
</tr>
<tr>
<td>Proposed Language with Changes Highlighted</td>
<td>Pre-Existing Language</td>
<td>Annotation</td>
</tr>
<tr>
<td>------------------------------------------</td>
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<td>------------</td>
</tr>
<tr>
<td><strong>1. claim</strong> investigations costs;</td>
<td><strong>1. claim</strong> investigations costs;</td>
<td></td>
</tr>
<tr>
<td>2. legal expenses; and</td>
<td>2. legal expenses; and</td>
<td></td>
</tr>
<tr>
<td>3. litigation costs, pre- and post-judgment interest on awards and judgments, and the cost of bonds to release attachments or to appeal.</td>
<td>3. litigation costs, pre- and post-judgment interest on awards and judgments, and the cost of bonds to release attachments or to appeal.</td>
<td></td>
</tr>
<tr>
<td><strong>Claim expenses</strong> do not include salaries and expenses of employees of member, overhead, or any fees paid for claim administration.</td>
<td><strong>Claim expenses</strong> do not include salaries and expenses of employees of member, overhead, or any fees paid for claim administration.</td>
<td></td>
</tr>
<tr>
<td><strong>F. Loss</strong> means the amount (less the deductible or retention) the member or additional covered party becomes legally obligated to pay as damages, judgments, settlements, including claim expenses for any wrongful acts.</td>
<td><strong>F. Loss</strong> means the amount (less the deductible or retention) the member or additional covered party becomes legally obligated to pay as damages, judgments, settlements, including claim expenses for any wrongful acts.</td>
<td>Removed the language (less the deductible or retention) … Confusing.</td>
</tr>
<tr>
<td><strong>G. Member</strong> means a Washington State public transit entity that participated in the formation of the Pool or has been approved for membership in the Pool.</td>
<td><strong>G. Member</strong> means a Washington State public transit entity that participated in the formation of the Pool or has been approved for membership in the Pool.</td>
<td>No changes.</td>
</tr>
<tr>
<td><strong>H. Offense</strong> means any of the offenses included in the definitions of advertising injury or personal injury.</td>
<td><strong>H. Offense</strong> means any of the offenses included in the definitions of advertising injury or personal injury.</td>
<td>No changes.</td>
</tr>
<tr>
<td><strong>I. Personal injury</strong> means injury arising out of one or more of the following offenses:</td>
<td><strong>I. Personal injury</strong> means injury arising out of one or more of the following offenses:</td>
<td>Updated discrimination causes of action to modern terms and laws.</td>
</tr>
<tr>
<td>1. false arrest, detention, or imprisonment;</td>
<td>1. false arrest, detention, or imprisonment;</td>
<td></td>
</tr>
<tr>
<td>2. malicious prosecution;</td>
<td>2. malicious prosecution;</td>
<td></td>
</tr>
<tr>
<td>3. defamation;</td>
<td>3. defamation;</td>
<td></td>
</tr>
<tr>
<td>Proposed Language with Changes Highlighted</td>
<td>Pre-Existing Language</td>
<td>Annotation</td>
</tr>
<tr>
<td>------------------------------------------</td>
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<td>------------</td>
</tr>
<tr>
<td>4. the wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling, or premises that a person occupies;</td>
<td>4. the wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling, or premises that a person occupies;</td>
<td>Fixed alpha issue.</td>
</tr>
<tr>
<td>5. oral or written publication of material that slanders or libels a person or organization or disparages a person’s or organization’s goods, products, or services; or</td>
<td>5. oral or written publication of material that slanders or libels a person or organization or disparages a person’s or organization’s goods, products, or services; or</td>
<td></td>
</tr>
<tr>
<td>6. oral or written publication of material that violates a person’s right of privacy;</td>
<td>6. oral or written publication of material that violates a person’s right of privacy;</td>
<td></td>
</tr>
<tr>
<td>7. assault or battery unless such would constitute a crime in the state in which it was committed; or</td>
<td>7. assault or battery unless such would constitute a crime in the state in which it was committed; or</td>
<td></td>
</tr>
<tr>
<td>8. discrimination prohibited by state or federal law including discrimination based upon race, <strong>creed, color, religion, sex, nationality, national origin, age, color, creed, sex, veteran’s status, marital status, disability, genetic information, pregnancy, or sexual orientation, sexual preference, age employment, or disability.</strong></td>
<td>8. discrimination prohibited by state or federal law including discrimination based upon race, religion, nationality, national origin, color, creed, sex, sexual preference, age employment, or disability.</td>
<td>Added language to clarify that WSTIP does not include the rendering of first aid and using Naloxone as the “practice of medicine.” Therefore in the cases of rendering first aid and Naloxone this exclusion does not apply.</td>
</tr>
</tbody>
</table>

J. **Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes materials to be recycled, reconditioned, or reclaimed.

K. **Professional services** means:

1. the practice of medicine, such as (but not limited to) physician, surgeon, osteopath, chiropractor, anesthesiologist, dentist,
<table>
<thead>
<tr>
<th>Proposed Language with Changes Highlighted</th>
<th>Pre-Existing Language</th>
<th>Annotation</th>
</tr>
</thead>
<tbody>
<tr>
<td>psychiatrist, psychologist, nurse, paramedic, emergency medical technician, or pharmacist; or 2. services by architects, engineers, surveyors, or draftsmen; 2.3. <strong>professional services</strong> does not include the rendering of emergency first aid including the administration of a life-saving opioid overdose medication (such as Naloxone).</td>
<td>psychologist, psychologist, nurse, paramedic, emergency medical technician, or pharmacist; or 2. services by architects, engineers, surveyors, or draftsmen;</td>
<td>POST BOARD MEETING UPDATE – Should “Naloxone” be changed to something less descriptive in case some other drug becomes available for the same purpose? Sure, done.</td>
</tr>
<tr>
<td>L. <strong>Property damage</strong> means physical injury to tangible property, including all resulting loss of use of that property.</td>
<td>L. <strong>Property damage</strong> means physical injury to tangible property, including all resulting loss of use of that property.</td>
<td>No changes.</td>
</tr>
<tr>
<td>M. <strong>Sexual Abuse</strong> means any actual, attempted, or alleged criminal sexual touching, contact, or display of the body of or to a person by another person, or persons acting in concert, which causes physical and/or mental injuries. Sexual abuse includes sexual molestation, sexual assault, sexual exploitation, or sexual injury. Sexual abuse does not include sexual harassment.</td>
<td>New definition.</td>
<td>New definition. Follows with exclusion for sexual abuse. POST BOARD MEETING UPDATE – Why is it important to have a definition of sexual abuse and sexual harassment? Answer – Sexual abuse is a criminal activity that falls outside the scope of duties of any individual for their agency. Sexual harassment, however, is either a tangible employment action or a hostile environment … both covered actions within this document.</td>
</tr>
<tr>
<td>N. <strong>Sexual harassment</strong> means actual or alleged unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct or a sexual nature directed to an employee of member when:</td>
<td>New definition.</td>
<td>New definition. POST BOARD MEETING UPDATE – Why is it important to have a definition of sexual abuse and sexual harassment? Answer – Sexual abuse is a criminal activity that falls outside the scope of duties of any individual for their agency. Sexual harassment, however, is either a tangible …</td>
</tr>
<tr>
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<td>Annotation</td>
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<td>-----------------------------------------</td>
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</tr>
</tbody>
</table>
| 1. Submission to such conduct is made either explicitly or implicitly a term and condition of such employee’s employment; or  
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such employee; or  
3. Such conduct has the purpose or effect of unreasonably interfering with such employee’s work performance or creating an intimidating or offensive work environment. | | employment action or a hostile environment … both covered actions within this document. |

O. **Suit** means a civil proceeding which seeks damages arising out of a *wrongful act*. Suit includes:

1. an arbitration proceeding in which such damages are claimed and to which you must submit or do submit with our consent; or  
2. any other alternative dispute resolution proceeding in which such damages are claimed and to which you submit with our consent.

O. **Suit** means a civil proceeding which seeks damages arising out of a *wrongful act*. Suit includes:

1. an arbitration proceeding in which such damages are claimed and to which you must submit or do submit with our consent; or  
2. any other alternative dispute resolution proceeding in which such damages are claimed and to which you submit with our consent.

No changes.

P. **Terrorist activity** means activities against persons, organizations or property of any nature:

1. That involve the following preparation:  
a. Use or threat of force or violence; or,

New definition

Matches definition in the GEM reinsurance policy. Definition also included in all four insurance pool policies reviewed.
### Proposed Language with Changes Highlighted

<table>
<thead>
<tr>
<th>2. When one or both of the following applies:</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. <strong>The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or</strong></td>
</tr>
<tr>
<td>b. <strong>It appears that the intent is to intimidate or coerce a government, or to further political ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.</strong></td>
</tr>
</tbody>
</table>

### Pre-Existing Language

2. When one or both of the following applies:
   a. The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
   b. It appears that the intent is to intimidate or coerce a government, or to further political ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

### Annotation

1. POST BOARD MEETING UPDATE – Added breach of duty … Common definition language is: Any actual or alleged act, error, omission, misstatement, misleading statement, neglect, or breach of duty by an insured person while acting in his or her capacity as such and behalf of the public entity. In defense of the definition as originally written, malfeasance, misfeasance and nonfeasance are all duty based.

2. Expanded the definition of wrongful act related to employment actions to clarify coverage for

---

### Wrongful act means:

1. any actual or alleged error, misstatement, or misleading statement, or any act, omission, breach of duty, or neglect including malfeasance, misfeasance, and nonfeasance by **member or additional covered party** rendered in the discharge of his or her duties for you; and

2. any actual or alleged wrongful termination; harassment; retaliation; discipline or discrimination; employment related misrepresentation to an employee or applicant for employment with the
<table>
<thead>
<tr>
<th>Proposed Language with Changes Highlighted</th>
<th>Pre-Existing Language</th>
<th>Annotation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>member</strong>: wrongful failure to employ or promote; wrongful deprivation of career opportunity; wrongful demotion or negligent employee evaluation including the giving of negative or defamatory statements in connection with an employee reference; wrongful discipline, violation of an employee's or applicant's civil right; employment-related libel, slander, defamation or invasion or privacy related to hiring or employment.</td>
<td></td>
<td>retaliation, failure to promote, etc, as well as libel and slander related to employment (giving references). Much broader more descriptive language related to what is covered under employment practices.</td>
</tr>
<tr>
<td>3. <strong>Any other offenses</strong> included in the definitions of advertising injury or personal injury.</td>
<td></td>
<td>3. Committee moved advertising injury and personal injury from the general liability document to the public officials document. Better match of triggers (each is a wrongful act). Moving Coverage B from GL to here includes personal injury (false arrest, defamation, advertising liability, violation of privacy, assault and battery, and discrimination.</td>
</tr>
</tbody>
</table>

**COVERAGE PART**

**Section 1. Coverage Agreement**

A. Coverage

1. **Generally, the Pool will pay** for losses arising from public officials' errors and omissions, personal injury and advertising injury, and employment practices liability. Specifically, we will pay on behalf of **member or additional covered party** those sums that **member or additional covered party** becomes legally obligated to pay as **loss** because of a **wrongful act(s)** to which this coverage applies if A1. Committee wishes to add some brief explanatory language about what is covered here in very general terms. Therefore, language was added for that purpose.
<table>
<thead>
<tr>
<th>Proposed Language with Changes Highlighted</th>
<th>Pre-Existing Language</th>
<th>Annotation</th>
</tr>
</thead>
<tbody>
<tr>
<td>it meets the responsibilities and conditions of this document and is not excluded.</td>
<td></td>
<td>Minor changes</td>
</tr>
</tbody>
</table>

2. This coverage applies to a **wrongful act(s)** only if:
   a. The **wrongful act(s)** takes place after the Retroactive Date shown in the Declarations and before the end of the policy coverage period; and
   b. A **claim is first made against member or additional covered party** as set forth in paragraph B below during the coverage period or any extended reporting period we may provide according to Section 6 – Extended Reporting Period.

3. This coverage applies to a **wrongful act(s)** only if:
   a. The **wrongful act(s)** takes place after the Retroactive Date shown in the Declarations and before the end of the policy period; and
   b. A **claim is first made against member or additional covered party** as set forth in paragraph B below during the coverage period or any extended reporting period we may provide according to Section 6 – Extended Reporting Period.

Minor changes

Moving Coverage B from GL to here includes personal injury (false arrest, defamation, advertising liability, violation of privacy, assault and battery, and discrimination.)
### Proposed Language with Changes Highlighted

#### B. Claims

1. A **claim** will be deemed to have been made at the earlier of the following:
   
   a. When a notice of such **claim** is received and recorded by us; or
   
   b. When notice is provided as detailed in C1 below, a wrongful act(s) which may subsequently give rise to a claim being made and you give written notice to us of such circumstances immediately but not later than:
      
      1. The end of the coverage period; or
      2. The end of any applicable extended reporting period.

2. **All claims** based on or arising out of the same wrongful act, or a series of related wrongful acts, by one or more covered entities shall be considered first made when the first of such claims is made.

#### C. Member Responsibilities

1. **Immediate Reporting of Claims or Suits** – If a **member** receives a written **claim** or **suit** that may involve coverage under this Coverage Document, you must record the time and date on which you received the **claim** or **suit** and immediately provide a copy of all documents received to the Pool.

### Pre-Existing Language

#### B. Claims

1. A **claim** will be deemed to have been made at the earlier of the following:
   
   a. When a notice of such **claim** is received and recorded by us; or
   
   b. When a wrongful act(s) which may subsequently give rise to a claim being made and you give written notice to us of such circumstances immediately but not later than:
      
      1. The end of the coverage period; or
      2. The end of any applicable extended reporting period.

2. **All claims** based on or arising out of the same wrongful act, or a series of related wrongful acts, by one or more covered entities shall be considered first made when the first of such claims is made.

### Annotation

Lots of discussion at the Committee level about what is notice, when notice should be made. Eventually lead to a revamp into a Responsibilities section.

**Section 5. Conditions**

A. Duties in the event of wrongful act, claim or suit:

1. If a wrongful act occurs which you believe may result in a claim you must notify us in writing immediately. Such notice should include how, when, and where the wrongful act occurred.
<table>
<thead>
<tr>
<th>Proposed Language with Changes Highlighted</th>
<th>Pre-Existing Language</th>
<th>Annotation</th>
</tr>
</thead>
<tbody>
<tr>
<td>and the names and addresses of the people involved;</td>
<td>2. If you receive a claim or suit which may involve coverage under this Coverage Document, you must record the time and date on which you received the claim or suit and immediately provide a copy of all documents receive to us; and 3. In connection with any claim or suit you must: a. authorize us to obtain records or other information, and b. cooperate with us in the investigation, settlement or trial of any claim or suit.</td>
<td>POST BOARD MEETING UPDATE – This was a topic of discussion at the Board meeting. A consensus was to delete this responsibility.</td>
</tr>
<tr>
<td>2. Ask for an Explanation of Coverage – For a suit the member must request an explanation of coverage available to them in writing.</td>
<td>POST BOARD MEETING UPDATE – This was a topic of discussion at the Board meeting. A consensus was to delete this responsibility.</td>
<td>See above</td>
</tr>
<tr>
<td>32. Cooperate in the Process – A member or additional covered party authorize us to obtain records or other information; and cooperate with us in the investigation, defense, settlement or trial of any claim or suit.</td>
<td>POST BOARD MEETING UPDATE – This was a topic of discussion at the Board meeting. A consensus was to delete this responsibility.</td>
<td>See above</td>
</tr>
<tr>
<td>42. Cooperate in the Process – A member or additional covered party authorize us to obtain records or other information; and cooperate with us in the investigation, defense, settlement or trial of any claim or suit.</td>
<td>POST BOARD MEETING UPDATE – This was a topic of discussion at the Board meeting. A consensus was to delete this responsibility.</td>
<td>See above</td>
</tr>
<tr>
<td>43. Pay Your Deductible – A member is obligated to pay its deductible when claim expenses exceed the deductible and upon the Pool’s demand.</td>
<td>POST BOARD MEETING UPDATE – This was a topic of discussion at the Board meeting. A consensus was to delete this responsibility.</td>
<td>See above</td>
</tr>
<tr>
<td>45. Reporting Prior to Claim or Suit – If an event or situation occurs that you believe may result in a claim or suit, you must notify us in writing within a reasonable timeframe. Such notice should include an overview of the situation including all involved parties (name, address, and other contact information), what happened, when it happened, and where it happened.</td>
<td>POST BOARD MEETING UPDATE – This was a topic of discussion at the Board meeting. A consensus was to delete this responsibility.</td>
<td>See above</td>
</tr>
</tbody>
</table>

Section 5. Conditions

A. Duties in the event of wrongful act, claim or suit:

1. If a wrongful act occurs which you believe may result in a claim you must notify us in writing immediately. Such notice should include how, when, and where the wrongful act occurred,
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<td>and the names and addresses of the people involved;</td>
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<tr>
<td>56. Duty to Mitigate – Following a <em>claim</em>, <em>suit</em> or <em>loss</em>, the <em>member</em> is obligated to take all reasonable steps in mitigation to this or future similar covered <em>loss</em> or damage. In the event <em>member</em> fails to take reasonable steps in mitigation, the Pool may deny or limit coverage.</td>
<td></td>
<td>New provision – staff requested. This was much longer, but Committee discussion shortened language to simplified version. POST BOARD MEETING UPDATE – What would be an example of a Duty to Mitigate? Post loss, the Member would have the duty to take reasonable steps to minimize their damages. Taken a step further, post harassment loss WSTIP may tell the Member they should conduct retaliation training to minimize the chance of retaliation losses stemming from the harassment loss. To clarify the intent, language was changed from … steps in mitigation to this or any other covered loss or damage TO steps in mitigation to this or future similar covered loss or damage.</td>
</tr>
<tr>
<td>B. Subrogation</td>
<td>1. When we have paid a <em>loss</em> on your behalf, you must transfer to us your rights to recover payments for that <em>loss</em> from others; and 2. You must cooperate with us in all proceedings to recover payments from others we have made on your behalf. 3. You may waive subrogation but only prior to any <em>claim</em> or <em>suit</em>.</td>
<td>Previously a Condition. #3 changed to include Pool’s consent regarding waiving of subrogation. POST BOARD MEETING UPDATE – Is this intended to refer to waiver of subrogation in member contracts? There are not a lot of opportunities to subrogate from a POL losses, but of course we would want to try to recover funds whenever possible. This same language would have more relevance in the G.L. document, however, it is common to have the same conditions in each document for consistency sake.</td>
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| **78. Exhaust Your Remedies** – A member must exhaust all remedies available under the Interlocal Agreement, Bylaws, and Governance Policies prior to suing us for coverage under this Coverage Document. | C. Legal action against us
No person or entity may:
   1. join us as a party in a *suit* seeking damages from a covered party; or
   2. sue us regarding coverage under this Coverage Document unless all terms and conditions have been fulfilled | New – Reminding the Member they have remedies prior to lawsuit. Some language was previously in Conditions, Legal Actions Against Us. |
| **Pool’s Responsibilities** | **C. Investigation, Settlement, and Defense**
1. The Pool has the right and duty to defend any *suit* or *claim* seeking damages from a *member* or *additional covered party* for wrongful acts to which this coverage applies. We may, at our discretion, investigate and settle any *claim* or *suit* as we consider appropriate. The *member* or *additional covered party* has an obligation to cooperate with us in our investigation and defense. Our duty to defend or settle ends when the limit of liability has been exhausted by payment of damages, judgments, settlements, and *claim* expenses. | Previously in Investigation, Settlement and Defense. Moved into new section Pool’s Responsibilities.
There is a difference between a “right” and a “duty”. Think of “right” as “may” and “duty” as “shall.”
| | | POST BOARD MEETING UPDATE – This seems redundant, can’t it be shortened to: Investigate – The Pool may, at our discretion, investigate and settle any reported event or situation? The first part is a discretion or an option to investigate and potentially settle pretty much anything if we consider it appropriate. The second part is about the investigation and settlement “right” of any claim or suit.
Think of a “right” as a “may” and a duty as a “shall.” |
<p>| <strong>2. Duty to Defend</strong> – The Pool has a duty to defend any <em>suit</em> seeking damages from a <em>member</em> or <em>additional covered party</em> for wrongful acts to which this coverage applies. | | See above |
| <strong>3. Inform the Member of Coverage Limitations</strong> – The Pool has a responsibility to inform the <em>member</em> | | New Section. |</p>
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<td>or <strong>additional covered party</strong> of any identified limitations to the coverage afforded under this agreement including an outright denial of coverage.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Pay to the Limits – The Pool’s duty to defend or settle ends when the limit of liability has been exhausted by payment of damages, judgments, settlements, and <strong>claim expenses</strong>.</td>
<td></td>
<td>Previously located in Limits section See above. POST BOARD MEETING UPDATE – Does this mean expenses are inside the limit of liability? Yes.</td>
</tr>
<tr>
<td>5. Not Pay Expenses Prior to Acceptance – The Pool has no duty to pay any damages, judgments, settlements or <strong>claim expenses</strong> incurred by a <strong>member</strong> or <strong>additional covered party</strong> prior to the presentation and acceptance of the suit or claim by the Pool. For this limit of coverage, the word settlement is defined to mean any verbal or written agreement to resolve the <strong>claim</strong> or <strong>suit</strong> reached by the <strong>member</strong> or <strong>additional covered</strong> and the claimant/plaintiff.</td>
<td></td>
<td>New Section – Requested by Staff that there is no duty to pay prior to the acceptance of the tender. Should a member decide to present a claim at the moment of settlement, the Pool has no duty to participate or backfill the member for expenses they incurred.</td>
</tr>
<tr>
<td>E. Other Conditions of Coverage</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Legal action against us - <strong>No person or entity may join us as a party in a suit seeking damages from a covered party</strong></td>
<td>C. Legal action against us</td>
<td>Remaining condition. Some of which can be deleted.</td>
</tr>
<tr>
<td>2. Other insurance - The coverage provided by this Coverage Document shall be excess over any other valid coverage or insurance available to any member or additional covered party, whether such</td>
<td>D. Other insurance</td>
<td>Makes it clear that if there are concurrent policies, WSTIP’s policy is excess. However, if the purchase of an additional policy is meant to be</td>
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<td>coverage or insurance is stated to be primary, contributory, excess, contingent, or otherwise. However, this condition does not apply if the other coverage or insurance was purchased specifically to apply in excess of this insurance and identifies this policy as primary insurance.</td>
<td>If there is other valid and collectible coverage or insurance for a loss covered by this Coverage Document, our coverage shall be excess.</td>
<td>excess to this policy, this policy can be primary as long as the policies so state.</td>
</tr>
<tr>
<td>3. No assignment - Your rights and duties under this Coverage Document may not be assigned or transferred without our consent.</td>
<td>E. No assignment Your rights and duties under this Coverage Document may not be assigned or transferred without our consent.</td>
<td>No change.</td>
</tr>
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</table>

**Section 32. Who is covered?**
The coverage afforded by this Coverage Document applies to:

A. The member identified in the Coverage Declarations.

B. Each of the following are additional covered parties while acting within the scope of his, her, or its duties on member’s behalf of the member:

1. elected, appointed, and employed officials;
2. current or former members of commissions, boards, or other units operated by you;
3. your current or former employees;
4. all persons who perform a service on a volunteer basis for you, provided such performance is under your direction and control. This does not include any person or entity working on retainer or as an independent contractor;

**Section 3. Who is covered?**
The coverage afforded by this Coverage Document applies to:

A. The member identified in the Coverage Declarations.

B. Each of the following are additional covered parties while acting within the scope of his, her, or its duties on behalf of the member:

1. elected, appointed, and employed officials;
2. current or former members of commissions, boards, or other units operated by you;
3. your current or former employees;
4. all persons who perform a service on a volunteer basis for you, provided such performance is under your direction and control. This does not include any person or entity working on retainer or as an independent contractor;

**Reminder that the pool employees, and the Board are insured on this policy.**
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<td>5. all persons or organizations providing service to you under any mutual aid or similar agreement; and 6. the estate of any person or entity described in this subsection, provided any claim is first made within one year of that person’s death.</td>
<td>5. all persons or organizations providing service to you under any mutual aid or similar agreement; and 6. the estate of any person or entity described in this subsection, provided any claim is first made within one year of that person’s death.</td>
<td></td>
</tr>
<tr>
<td>C. The Pool and its employees while acting within the scope of his, her, or its official duties.</td>
<td>C. The Pool and its employees while acting within the scope of his, her, or its official duties.</td>
<td></td>
</tr>
<tr>
<td><strong>Section 3. Limits of Coverage</strong>&lt;br&gt;A. The most we will pay for all loss arising from a wrongful act during any coverage period is the limits of liability as shown in the Declarations. <strong>Section 3. Limits of Coverage</strong>&lt;br&gt;A. The most we will pay for all loss arising from a wrongful act during any coverage period is the limits of liability as shown in the Declarations.</td>
<td><strong>Section 3. Limits of Coverage</strong>&lt;br&gt;B. The limits of liability as set forth above is the most we will pay regardless of the number of covered persons or the number of suits or claims. <strong>Section 3. Limits of Coverage</strong>&lt;br&gt;B. The limits of liability as set forth above is the most we will pay regardless of the number of covered persons or the number of suits or claims.</td>
<td>No change.</td>
</tr>
<tr>
<td><strong>Section 3. Limits of Coverage</strong>&lt;br&gt;B. The limits of liability as set forth above is the most we will pay regardless of the number of covered persons or the number of suits or claims.</td>
<td>C. If the wrongful act(s) originated in a coverage period prior to the inception of this coverage document or any applicable retroactive date, the wrongful act(s) shall be deemed to be covered solely by the limits provided under the Pool’s earlier coverage document.</td>
<td>Slight change.</td>
</tr>
</tbody>
</table>
Section 64. Extended reporting period

A. If this coverage is canceled or not renewed, we will provide a basic extended reporting period without additional charge or, at your option, a supplementary extended reporting period for an additional charge. An extended reporting period does not change the scope of coverage or extend the coverage period. It only extends the reporting period to report a claim to us.

B. The basic extended reporting period starts with the termination of coverage and lasts for sixty days. The basic extended reporting period does not apply to claims that are covered under any subsequent coverage or insurance you purchase, or that would be covered but for the exhaustion of the amount of coverage or insurance applicable to such claims.

C. Supplementary extended reporting period

1. a supplemental extended reporting period of one year duration is available but only by an endorsement;
2. this supplemental period starts when the basic extended reporting period ends;
3. you must give us a written request for the endorsement within 60 days after the end of the coverage period. The supplemental extended reporting period will not go into effect unless you pay the additional contribution promptly when due;
4. the additional contribution shall be twenty-five percent of the member’s annual

Section 6. Extended reporting period

A. If this coverage is canceled or not renewed, we will provide a basic extended reporting period without additional charge or, at your option, a supplementary extended reporting period for an additional charge. An extended reporting period does not change the scope of coverage or extend the coverage period. It only extends the reporting period to report a claim to us.

B. The basic extended reporting period starts with the termination of coverage and lasts for sixty days. The basic extended reporting period does not apply to claims that are covered under any subsequent coverage or insurance you purchase, or that would be covered but for the exhaustion of the amount of coverage or insurance applicable to such claims.

C. Supplementary extended reporting period

1. a supplemental extended reporting period of one year duration is available but only by an endorsement;
2. this supplemental period starts when the basic extended reporting period ends;
3. you must give us a written request for the endorsement within 60 days after the end of the coverage period. The supplemental extended reporting period will not go into effect unless you pay the additional contribution promptly when due;
4. the additional contribution shall be twenty-five percent of the member’s annual

Brian reviewed and said the increase was appropriate. There appears to be an exclusion in our GEM policy for extended reporting period so this may need to be limited too.

POST BOARD MEETING UPDATE – Wouldn’t the extended reporting period extend the coverage period? No, it only extends the period you can report. It is a claims-made policy thing.
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<td>annual contribution for public officials’ liability coverage; and 5. the coverage afforded through the supplementary extended reporting period shall be excess over any other valid and collectible coverage or insurance.</td>
<td>contribution for public officials’ liability coverage; and 5. the coverage afforded through the supplementary extended reporting period shall be excess over any other valid and collectible coverage or insurance.</td>
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**Section 52. Exclusions**
This coverage does not apply to a *loss*:

A. Arising out of any *wrongful act(s)* that takes place prior to the *earlier of the inception date or retroactive date(s)* of this coverage document.

B. *Consisting of any* Which represents cost, civil fine, penalty, or expense levied or imposed from any complaint or enforcement action by any federal, state or local governmental regulatory agency. *This exclusion does not apply to loss resulting from claims for relief or complaints filed with the Equal Employment Opportunity Commission, state or federal Human Rights Commission to the extent allowed by law.*

C. *Consisting of liability imposed on member or additional covered party under:* Arising out of obligations under the Employee Retirement Income Security Act of 1975 (ERISA), the Comprehensive Omnibus Budget Reconciliation Act (COBRA), the Worker Adjustment Retraining Notification Act (WARN), any similar federal, state or local laws; any including subsequent amendments to such laws, or any regulations promulgated under any

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<tr>
<td>Section 2. Exclusions</td>
<td>This coverage does not apply to a <em>loss</em>:</td>
<td>There is only a retroactive date listed on the declarations page.</td>
</tr>
<tr>
<td>A. Arising out of any <em>wrongful act(s)</em> that takes place prior to the <em>earlier of the inception date or retroactive date(s)</em> of this coverage document.</td>
<td>B. Which represents cost, civil fine, penalty, or expense levied or imposed from any complaint or enforcement action by any federal, state or local governmental regulatory agency.</td>
<td>Providing coverage for EEOC and HRC actions using the “carve back” or exception to the exclusion.</td>
</tr>
<tr>
<td></td>
<td>B. <em>Which represents cost, civil fine, penalty, or expense levied or imposed from any complaint or enforcement action by any federal, state or local governmental regulatory agency.</em></td>
<td>This exclusion has been used to exclude PDC fines, public records fines, etc.</td>
</tr>
<tr>
<td></td>
<td>C. Arising out of obligations under the Employee Retirement Income Security Act of 1975 (ERISA) including subsequent amendments or any similar federal, state or local law or regulation.</td>
<td>Expands the exclusion. Does not cover ERISA, COBRA, or WARN. This is consistent with peer pool coverage exclusions.</td>
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## Proposed Language with Changes Highlighted

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<td><strong>such laws or any similar federal, state or local law or regulation.</strong></td>
<td>No changes.</td>
</tr>
<tr>
<td><strong>D. Arising out of condemnation, inverse condemnation, adverse possession, dedication by adverse use, or disputes involving the application of impact or linkage fees. This includes but is not limited to, takings and partial takings of private property resulting from the application of a land use, zoning, building, subdivision or similar laws or regulations.</strong></td>
<td>No changes.</td>
</tr>
<tr>
<td><strong>E. Arising out of or attributable to the member or additional covered party obtaining profit, advantage or remuneration to which the member or additional covered party is not entitled; Provided, an adverse fact or finding attributable to a member or additional covered party shall not be imputed to any other member or additional covered party.</strong></td>
<td>No changes.</td>
</tr>
<tr>
<td><strong>F. Arising out of bodily injury, property damage, personal injury, or advertising injury. This exclusion does not apply to loss by an employee, former employee, or prospective employee or by the spouse or child thereof resulting from:</strong></td>
<td>This seems like a significant change, but really it is a carve back to ensure certain kinds of actions are indeed covered related to employee practices, slander, liable, and advertising media liability. The carve back updates to standard employment related causes of action.</td>
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**POST BOARD MEETING UPDATE – Is this a carve back? Not clear on the intent, and the same with G. It is not a carve back, it is saying if more than one party is involved, any found adverse fact found against one, is not a finding against all.**

**POST BOARD MEETING UPDATE – Should the end of this exclusion be ... This exclusion does not apply to “personal injury” vs. bodily injury? Yes, changed.**

---

**F. Arising out of bodily injury, property damage, personal injury, or advertising injury. This exclusion does not apply to loss by an employee, former employee, or prospective employee or by the spouse or child thereof resulting from:**

1. refusal to employ;  
2. termination of employment; or  
3. coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment-related practices or policies.

**Involving bodily injury or property damage. This exclusion does not apply to personal injury caused by or arising out of any wrongful act**
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<td>involving an actual or alleged wrongful termination harassment; retaliation; discrimination; employment related misrepresentation to an employee or applicant for employment with the member; wrongful failure to employ or promote; wrongful deprivation of career opportunity; wrongful demotion or negligent employee evaluation including the giving of negative or defamatory statements in connection with an employee reference; wrongful discipline; violation of an employee’s or applicant's civil rights; employment-related libel, slander, defamation or invasion of privacy.</td>
<td>G. Brought about or contributed to by fraud, dishonesty, or bad faith, or arising from the deliberate violation of any federal, state, or local statute, ordinance, rule or regulation; provided an adverse fact or finding attributable to a member or additional covered party shall not be imputed to any other member or additional covered party.</td>
<td>Slight change. The coverage attorney suggested separation of the sentences makes it clearer that bad faith of one party, does not mean bad faith of all parties. Also, bad faith of one member would not mean bad faith of all members party to the action.</td>
</tr>
<tr>
<td>G. Arising out of Brought about or contributed to by fraud, dishonesty, or bad faith, or arising from the deliberate violation of any federal, state, or local statute, ordinance, rule or regulation; provided an adverse fact or finding attributable to a member or additional covered party shall not be imputed to any other member or additional covered party.</td>
<td>POST BOARD MEETING UPDATE – Shouldn’t the word “deliberate” be “intentional?” Yes. These seem like the same word, but legally they do mean different things. Intentional means “done on purpose or knowingly.” Deliberate means “intentional but with the added complexity of carefully thinking it out in advance.”</td>
<td></td>
</tr>
<tr>
<td>POST BOARD MEETING UPDATE – Can’t H and G be combined? Yes, language reflects combination.</td>
<td>POST BOARD MEETING UPDATE – Can’t H and G be combined? Yes, language reflects combination.</td>
<td></td>
</tr>
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</table>

H. Arising out of any intentional dishonest, fraudulent, criminal or malicious act, error or omission, by any member or additional covered party.
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<td><em>party</em> including the violation of any statute, code or ordinance.</td>
<td>H. Arising out of, directly or indirectly, debt security financing, including but not limited to bonds, notes and debentures.</td>
<td>Change in alpha order. No material change.</td>
</tr>
<tr>
<td>H. Arising out of, directly or indirectly, debt security financing, including but not limited to bonds, notes and debentures.</td>
<td>H. Arising out of, directly or indirectly, debt security financing, including but not limited to bonds, notes and debentures.</td>
<td>Change in alpha order. No material change.</td>
</tr>
<tr>
<td>I. Arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of <em>pollutants</em> at any time.</td>
<td>I. Arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of <em>pollutants</em> at any time.</td>
<td>Change in alpha order. No material change.</td>
</tr>
<tr>
<td>J. Arising out of, resulting from, caused or contributed to by asbestos, lead, or mold or exposure to asbestos, lead, or mold, or for the costs of abatement, mitigation, removal or disposal of asbestos, lead or mold.</td>
<td>J. Arising out of, resulting from, caused or contributed to by asbestos, lead, or mold or exposure to asbestos, lead, or mold, or for the costs of abatement, mitigation, removal or disposal of asbestos, lead or mold.</td>
<td>Change in alpha order. No material change.</td>
</tr>
<tr>
<td>L. Resulting from <em>By reason of</em> the assumption of liability in a contract or agreement. This exclusion does not apply to loss that you would have in absence of the contract or agreement.</td>
<td>O. By reason of the assumption of liability in a contract or agreement. This exclusion does not apply to loss that you would have in absence of the contract or agreement.</td>
<td>Change in alpha order. Originally O, but moved to here to be closer to the new M.</td>
</tr>
<tr>
<td>M. Arising out of or related to any award, order or relief granted in any labor arbitration proceedings, civil service hearings, or unfair labor practices proceedings or any other similar employer/employee labor dispute, administrative hearing, or proceeding initiated against a member under the laws of the State of Washington and/or the United States of America or as provided for in</td>
<td></td>
<td>New. Previously we have excluded such matters using old Exclusion A, K, and O. This makes it clear we are not covering labor disputes in any form.</td>
</tr>
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<td><strong>Proposed Language with Changes Highlighted</strong></td>
<td><strong>Pre-Existing Language</strong></td>
<td><strong>Annotation</strong></td>
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<td>any collective bargaining agreement between <em>member</em> or <em>additional covered party</em> and any employee, employee bargaining unit or union for any form of grievance resolution, including any defense cost associated with any proceeding described in this paragraph.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>N.</strong> Arising out of the destruction or disappearance of money, securities or the loss of use thereof.</td>
<td><strong>L.</strong> Arising out of the destruction or disappearance of money, securities or the loss of use thereof.</td>
<td>No change. Coverage for such matters are in the crime / employee fidelity policy. There may also be coverage in the cyber liability policy dependent on the root cause of the loss.</td>
</tr>
<tr>
<td><strong>Q.</strong> Arising out of or contributed to by your failing to place or maintain any insurance, bond, or self-insurance.</td>
<td><strong>M.</strong> Arising out of or contributed to by your failing to place or maintain any insurance, bond, or self-insurance.</td>
<td>Change in alpha order. No material change.</td>
</tr>
<tr>
<td><strong>P.</strong> Arising out of rendering or failure to render professional services. <em>Professional services</em> does not include the rendering of emergency first aid including the administration of a life-saving opioid overdose medication (such as Naloxone).</td>
<td><strong>N.</strong> Arising out of rendering or failure to render professional services.</td>
<td>Change in alpha order. No material change. Remember there was a change in the definition of professional services.</td>
</tr>
<tr>
<td><strong>Q.</strong> Arising out of: 1. any tax assessments or adjustments; 2. the collection, refund, disbursement, or application of any taxes; or 3. failure to anticipate tax revenue shortfalls.</td>
<td><strong>P.</strong> Arising out of: 1. any tax assessments or adjustments; 2. the collection, refund, disbursement, or application of any taxes; or 3. failure to anticipate tax revenue shortfalls.</td>
<td>Change in alpha order. No material change.</td>
</tr>
</tbody>
</table>

**POST BOARD MEETING UPDATE** – Should the carveback be added here too, just to make it easier for the member? Sure, done.

**POST BOARD MEETING UPDATE** – Should "Naloxone" be changed to something less descriptive in case some other drug becomes available for the same purpose? Sure, done.
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<td>R. Consisting of punitive damages, multiplied damages, criminal fines, or civil penalties, or any other damages, fines, penalties or assessments that are imposed for the purposes other than to compensate an injured person or entity for their actual injury, loss or damage.</td>
<td>Q. Arising out of demands or actions seeking relief or redress in any form other than monetary damages, for any fees, costs or expenses which you may become obligated to pay as a result of any adverse judgment for declaratory relief or injunctive relief, or for punitive or exemplary damages.</td>
<td>This exclusion has been problematic for staff on many occasions failing to provide clear direction. Reviewed language from other pools which resulted in two exclusions … one for injunctive relief and one for punitive damages, fines, etc. See below.</td>
</tr>
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<td>S. Arising out of or related to any claim or suit for equitable relief including action for injunctive relief or declaratory relief.</td>
<td>Q. Arising out of demands or actions seeking relief or redress in any form other than monetary damages, for any fees, costs or expenses which you may become obligated to pay as a result of any adverse judgment for declaratory relief or injunctive relief, or for punitive or exemplary damages.</td>
<td>This exclusion has been problematic for staff on many occasions failing to provide clear direction. Reviewed language from other pools which resulted in two exclusions … one for injunctive relief and one for punitive damages, fines, etc. See above. POST BOARD MEETING UPDATE – Should there be a carveback? Would injunctive relief to rehire a wrongfully terminated employee be excluded? Just want to be sure this excludes the injunctions it intends. <strong>This is going to require more research.</strong></td>
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<td>T. For <strong>bodily injury</strong> or <strong>property damage</strong> due to war (declared or not) or any act or condition incident to war. War includes civil war, insurrection, rebellion, revolution, or <strong>terrorist activity</strong>.</td>
<td>R. For <strong>bodily injury</strong> or <strong>property damage</strong> due to war (declared or not) or any act or condition incident to war. War includes civil war, insurrection, rebellion, revolution, or terrorist activity.</td>
<td>Change in alpha order. No material change. Terrorist activity was not defined. Used definition that matches reinsurance exclusions.</td>
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<td>U. Liability arising out of the hazardous properties of nuclear material.</td>
<td>S. Liability arising out of the hazardous properties of nuclear material.</td>
<td>Change in alpha order. No material change.</td>
</tr>
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<td>V. Arising out of the actual or alleged violation of the Public Records Act (RCW 42.56) and/or the Open Public Meetings Act (RCW 42.30).</td>
<td></td>
<td>NEW. We have previously denied such claims under the old exclusion Q. However, staff asked for a clearer exclusion. This is a common exclusion across all Pool documents reviewed.</td>
</tr>
<tr>
<td>W. Consisting of any costs or expenses incurred to make premises accessible to persons with disabilities as required by the Americans with Disabilities Act; any similar federal, state or local law; any amendments to such laws; or any regulations promulgated under any such laws.</td>
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<td>NEW. Consistent with other risk pool documents.</td>
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<td>Proposed Language with Changes Highlighted</td>
<td>Pre-Existing Language</td>
<td>Annotation</td>
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<td><strong>X. Consisting of awards or settlements of employer-paid pay and benefits, such as but not limited to vacation, general leave, sick leave, back pay, payroll taxes, and retirement.</strong> This exclusion does apply to back pay awarded as part of an employment practices action.</td>
<td><strong>NEW.</strong> We have previously covered back pay in employment discrimination situations. However, we have never covered vacation, sick leave etc. Staff asked for a clearer exclusion. POST BOARD MEETING UPDATE – Added carveback language for backpay in conjunction with an employment practices action. This will need further research.</td>
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<td><strong>Y. Arising out of sexual abuse or molestation of any person by an additional covered party or by any employee or volunteer of a member.</strong> The conduct of the employee or volunteer will not be imputed to the member. Sexual abuse does not include sexual harassment.</td>
<td><strong>NEW.</strong> This was not previously excluded as we did not have a criminal exclusion or a sexual abuse exclusion. The member itself does not loose coverage. The member would not be sued for sexual abuse, but rather negligent hiring, supervision, retention. All pools have a sexual abuse exclusion. Also, it clarifies sexual abuse is not sexual harassment which is why both terms are defined. POST BOARD MEETING UPDATE – Should we carveback defense for employees under a reservation of rights? No, that would defeat the purpose.</td>
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<td><strong>Z. Arising out of or related in any way to the ownership, maintenance, operations, use, loading or unloading of aircraft or watercraft.</strong></td>
<td><strong>NEW.</strong> All pools have a similar exclusion. POST BOARD MEETING UPDATE – This seems like a very strong exclusion for watercraft. Agreed, deleted watercraft. This will need further research.</td>
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<td><strong>AA. Arising out of fireworks or pyrotechnics displays, events or exhibitions.</strong></td>
<td><strong>NEW.</strong> All pools have a similar exclusion.</td>
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<td><strong>BB. For liability arising out of:</strong></td>
<td><strong>NEW.</strong> All pools have a similar exclusion.</td>
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<td>Proposed Language with Changes Highlighted</td>
<td>Pre-Existing Language</td>
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| 1. An insufficiency of funds to meet any obligations under any plan included in the employee benefit program;  
2. Inadequacy of performance/advice given with respect to participation in the employee benefits program, including:  
a. Failure of any investment to perform;  
b. Errors in providing information on past performance of investment vehicles;  
c. Advice given to any person with respect to that person's decision to participate or not participate in the employee benefit program. | | NEW. Excludes cyber liability exposures from public officials liability document. Coverage can be found under the Cyber Liability policy. This just means you cannot stack policies. |
| **CC. Consisting of damages, or loss costs or expenses because of personal injury, advertising injury, or property damage arising directly or indirectly out of:**  
1. Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of non-public information; or  
2. the loss of, loss of use, damage to, corruption of, inability to access, or inability to manipulate electronic data.  
3. This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, costs or expenses incurred by any member or others out of that which is described in paragraph 1 or 2 above. | | |
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<th>Proposed Language with Changes Highlighted</th>
<th>Pre-Existing Language</th>
<th>Annotation</th>
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| DD. Arising out of bodily injury to member’s employee whose employment is not subject to the Industrial Insurance Act of Washington (Title 51 RCW) or the spouse, child, parent brother or sister of that employee occurring in the course of employee’s employment by member. This exclusion applies: 1. Whether the member may be liable as an employer or in any other capacity; and 2. To any obligation to share damages with or repay someone else who must pay damages because of the injury. | For which there is coverage for member or additional covered party under the Liability Coverage Document issued by Pool to member. | NEW. All pools have a similar exclusion. If a member has employees that fall outside of L&I or if member fails to properly report a worker to L&I and that worker injury is not covered, Pool will not participate in the settlement of such claim. 
POST BOARD MEETING UPDATE – Shouldn’t the word “not” be removed? Further research will be required. |
| EE. For which there is coverage for member or additional covered party under the Liability Coverage Document issued by Pool to member. | For which there is coverage for member or additional covered party under the Liability Coverage Document issued by Pool to member. | Previously a condition. This means the general liability and the public officials liability can not be stacked. If one policy covers, the other does not. |
October 18, 2018

TO: WSTIP Executive Committee

FROM: Tracey Christianson, Executive Director

SUBJECT: Notice Letter from the Department of Licensing / Driver Record Monitoring Update

Action Requested
This item may benefit from a more in-depth discussion. If the Committee agrees, Staff suggest adding it to the Executive Committee Retreat topic list.

Background
Staff disclosed that recent interactions with the Department of Licensing (DOL) regarding our driver record monitoring program have put our program as we know it today into some flux. Rick, Andrea and I met with representatives from DOL in late August. During that meeting, it was made clear to us that a legislative fix would be needed to continue the program in the same fashion we manage it today. Particularly troublesome is DOL’s decision that (1) vanpool drivers can not be monitored, and (2) all employees that are monitored must sign releases to do so.

Staff approached the Washington State Transit Association to see if their lobbyist(s) could take on this challenge. WSTA and WSTIP agreed that any additional costs because of this engagement would ultimately be paid by WSTIP. General counsel drafted potential legislative language changes (see attached). WSTIP staff met with Michael Shaw to provide background, get his thoughts, and presented the language changes. Shaw has agreed to proceed with attempting to change the legislation.

Shaw has met with the legislative staff at DOL and found they are not opposed to the changes we are seeking. They are reviewing the language we are proposing.

An additional item in DOL’s letter is a conclusion we have exceeded our authority by offering services outside of our membership. This puts our Interlocal Agreement agencies in jeopardy. This is a troubling conclusion as I personally bristle over the notion that DOL itself has the authority to tell us where our scope of authority is. As historical background, WSTIP asked DOL if they had issue with us providing services outside our membership and their answer was no. We then sought specific approval of such a program from the state risk manager’s office, and approval was granted. Still, this is an opportunity to review our decision to provide services outside our membership because our burden under this proposed contract is greater than it was under our original contract in terms of both training and auditing.

That is why Staff suggest this topic be covered in more depth at the Executive Committee retreat.

Attachments:
DOL Letter dated October 15, 2018
RCW 46.52.130
Draft legislative language
October 15, 2018

Tracey Christianson, Executive Director
Washington State Transit Insurance Pool
2629 12th Court SW
Olympia, WA 98502

Dear Ms. Christianson,

I am responding to your request for changes to the proposed contract between the Department of Licensing (DOL) and the Washington State Transit Insurance Pool (WSTIP) for access to driving records.

Since the contract between DOL and WSTIP was initially executed over 10 years ago, several things have changed regarding how personal information is shared, used and secured, including an increased number of regulations, such as Revised Code of Washington (RCW) 46.52.130, about how data may be released. As a result, all new DOL data sharing agreements contain provisions and limitations not found in previous contracts.

Specific to abstracts of driving records, RCW 46.52.130 states DOL “…may furnish an abstract of a person’s driving record as permitted under this section.” The statute does not give DOL discretion in making any other allowances, interpretations or exceptions to the list of permissible reasons to release driving records, or whose records may be monitored.

WSTIP has requested to get access to driving records for its members and other entities as an agent under subsection (h), State colleges, universities, or agencies, or units of local government. Although other sections of RCW 46.52.130 allow “agents” to access driving records for their clients, subsection (h) does not have this provision and DOL therefore does not have the authority to give WSTIP access to driving records for its members under subsection (h).

However, WSTIP, as an agent for its members, may access driving records under subsections (b) Employers or prospective employers, and (d) Transit authorities. If WSTIP wishes to continue to access driving records for its members, it may do so under subsections (b) and (d) as long as it meets the requirements of those sections, including obtaining a Release of Interest from each individual prior to requesting the driving record for employment purposes.

WSTIP has also requested that it be allowed to review driving records (aka “monitoring”) for vanpool drivers. Unlike Subsections (b) and (e), subsection (d), Transit authorities, does not allow DOL to provide monitoring services.
Additionally, during our meeting on August 22, 2018, WSTIP stated it was providing driving records to non-member entities such as counties, fire districts and cities for employment purposes. DOL believes that providing driving records to non-members is outside the scope of WSTIP’s authority as a risk pool for certain transit authorities.

DOL understands how changes to the data sharing regulations have impacts on how WSTIP conducts business. To allow time for WSTIP to pursue changes to state law in the next legislative session as a means of continuing its business practices, WSTIP’s current contract (DOL #K1239) will be extended through, and terminate, on June 30, 2019.

After that, if WSTIP is successful in getting the law changed, DOL can provide driving records pursuant to the revised law. However, if WSTIP is unsuccessful, WSTIP may enter into a new contract with DOL for driving records under the laws in effect at that time. As the statutes are written today, the agreement would contain the following conditions:

- WSTIP must ensure all subrecipients requesting driving records for employment purposes, or monitoring as allowed under Subsection (b), have signed a Release of Interest for each individual prior to requesting the driving record;
- WSTIP cannot provide monitoring services for vanpool drivers; and
- As an agent to its subrecipients, WSTIP must be responsible and accountable to ensure that its subrecipients meet all DOL data security, subrecipient, and permissible use requirements as outlined in the new contract. As such, it must at a minimum audit all subrecipients for both data security and permissible use.

Please let me know if you have any questions.

Sincerely,

Debbie Dunn

Debra Dunn, Data Sharing Manager
Program and Services Division

Cc: Brad Benfield, PSD Assistant Director
DOL Contract File
RCW 46.52.130

Abstract of driving record—Access—Fee—Violations.

Upon a proper request, the department may furnish an abstract of a person’s driving record as permitted under this section.

(1) Contents of abstract of driving record. An abstract of a person’s driving record, whenever possible, must include:

(a) An enumeration of motor vehicle accidents in which the person was driving, including:
   (i) The total number of vehicles involved;
   (ii) Whether the vehicles were legally parked or moving;
   (iii) Whether the vehicles were occupied at the time of the accident; and
   (iv) Whether the accident resulted in a fatality;
(b) Any reported convictions, forfeitures of bail, or findings that an infraction was committed based upon a violation of any motor vehicle law;
(c) The status of the person’s driving privilege in this state; and
(d) Any reports of failure to appear in response to a traffic citation or failure to respond to a notice of infraction served upon the named individual by an arresting officer.

(2) Release of abstract of driving record. An abstract of a person’s driving record may be furnished to the following persons or entities:

(a) Named individuals. (i) An abstract of the full driving record maintained by the department may be furnished to the individual named in the abstract.
   (ii) Nothing in this section prevents a court from providing a copy of the driver’s abstract to the individual named in the abstract or that named individual’s attorney, provided that the named individual has a pending or open infraction or criminal case in that court. A pending case includes criminal cases that have not reached a disposition by plea, stipulation, trial, or amended charge. An open infraction or criminal case includes cases on probation, payment agreement or subject to, or in collections. Courts may charge a reasonable fee for the production and copying of the abstract for the individual.

(b) Employers or prospective employers. (i)(A) An abstract of the full driving record maintained by the department may be furnished to an employer or prospective employer or an agent acting on behalf of an employer or prospective employer of the named individual for purposes related to driving by the individual as a condition of employment or otherwise at the direction of the employer.
   (B) Release of an abstract of the driving record of an employee or prospective employee requires a statement signed by: (i) The employee or prospective employer that authorizes the release of the record; and (ii) the employer attesting that the information is necessary for employment purposes related to driving by the individual as a condition of employment or otherwise at the direction of the employer. If the employer or prospective employer authorizes an agent to obtain this information on their behalf, this must be noted in the statement. The statement must also note that any information contained in the abstract related to an adjudication that is subject to a court order sealing the juvenile record of an employee or prospective employee may not be used by the employer or prospective employer, or an agent authorized to obtain the information on their behalf, unless required by federal regulation or law. The employer or prospective employer must afford the employee or prospective employer an opportunity to demonstrate that an adjudication contained in the abstract is subject to a court order sealing the juvenile record.
   (C) Upon request of the person named in the abstract provided under this subsection, and upon that same person furnishing copies of court records ruling that the person was not at fault in a motor vehicle accident, the department must indicate on any abstract provided under this subsection that the person was not at fault in the motor vehicle accident.
   (D) No employer or prospective employer, nor any agent of an employer or prospective employer, may use information contained in the abstract related to an adjudication that is subject to a court order sealing the juvenile record of an employee or prospective employee for any purpose unless required by federal regulation or law. The employee or prospective employee must furnish a copy of the court order sealing the juvenile record to the employer or prospective employer, or the agent of the employer or prospective employer, as may be required to ensure the application of this subsection.
   (ii) In addition to the methods described in (b)(i) of this subsection, the director may enter into a contractual agreement with an employer or its agent for the purpose of reviewing the driving records of existing employees for changes to the record during specified periods of time. The department shall establish a fee for this service, which must be deposited in the highway safety fund. The fee for this service must be set at a level that will not result in a net revenue loss to the state. Any information provided under this subsection must be treated in the same manner and is subject to the same restrictions as driving record abstracts.

(c) Volunteer organizations. (i) An abstract of the full driving record maintained by the department may be furnished to a volunteer organization or an agent for a volunteer organization for which the named individual has submitted an application for a position that would require driving by the individual at the direction of the volunteer organization.
   (ii) Release of an abstract of the driving record of a prospective volunteer requires a statement signed by: (A) The prospective volunteer that authorizes the release of the record; and (B) the volunteer organization attesting that the information is necessary for purposes related to driving by the individual at the direction of the volunteer organization. If the volunteer organization authorizes an agent to obtain this information on their behalf, this must be noted in the statement.

(d) Transit authorities. An abstract of the full driving record maintained by the department may be furnished to an employee or agent of a transit authority checking prospective volunteer vanpool drivers for insurance and risk management needs.

(e) Insurance carriers. (i) An abstract of the driving record maintained by the department covering the period of not more than the last three years may be furnished to an insurance company or its agent:
   (A) That has motor vehicle or life insurance in effect covering the named individual;
   (B) To which the named individual has applied; or
   (C) That has insurance in effect covering the employer or a prospective employer of the named individual.
   (ii) The abstract provided to the insurance company must:
   (A) Not contain any information related to actions committed by law enforcement officers or firefighters, as both terms are defined in RCW 41.26.030, or by Washington state patrol officers, while driving official vehicles in the performance of their occupational duty, or by registered tow truck operators as defined in RCW 46.55.010 in the performance of their occupational duties while at the scene of a roadside
impound or recovery so long as they are not issued a citation. This does not apply to any situation where the vehicle was used in the commission of a misdemeanor or felony;

(B) Include convictions under RCW 46.61.5249 and 46.61.525, except that the abstract must report the convictions only as negligent driving without reference to whether they are for first or second degree negligent driving; and

(C) Exclude any deferred prosecution under RCW 10.05.060, except that if a person is removed from a deferred prosecution under RCW 10.05.080, the abstract must show the deferred prosecution as well as the removal.

(iii) Any policy of insurance may not be canceled, nonrenewed, denied, or have the rate increased on the basis of information regarding an accident included in the abstract of a driving record, unless the policyholder was determined to be at fault.

(iv) Any insurance company or its agent, for underwriting purposes relating to the operation of commercial motor vehicles, may not use any information contained in the abstract relative to any person's operation of motor vehicles while not engaged in such employment. Any insurance company or its agent, for underwriting purposes relating to the operation of noncommercial motor vehicles, may not use any information contained in the abstract relative to any person's operation of commercial motor vehicles.

(v) The director may enter into a contractual agreement with an insurance company or its agent for the limited purpose of reviewing the driving records of existing policyholders for changes to the record during specified periods of time. The department shall establish a fee for this service, which must be deposited in the highway safety fund. The fee for this service must be set at a level that will not result in a net revenue loss to the state. Any information provided under this subsection must be treated in the same manner and is subject to the same restrictions as driving record abstracts.

(f) Alcohol/drug assessment or treatment agencies. An abstract of the driving record maintained by the department covering the period of not more than the last five years may be furnished to an alcohol/drug assessment or treatment agency approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment, for purposes of assisting employees in making a determination as to what level of treatment if any, is appropriate, except that the abstract must:

(i) Also include records of alcohol-related offenses, as defined in RCW 46.01.260(2), covering a period of not more than the last ten years; and

(ii) Indicate whether an alcohol-related offense was originally charged as a violation of either RCW 46.61.502 or 46.61.504.

(g) Attorneys—City attorneys, county prosecuting attorneys, and named individual's attorney of record. An abstract of the full driving record maintained by the department, including whether a recorded violation is an alcohol-related offense, as defined in RCW 46.01.260(2), that was originally charged as a violation of either RCW 46.61.502 or 46.61.504, may be furnished to city attorneys, county prosecuting attorneys, or the named individual's attorney of record. City attorneys, county prosecuting attorneys, or the named individual's attorney of record may provide the driving record to alcohol/drug assessment or treatment agencies approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment.

(h) State colleges, universities, or agencies, or units of local government. An abstract of the full driving record maintained by the department may be furnished to (i) state colleges, universities, or agencies for employment and risk management purposes or (ii) units of local government authorized to self-insure under RCW 48.62.031 for employment and risk management purposes.

(i) Superintendent of public instruction. An abstract of the full driving record maintained by the department may be furnished to the superintendent of public instruction for review of public school bus driver records. The superintendent or superintendent's designee may discuss information on the driving record with an authorized representative of the employing school district for employment and risk management purposes.

(3) Release to third parties prohibited. Any person or entity receiving an abstract of a person's driving record under subsection (2)(b) through (f) of this section shall use the abstract exclusively for his, her, or its own purposes or as otherwise expressly permitted under this section, and shall not divulge any information contained in the abstract to a third party.

(4) Fee. The director shall collect a thirteen dollar fee for each abstract of a person's driving record furnished by the department. Fifty percent of the fee must be deposited in the highway safety fund, and fifty percent of the fee must be deposited according to RCW 46.68.038.

(5) Violation. (a) Any negligent violation of this section is a gross misdemeanor.

(b) Any intentional violation of this section is a class C felony.

(6) Effective July 1, 2019, the contents of a driving abstract pursuant to this section shall not include any information related to sealed juvenile records unless that information is required by federal law or regulation.

[ 2017 c 43 § 2; 2015 2nd sp.s. c 3 § 12; 2015 c 265 § 4. Prior: 2012 c 74 § 6; 2012 c 73 § 1; 2010 c 253 § 1; 2009 c 276 § 1; 2008 c 253 § 1; 2007 c 424 § 3; 2004 c 49 § 1; 2003 c 367 § 1; prior: 2002 c 352 § 20; 2002 c 221 § 1; 2001 c 309 § 1; 1998 c 165 § 11; 1997 c 66 § 12; prior: 1996 c 307 § 4; 1996 c 183 § 2; 1994 c 275 § 16; 1991 c 243 § 1; 1989 c 178 § 24; prior: 1987 1st ex.s.s. c 9 § 2; 1987 c 397 § 2; 1987 c 181 § 1; 1986 c 74 § 1; 1985 ex.s.s. c 11 § 11; 1979 ex.s.s. c 136 § 84; 1977 ex.s.s. c 356 § 2; 1977 ex.s.s. c 140 § 1; 1973 1st ex.s.s. c 37 § 1; 1969 ex.s.s. c 40 § 3; 1967 c 174 § 2; 1967 c 32 § 63; 1963 c 169 § 65; 1961 ex.s.s. c 21 § 27.]

NOTES:

Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.


Finding—Intent—2015 c 265: See note following RCW 13.50.010.

Effective date—2012 c 74 §§ 1-12: See note following RCW 46.17.100.

Effective date—2010 c 253: "This act takes effect October 31, 2010." [2010 c 253 § 3.]

Effective date—2008 c 253: "This act takes effect August 1, 2008." [2008 c 253 § 2.]

http://app.leg.wa.gov/RCW/default.aspx?cite=46.52.130
Effective date—2007 c 424: See note following RCW 46.20.293.

Effective dates—2002 c 352: See note following RCW 46.09.410.

Effective date—1998 c 165 §§ 8-14: See note following RCW 46.52.070.

Short title—1998 c 165: See note following RCW 43.59.010.

Effective date—1996 c 183: See note following RCW 46.52.030.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

Effective dates—1989 c 178: See RCW 46.25.901.

Severability—Effective date—1987 1st ex.s. c 9: See notes following RCW 46.29.050.

Intent—1987 c 397: See note following RCW 46.61.410.

Effective date—1985 ex.s. c 1: See note following RCW 46.20.070.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Effective date—1967 c 174: See note following RCW 46.29.050.

Abstract of driving record to be furnished: RCW 46.29.050.

Use of highway safety fund to defray cost of furnishing and maintaining driving records: RCW 46.68.060.
(d) **Transit authorities.** An abstract of the full driving record maintained by the department may be furnished to an employee or agent of a transit authority checking prospective or existing volunteer vanpool drivers for insurance and risk management needs.

(i) The director may enter into a contractual agreement with a transit authority or its agent for the purpose of reviewing the driving records of existing van pool drivers for changes to the record during specified periods of time. The department shall establish a fee for this service, which must be deposited in the highway safety fund. The fee for this service must be set at a level that will not result in a net revenue loss to the state. Any information provided under this subsection must be treated in the same manner and is subject to the same restrictions as driving record abstracts.

(ii) “Agent” of a transit authority includes an insurance pool established under RCW 48.62.031, of which the transit authority is a member.

(iii) The Transit Authority or its agent need not obtain a release of an abstract of the full driving record or of information provided pursuant to paragraph (d) (i).

(h) **State colleges, universities, or agencies, or units of local government.** An abstract of the full driving record maintained by the department may be furnished to:

(i) state colleges, universities, or agencies for employment and risk management purposes or

(ii) units of local government authorized to self-insure under RCW 48.62.031, or their agent, for employment and risk management purposes. The director may enter into a contractual agreement with a unit of local government, or its agent, for the purpose of reviewing the driving records of existing employees for changes to the record during specified periods of time. The department shall establish a fee for this service, which must be deposited in the highway safety fund. The fee for this service must be set at a level that will not result in a net revenue loss to the state. Any information provided under this subsection must be treated in the same manner and is subject to the same restrictions as driving record abstracts. “Agent” of a unit of local government” includes an insurance pool established under RCW 48.62.031, of which the unit of local government is a member. “Unit of local government” includes an insurance pool established under RCW 48.62.031. The unit of local government or its agent need not obtain a release of an abstract of the full driving record or of information provided pursuant this paragraph.
October 26, 2018

TO: WSTIP Executive Committee

FROM: Andrea Powell, Administrative Services Manager

SUBJECT: Request to Engage External Certified Public Accountant (CPA) Services

Action Requested:
Authorize the Executive Director to negotiate and execute a new agreement with StraderHallet for external CPA services.

Background:
The current contract for external CPA services was set to expire in 2018 and was extended through 2019. The Audit Committee reviewed the requirements to be included in the Request for Proposal (RFP) at the meeting on August 23, 2018.

WSTIP conducted the RFP for external CPA services which closed September 28. We received four proposals. The proposals were rated based on the selection and evaluation section within the RFP:

1. Qualifications and experience of personnel to be assigned to this contract. (15%)
2. Experience with public entities and public entity insurance pools. (30%)
3. Estimated costs to WSTIP for services required. (50%)
4. Washington state certification as Minority/Woman Owned Business Enterprise (MWBE). (5%)

A copy of the RFP and successful proposal is attached to this memo. Staff request permission to move forward with engaging StraderHallet for external CPA. We are proposing starting the agreement January 1, 2019 for a three-year agreement with two one-year extensions possible.

/ap
REQUEST FOR PROPOSALS

Accounting Services
For the
Washington State Transit Insurance Pool

Proposal due by: September 28th, 2018

Introduction
The Washington State Transit Insurance Pool (WSTIP or the Pool) intends to contract with a firm for accounting services. Interested parties are invited to submit a written proposal.

Organizational Overview
The Washington State Transit Insurance Pool is one of many pools currently operating in the State of Washington. WSTIP was established in 1989. Currently, there are 25-member transit agencies which participate in the property and liability programs offered by the Pool. The Pool represents most of the transit agencies in Washington State. Member vehicles travel close to 100 million miles a year. The programs/coverages offered by the Pool include General & Auto Liability, All-Risk Property (including auto physical damage), Boiler and Machinery, Employee Fidelity/Crime, Cyber, and Public Officials Liability. The Pool also provides loss prevention and risk management services to our Pool members. WSTIP is regulated by the Washington State Risk Manager and audited annually by the Washington State Auditor.

Scope of Work
The accounting services requested would encompass the following monthly, quarterly and annual accounting services including, but not limited to:

1. Posting A/P, A/R, payroll, general journal entries related to financials and claim liability reports, monthly or as requested.
2. Prepare quarterly comparative financials for the WSTIP Board including Statement of Net Position and Statement of Revenues and Expenses. Reports to be provided by the 15th of the month following the close of the quarter, or 10 days after Staff provides required material, whichever is later.
3. Prepare financial statements and notes in accordance with the BARS manual for annual report to Washington State Auditor. Annual draft of financial statements shall be provided by March 30th and final by April 30th, or 10 days after Staff provides required material, whichever is later.
4. Work with the Washington State Auditor to answer questions regarding preparation of annual financials and resolution of any post-audit findings.
5. Prepare monthly trial balances and reconcile all bank accounts.

The Accounting Firm/Individual provide a flat monthly fee for the stated scope of work, as well as an hourly rate for advice, counsel and consulting services for the WSTIP Board and Staff on accounting, internal controls, financials and payroll related functions related to WSTIP operations as needed.

The contract will start January 1, 2019.

Areas of General Knowledge

1. Public Entity Insurance Pooling Operations as it relates to the financials of the program, including review and understanding of WAC 200.100.37 and RCW 48.62
2. Knowledge of Generally Accepted Accounting Principles (GAAP), Governmental Accounting Standards Board (GASB), and Washington State Budgeting, Accounting, and Reporting systems (BARS).
Span of Control
The Accounting Firm/Individual will NOT have any responsibility for investments or management of investments, issuance or signing of checks, or supervision of WSTIP staff. All treasury and expenditure authority will rest with WSTIP.

Proposal Requirements
Your proposal shall include, in the order listed, the following:

1. The background on your firm and identification (including resumes) of the personnel to be involved in the account, including their professional qualifications and experience.

2. A list of public entities that you now serve and have served in the past five (5) years. Also, the name and telephone number of persons to contact for references. This reference list should also include how long you have been conducting business with this entity and the scope of services provided (i.e. investigation, claims audits, monitoring of claims, risk management services, etc.).

3. Resume(s) for key person(s) assigned to this contract.

4. Proof of $1,000,000 of professional liability insurance.

5. Detailed pricing information including a monthly rate for tasks outlined in the statement of work, an hourly rate for services, other activities, and estimates of miscellaneous expenses (travel and other expenses).

Process

<table>
<thead>
<tr>
<th>Activity</th>
<th>Date/Deadline</th>
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<tbody>
<tr>
<td>Question Period ends</td>
<td>September 21, 2018</td>
</tr>
<tr>
<td>Proposals due</td>
<td>September 28, 2018</td>
</tr>
<tr>
<td>Accounting firm / professional selected</td>
<td>October 15, 2018</td>
</tr>
<tr>
<td>Agreement signed</td>
<td>November 1, 2018</td>
</tr>
<tr>
<td>Work begins</td>
<td>January 1, 2019</td>
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</table>

Indication of Interest
If you are interested in submitting a proposal and wish to be kept informed of questions and answers, please let us know by submitting an email to RFP@wstip.org and providing a contact name/email address to send any written responses to questions.

Questions
Questions regarding this proposal shall be submitted by email no later than September 21, 2018 to Marisa Espinoza, Finance Specialist marisa@wstip.org. Responses will be made in writing and will be sent to all that have indicated an interest in making a proposal.
Submittal of Proposals
The proposal shall be in the form of a PDF and may be emailed to: RFP@wstip.org. WSTIP may telephonically interview some or all candidates (at WSTIP's discretion). All proposals must be received no later than 5:00pm September 28, 2018. Late proposals will not be considered. All proposals, whether selected or rejected, shall become the property of the Washington State Transit Insurance Pool.

Selection and Evaluation of Proposals
WSTIP in its sole discretion shall select the proposal which is most advantageous to its Board and Staff. In rendering this decision, the following criteria, which is listed in the order of their relative priority, will be utilized as a general guideline.

1. Qualifications and experience of personnel to be assigned to this contract.
2. Experience with public entities and public entity insurance pools.
3. Estimated costs to WSTIP for services required.
4. Washington state certification as Minority/Woman Owned Business Enterprise (MWBE)

WSTIP has the option to: (1) reject any or all qualifications if such action is in the public interest; (2) accept other than the lowest bid; and (3) waive informalities and minor irregularities in qualifications received.

Award of Contract
The Pool reserves the right to reject any or all proposals submitted. Award of the contract will be made to the firm, in the sole opinion of the Pool, which will provide the best service and that best meets the needs of the Pool’s members. A sample contract for this project is included with this RFP. Contract terms are negotiable.

Proposals Subject to Public Records Requests
All proposals received shall remain confidential until the apparently successful bidder, if any, is announced. Thereafter, the Bids shall be deemed public records as defined in RCW 42.56.030 to 42.56.130 and RCW 42.56.210, .510, .520, .540 & .580 “Public Records.”

Any information in the proposal that the proposer desires to claim as proprietary and exempt from disclosure under the provisions of RCW 42.56 (Public Records Act) must be clearly designated. The page must be identified and the particular exception from disclosure upon which the Bidder is making the claim. Each page claimed to be exempt from disclosure must be clearly identified by the word “Confidential” or “Proprietary” printed on the lower right-hand corner of the page.

WSTIP will consider a proposer’s request for exemption from disclosure; however, WSTIP will make a decision predicated upon Chapter 42.56 RCW. Marking the entire Bid exempt from disclosure will not be honored. The proposer must be reasonable in designating information as confidential or proprietary. If any information is marked as confidential or proprietary in the proposal, such information will not be made available until the affected Bidder has been given an opportunity to seek a court injunction against the requested disclosure.

WSTIP reserves the right to reject any or all proposals.

Deadline for submittal:  September 28, 2018
September 26, 2018

Washington State Transit Insurance Pool
2629 12th Court SW
Olympia, WA 98502

To Whom It May Concern:

Thank you for the opportunity to submit a proposal for accounting services as outlined in your Request for Proposal. We believe our firm meets the qualifications of this proposal and offer the following information for your consideration.

I will be assigned to this contract as the accountant in charge. I have served as your outside CPA for many years and believe I have the experience and knowledge to assist you with your accounting needs thorough out the year and to help guide and support you during the audit process.

I have included the resume of a new employee to StraderHallett, Sonja Cade. Sonja was a long time employee of McSwain and Company and we are pleased that she has brought her experience to StraderHallett. Should you select our firm, I will be training Sonja as a backup to ensure that you have a second resource to reach out to and to rely on.

Within our bookkeeping department we also have several individuals who could assist you with Quickbooks's help or other accounting needs. My goal is to develop a team within StraderHallett to assist you as needed.

I will remain your primary contact and will be the one supporting you with the annual draft of the financial statements for the audit. I believe the role I played in assisting you with the new GASB changes reflects my commitment to the Washington State Transit Insurance Pool and is a strong reference for selecting StraderHallett.

Michael McGauly will be the responsible Principle. Michael is a shareholder of StraderHallett, P.S. He graduated from Seattle Pacific University with a Bachelor of Arts Degree after completing a double major in accounting and finance. Michael has over 20 years of experience in public accounting. He has worked closely with closely held businesses providing tax planning and business consulting in a variety of industries including: construction, manufacturing and professional services. Michael received his CPA license form the State of Washington in 1996. He is a member of the Washington Society of Certified Professional Accountants (WSCPA) and the American Institute of Certified Public Accountants (AICPA).
Our estimated monthly fee for the services noted in the scope of work is $1,300. Additional services will be based on hourly wages ranging from $85 to $215 an hour. We do not charge for our travel time or expenses. The work associated with the audit will be billed separately at our hourly rates.

As per your request, we have included proof of $1,000,000 of professional liability insurance.

Please contact us if you have any questions or require additional information. We look forward to hearing from you and for the opportunity to provide accounting services to Washington State Transit Insurance Pool.

Sincerely,

Joanne Krusz, CPA
Joanne F Krusz, CPA

PROFESSIONAL EXPERIENCE:

StraderHallett PS Jan. 2016 - Present
Lacey, Washington
Tax Manager
- Prepare and review income tax returns
- Compile and review financial statements
- Provide accounting and consulting services
- Provide tax advice and tax planning strategies
- Develop, maintain and support client relationships
- Supervise and train staff accountants
- Participate in local and professional organizations

McSwain & Company PS Nov. 2007 - Dec. 2015
Lacey, Washington
Tax Manager
- Prepared income tax returns for individuals and entities
- Compiled financial statements
- Developed and maintained strong client relationships
- Researched tax/accounting issues and provided guidance
- Supervised and reviewed staff accountants' work

(Punta Gorda, FL
Staff Accountant
- Prepared income tax returns for individuals and entities
- Compiled financial statements
- Prepared estate, trust and guardianship accountings
- Provided general accounting services
- Prepared federal and state payroll reports

EDUCATION:

Arizona State University - Bachelor of Science, Quantitative Bus. Analysis
Various Universities - Fifth of year of accounting
Golden Gate University - Master Level Taxation Classes

PROFESSIONAL ORGANIZATIONS/AFFILIATIONS:

American Institute of Certified Public Accountants
Washington Society of Certified Public Accountants
Board Memberships:
- Senior Services for South Sound
- Morningside
Sonja I. Cade

EXPERIENCE:

6/18 – Present  Strader-Hallett PS, Lacey, WA
Staff Accountant, responsibilities:

- Tax preparation for individual and corporate clients.
- Assist clients with bookkeeping services.
- Financial statement preparation.

Software utilized: Quickbooks, MS Office Suite, CCH Engagement, CCH Access, Adobe

11/05 – 5/18  McSwain & Co. PS, Lacey, WA
Staff Accountant, responsibilities:

- Internal billing system.
- Assist 6 to 8 clients with monthly and quarterly bookkeeping services and financial statement preparation.
- Assist clients with outside audits.

Software utilized: Quickbooks, MS Office Suite, Lacerte, Adobe, Timeslips

6/93 – 4/98  Microsoft Corporation, Redmond, WA
Senior Accountant, responsibilities:

- Managing financial licensing agreements with multiple amendments with hardware manufacturers with a concentration in international (Asia, Australia, Germany and Middle Eastern countries).
- Reconciled funds monthly and quarterly.
- Facilitated reconciliation of accounts between manufacturer and MS subsidiaries. Monthly G/L and sales reconciliation.
- Interface between internal legal and tax departments with commissions reporting to MS subsidiaries.

Software utilized: MS Office Suite, internal accounting system.

4/87 – 6/93  Aldus Corporation, Seattle, WA
Accounts Receivable Lead/Supervisor, responsibilities:

- Corporate accounts receivable system including daily operations as well as monthly, quarterly and yearly closings.
- Compile weekly and monthly sales reports.
- Identification of corporate manufacturing royalties due and traced the implementation of contractual agreements.
- Maintain market development funds contracts and identification of credits owed to customers.
- Active participation of yearly corporate audits.

Software utilized: MS Office Suite, internal accounting system.

EDUCATION:  Washington State University, Pullman WA
Degree: Bachelor of Arts in Business Administration, December 1986
Concentration: Accounting
AS P E N
AS PEN AMERICAN INSURANCE COMPANY
(A stock insurance company)
Administrative Offices: 590 Madison Avenue, 7th Floor, New York, NY 10022
ACCOUNTANTS PROFESSIONAL LIABILITY INSURANCE POLICY

DECLARATIONS

THIS IS A CLAIMS-MADE AND REPORTED POLICY. SUBJECT TO ITS TERMS AND CONDITIONS, THIS POLICY ONLY COVERS CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER DURING THE POLICY PERIOD, OR DURING THE EXTENDED REPORTING PERIOD, IF APPLICABLE. CLAIMS EXPENSES ARE INCLUDED IN, AND WILL REDUCE, THE LIMITS OF LIABILITY. PLEASE READ THE ENTIRE POLICY CAREFULLY.

COMPANY:  ASPEN AMERICAN INSURANCE COMPANY

POLICY NUMBER:  C001770-02  RENEWAL OF:  C001770-01

PRODUCER NAME & ADDRESS:
B&B Protector Plans, Inc.
d/b/a CPA Protector Plan
655 North Franklin Street
Suite 1800
Tampa, FL  33602

Item 1.  NAMED INSURED
StraderHallett PS

Item 2.  ADDRESS
5209 Corporate Center Ct SE
Lacey, WA  98503

Item 3.  POLICY PERIOD
From: 08/01/2018  To: 08/01/2019 12:01 a.m. Standard Time at the address of the Named Insured as stated in Item 1. above

Item 4.  LIMITS OF LIABILITY  (Inclusive of Claims Expenses)
A.  $1,000,000 Each Claim
B.  $1,000,000 Policy Aggregate

Item 5.  DEDUCTIBLE
A.  $20,000 Each Claim (including Damages and Claims Expenses)
B.  N/A Aggregate (for all Claims subject to Damages and Claims Expenses)
FIRM PROFILE
We continue to believe in the value of relationships. We view every client relationship like a partnership, and truly believe that our success is a result of your success.

We are committed to providing close, personal attention to our clients. We take pride in giving our clients the assurance that the personal assistance our clients receive comes from years of advanced training, technical experience and financial acumen. Our continued investment of time and resources in professional continuing education, state-of-the-art computer technology and extensive business relationships are examples of our commitment to excellence.

Founded in 1983, StraderHallett PS is a professional service corporation with an accounting practice located in Lacey - Olympia, Washington. We have developed a reputation for our knowledge, quality of service, expertise, timeliness and personal attention and concern for our clients.
OUR VISION

Creating synergy with clients and community for mutual success and financial prosperity.

OUR MISSION

Using our knowledge, expertise and values, we provide our clients specialized advice and counsel, enabling them to achieve their financial goals and objectives.

OUR VALUES

Integrity: Adhere, without compromise, to our moral and ethical standards.

Empathy: Respect and strive to understand the perspective of others.

Communication: Exchange information openly, clearly, and effectively.

Commitment: Be prepared, be on time, be engaged, be supportive, follow through, meet deadlines.

Growth: Improve personally and professionally.

Community: Participate in and support our local and professional communities.

Quality of Life: Balance responsibilities to family, clients, co-workers and community.
October 25, 2018

TO: WSTIP Executive Committee

FROM: Tracey Christianson, Executive Director
Andrea Powell, Administrative Services Manager
Joanne Kerrigan, Member Services Manager
Cedric Adams, Claims Manager

SUBJECT: Executive Staff Report – October 2018

FROM THE EXECUTIVE DIRECTOR

2019 AND 2020 MEETING SCHEDULE
The tentative 2019 and 2020 meeting schedule is attached to this report for your information. The 2019 dates were coordinated with Staci Jordan and the 2020 dates were coordinated with Shonda Shipman. As you place dates on your calendar remember that Executive Committee members also attend either Board Development Committee meetings or Governance Policy Committee meetings which are immediately after stand-alone Executive Committee meetings.

STAFF BENEFITS
At the Executive Committee meeting in July, the Committee asked staff to research some of the benefits that staff receive. The items the Executive Committee is interested in discussing include: employee contribution on the medical plan, the cap on general leave, and the general leave accrual amounts after 15 years. Although we expect this might be a workplan item for the Executive Committee in 2019, we were prepared to start this discussion at this meeting. This topic was pre-empted due to the time needed for the coverage appeal. Staff have asked incoming President if this could be added to the Retreat agenda.

GOVERNMENTAL ENTITIES MUTUAL (GEM)
GEM’s quarterly Board meeting is taking place on the same date as our Executive Committee meeting. Andrew Halsall, GEM’s Executive Director, will attend our meeting in December to give an update on GEM activities.

LIABILITY RENEWAL QUOTES
As we have already reported, we received quotes from our reinsurance and excess insurance carriers, including our employee fidelity/crime carrier. We will resubmit updated miles and employee counts to these carriers.
ADMINISTRATIVE SERVICES ACTIVITIES

RFP FOR ACCOUNTING SERVICES
The RFP for accounting services closed on September 28. We received 4 responses. An apparently successful respondent has been selected. This is an action item at this meeting.

NEW STAFF POSITION: APPLICATION SUPPORT SPECIALIST
Staff are requesting a new technology position in the 2019 budget. This will be a technical application support position with primary duty to provide Origami support and development of custom/mobile solutions for WSTIP Members. This is a discussion item at this meeting.

EXPOSURE COLLECTION
Miles and employee counts have been updated and verified by Members. The final counts have been sent to the Actuary.

TECHNICAL SERVICES ACTIVITIES

ORIGAMI CLEANUP
The data cleanup effort continues. We have limited the scope to collision/non-collision events resulting in a loss. Limiting the scope should allow us to produce the metrics being tracked for the WSTIP Strategic Plan. Clean up is complete through 2016 and 2017 is in progress. The non-loss events will be coded later.

MEMBER SERVICES ACTIVITIES

JEFFEREY S. RISTAU SCHOLARSHIPS
There has been one new application for a scholarship. It was awarded on October 2. $11,000 is still available for 2018.

ABOVE AND BEYOND AWARD AND DRIVER RECOGNITION AWARDS
Tracey will schedule a visit to award an operator, Lucas Hill at Whatcom Transportation Authority.

TRANSIT AGENCY VISITS
Chris as completed the following member visits, Pierce(2), Grays Harbor (2), Yakima (2), Ben Franklin, Link (2), Spokane (2), Whatcom (2), C-Tran (2), Clallam, Jefferson, Mason, River Cities, Skagit, Kitsap, Everett, Columbia, Community, Twin, Grant, Intecity, Pullman, Asotin, Island, and Valley. Chris is scheduled to teach Reasonable Suspicion for Supervisors training at Mason Transit on November 8, making this the fifth location he will have trained at this year. He has also completed the Road Supervisor 101 class at Spokane Transit on October 17. He's also scheduled to train on this course at C-Tran on November 27. The training is focused on road supervision, operator interaction, monitoring, customer service and report writing.
**VANPOOL VISITS**
Joanne and or Chris will be visiting all members with a Vanpool program to update the compliance with that best practice. Renewed emphasis on vanpool event documentation including pictures, clarity on coverage and agency claim activity is being discussed at the site visits. Joanne and Cedric attended the WSTA Vanpool Committee meeting to provide information on vanpool coverage as well as a vanpool claims and trend analysis. Joanne suggested forming a subcommittee for reviewing the Vanpool Operations Best Practice document. She received volunteers. She has visited Grays Harbor, Spokane, Ben Franklin, Grant, Pierce, Kitsap, Island, Community, Mason, Intercity, and C-Tran.

**WSTIP TRAINING**
WSDOT asked WSTIP staff to help deliver more specific and more frequent training on Drug and Alcohol Substance Abuse Management Compliance training for Supervisors. Staff engaged CUTR and have proceeded to ask WSDOT to amend the RTAP contract to include funds for this training. WSDOT agreed. Two live class trainings and two live webinars as well as recorded versions of the material will be provided before the end of April 2019.

We have completed and or scheduled 23 classes of the 27 courses for this contract period. Staff has three safety and risk and one operations class yet to schedule for 2018 - 2019. Applications for the next contract period will open in December or January.

**TRAINER’S ACADEMY**
Staff has a meeting planned with Clarified Concepts to talk about the curriculum and make up of the 3-day boot camp that leads off the Trainer’s Academy. Chris is tasked with lending expertise in instruction, operations, and training so the training has transit focused themes. Scheduling and training dates are still in the planning process; early 2019 is the goal.

**COLLISION AVOIDANCE PROJECT AT PIERCE**
BACKGROUND: WSTIP Staff was notified of a change in the status of the scope of work on the Pierce CAWS Research Project in April. Mobileye has since told Pierce they will not follow FTA contractual guidelines or allow the current version of Shield+ with the EyeQ2 chipset to be used as the trigger for AEB. Therefore, Pierce in consultation with the FTA has terminated contract negotiations with Mobileye and subsequently, Rosco as well. To continue moving the project forward, and with FTA’s approval, Pierce Transit asked DCS Inc., the vendor for the PASS AEB system, to provide a Collision Avoidance Warning System as an alternative trigger for the system. The FTA has verbally approved this change.

Pierce is moving forward with developing a revised scope for and with DCS. Pierce is tasked with presenting this new proposal to the FTA for written approval and then their Board in November for approval to contract with DCS. The plan will: provide a LIDAR CAWS with AEB for 30 buses and a LIDAR CAWS (with deceleration only) for up to an additional 70 buses - or to the expenditure of the local and grant funded monies less contingency. Dependent on the outcome of Pierce’s Board meeting, WSTIP’s Interlocal agreement with Pierce will need an amendment to address the change in vendors which will be presented to the Executive Committee.

UPDATE: Staff is talking to the research partners under contract with WSTIP to address scope changes and budget concerns. The biggest player in this is VTTI because of the shift of work. Dr. Lutin is actively working with each research partner to iron out those proposals. WSTIP will then engage Pierce to align the Interlocal agreement to address the budget.
LYTX DRIVECAM STATUS AT PIERCE TRANSIT
Active monitoring is still taking place since the go live date of September 1. For questions, please see the report provided at the September quarterly Board meeting or Joanne can request more updated information from the Project Manager at Pierce for individual inquiries.

NETWORK SECURITY
Staff announced the network security grant application process at the September quarterly Board meeting. That was followed up with an email to the IT Managers and Board members as well as an article in the TransACTION newsletter on October 3. Staff will reimburse any agency that has utilized user training within the last year. Any member that purchases the user training in the next year, WSTIP will reimburse them. We will continue to reinforce efforts for network and cyber security. As of October 18, Everett, C-Tran, Skagit, Community, Whatcom, and Pierce have been awarded reimbursement.

CLAIMS ACTIVITIES
***indicates newly added information since the last Executive Committee report.

RECENTLY RESOLVED CASES OF INTEREST
None.

OPEN LIABILITY CLAIMS OF INTEREST

Parnell vs. Kitsap (2016 case). The representative for Margaret Parnell’s estate filed suit against Kitsap Transit and the City of Bremerton stating the location of the bus stop contributed to the death of Margaret Parnell. Parnell was killed when a vehicle, driven by Calob Courtney, left the roadway, jumped the curb and hit the bus shelter where Ms. Parnell was sitting. At the scene, Courtney exhibited signs of methamphetamine use and admitted to also smoking marijuana earlier in the day. The estate of Parnell claims Kitsap Transit was negligent in its placement of the shelter. A similar claim was also filed with City of Bremerton. We have entered into a joint defense agreement with the City. The discovery process has begun. ***We participated in an October 8, 2018 mediation for this suit. The City of Bremerton, Parnell Estate, David Baird (broken leg and head injury), a person claiming emotional distress, and USAA (umbrella policy for the owners of the car driven by Mr. Courtney) were all represented at the mediation. We left the mediation without a settlement, but negotiations and discussions continued, with a tentative date of October 18, 2018 set to finalize a settlement or prepare for trial. Post mediation deposition schedules are still in progress. Our attorney is Caryn Jorgensen from Mills Meyers.

Sartin vs. Pierce (2015 case). The Pierce driver in this event suffered an unanticipated cardiac arrest and lost consciousness while driving the bus near the I-5 in Tacoma. The bus careened off multiple nearby vehicles. Plaintiff Sartin was a passenger in one of these vehicles. Sartin went to the ER and was released the same day. He started treating with a chiropractor and primary care physician for neck, shoulder, and back injuries. Medical specials are $90K, wage loss $80K (at the time of loss he was a painter earning $31.65 per hour), and decreased earning capacity $50K (lost seniority in the union). Our current defense is “sudden illness,” arguing that a driver who is suddenly stricken by an unexpected loss
of consciousness is not chargeable with negligence. We filed a summary judgment motion, which was denied. Mediation on Sartin was unsuccessful. However, a companion claim to this one, Sacksteder, was settled in mediation on January 4. So far, one other tort claim form was submitted to Pierce. Trial was set for February 22, 2018. Trial is now delayed as the plaintiff has filed suit against the certified medical examiner who provided our driver's medical card. The court has combined these lawsuits and now trial is January 2019. The discovery process for the new defendant has started. We will participate in this process and capitalize on any new opportunities for information; however, from the initial litigation process we already have much of what we need. We are also attempting to assess the additional facts gathered in this case. The statute for this event has run and there were no additional suits filed (four claims were closed). We are working with the medical providers to secure expert witnesses in preparation for this trial. ***After a request to attend a mediation on this suit form the plaintiff, we sent a settlement offer with a tentative date of October 17, 2018 to accept the offer. If the offer is not accepted, we will continue to prepare for this trial. Our attorneys are Caryn Jorgensen from Mills Meyers and Tim Malarchick from the office of Tim Malarchick. Caryn is representing Pierce and Tim is representing the widow of the driver/estate.

Bowman vs. Pierce Transit (2018 case). A passenger got off our fixed route bus and then attempted to cross the street. She was struck by a passing motorist. We are still gathering information but expect severe injuries from the 20-year-old plaintiff. We have already received a claim for damages in the amount of $3-5 million, but no suit is currently filed. ***We received the summons and complaint on this claim in early October. We concluded our initial investigation of this claim around the same time, so we will now work towards submitting or answer to the complaint and the beginning stages of the litigation process. Jessie Harris from Williams Kastner is our attorney representing Pierce Transit.

Moon vs. Clallam Transit (2015 case). Plaintiff Moon exited the bus on the sidewalk at the Sequim Transit Center. On the way to her car in the parking area, the plaintiff passed around a group of passengers waiting to board the bus, reached in her purse for her keys, and tripped on a treeless planter behind the crowd. The plaintiff cut her nose, sprained both wrists, and broke her elbow (permanency claimed). The elbow injury required multiple surgeries. After a prosthesis was placed in her elbow joint in January of 2016 and subsequent physical therapy and manipulation, she required another surgery to place a smaller prosthesis in the joint in June of 2016. In November of 2016, the plaintiff underwent her third surgery and the prosthesis was removed entirely. She argues the transit agency is liable for her injury by International Building Code, which Washington has adopted, and other premises liability causes. The plaintiff claims $120,352.41 in medical specials and $800,000 in general damages for a total demand of $920,352.41. This case in the early stages of the litigation process and discovery will begin shortly. The plaintiff officially added the City of Sequim as a co-defendant. For cost-sharing, we are discussing presenting a joint defense with the City of Sequim, at least through the discovery process. We have collected her medical records and they are currently under review. Our attorney is George Mix from Mix Sanders Thompson.

Mitchell vs. Spokane Transit (2015 case). This is a car collision accident involving a Spokane Transit vanpool. Ms. Mitchell was a passenger in the vanpool vehicle when another party hit the van broad-side. Ms. Mitchell was ejected out a window and yet another vehicle hit Ms. Mitchell. Mitchell received payment under the UIM and that claim is closed. Mitchell has a cause of action under a liability theory and we received a formal claim for damages to that effect. The claim for damages asked for $12 million in damages. Medical specials are close to $450K at last notification. No lawsuit has been filed. We have
re-engaged the accident reconstructionist originally on this file, to further assess liability arguments. We will know in the next month if a suit will be filed in this matter. Our last collection of medical specials raised the total to over $700K. A suit was filed on this matter in late August 2018. The discovery process has begun. Our attorney is John Riseborough from Paine Hamblen.

**ATU Local 1015 vs. Spokane Transit (2017 case).** The STA Board approved appealing this case at their November 16, 2017 meeting. We decided to keep the appeal with James McPhee, who was the lead attorney during the trial, and is most familiar with the case. The request for ATU attorney fees was submitted but will not be paid before a ruling on the appeal. Ultimately, the STA is arguing that they deserve some form of deference when applying a reasonably related advertising policy to their public transportation bus platforms. All briefs have been filed. We will now await a decision from the Court of Appeals, which may take up to six months. There is also a chance they may request an oral argument. The Ninth Circuit Court of Appeals requested oral argument on this appeal, but the date of argument is not yet known. We continue to monitor similar cases around the country in preparation for this appeal. Our attorneys are John Drake and James McPhee from Witherspoon Brajcich McPhee.

**Engen vs. Grant Transit (2011 case).** This is a complete fault case where our bus driver rear-ended a car at freeway speeds. In 2015, the claimant claimed $40K in medical expenses and $468K in general damages. A trial date has still not been set and the parties are exploring mediation. We agreed to conduct an independent medical exam (IME), as we have a multitude of medical records and want to hone in on injuries related to this event. The IME results include a long history of back and neck pain and treatment, evidence of symptom magnification, no signs of permanent injury, and doubts as to necessary treatment for injuries sustained in this event. We will attempt mediation, but also anticipate the potential for trial. We moved to schedule a trial date for this matter. This trial is set for January 6, 2020. The plaintiff sent a letter requesting a mediation, to which we agreed and are currently attempting to schedule. **Mediation for this suit is set for November 16, 2018. Our attorney is Pat McMahon from Carlson McMahon.**

**Munoz, Felipe and Maria vs. Skagit Transit (2013 case).** Maria Munoz claims to have her arm caught in the bus door upon her exit. She says she was holding onto her husband with her other hand and the bus began to pull away resulting in alleged dragging of them both. Mrs. Munoz complains of neck, shoulder, and arm pain along with an exacerbation of her mental health disorders (depression and anxiety). Mr. Munoz complains of shoulder and elbow injuries as well as trauma from the incident. We hired a medical expert to review the records and a forensics specialist to look at operational aspects of the door. The IME opined a contusion of the forearm at most for Mr. Munoz and multiple inconsistencies throughout his medical evaluation. Mrs. Munoz was opined to have non-anatomic pain syndrome. Trial was set for late April 2018, but at the plaintiff’s request, the trial was continued as they seek to also file suit against another party (hospital) for an unrelated incident but have alleged injuries to the same areas alleged in this suit. The discovery process is underway for the new co-defendants. Our attorney is Pat McMahon from Carlson McMahon.

**Cerros vs. Link Transit (2013 case).** Our transit bus rear-ended another vehicle. Plaintiff was a bus passenger and is claiming bodily injuries. We have attempted to settle, but our offer has been rejected. This case is still early in the litigation process. Trial has been scheduled for May 28, 2019. We have engaged a doctor to conduct a medical-record review of the plaintiff’s files for review. Our attorney is Pat McMahon from Carlson McMahon.
James vs. Whatcom Transportation Authority (2016 case). Plaintiff James was de-boarding a paratransit vehicle when she cut the back of her leg. James is legally blind. Her leg would not heal and James had to have a skin graft. Due to the additional nursing care needed, plaintiff had to leave her assisted living situation and go to a nursing home. The claim was denied due to lack of evidence on what James cut her leg on. Ms. James claims $50K in medical specials and sent a settlement demand of $2 million. We are currently in the discovery process. The plaintiff was deposed. This case was dismissed via a summary judgement motion. This was a significant win. The judge relied heavily on the video the incident. Just before the deadline, the plaintiff appealed the trial court’s summary motion judgment. We will continue to bring resolution to this suit and defend against the appeal if necessary. Our attorney is Mark Lee from Brownlie Wolf and Lee.

GENERAL CLAIMS INFORMATION (10/17/18)
Total open litigated files = 32
Total open liability claims = 638
Grand Total of Claims (all years since 2006) = 12,781

Claims Closures 09/01/2018 to 09/30/2018 – Total of 190 claims closed last month. Includes 0 sent to collections, 18 claim denials, 6 no formal claim filed, 77 settlements, and 89 closed subrogation claims.

CLAIMS ATTORNEY, ADJUSTER, AND INVESTIGATOR ROSTER
The attorney and adjuster guidelines are completed and posted on various sites along with the Request for Qualifications (RFQ). The collection of interested individuals and firms concluded on July 01, 2018. We are in process of meeting with RFQ responders. There were 3 responses from new adjusters, 9 responses from attorneys for the defense-counsel roster, and 5 attorneys for the investigations roster. We have set meetings with the various attorneys and adjusters that responded to our RFQ. The meetings are scheduled through the end of October. ***We have our last meeting scheduled for October 31, 2018.

SUBROGATION
As of October 17, 2018; there were 269 open 1st party auto-collision or property damage claims. Receivable totals to date for the year are below, both as a total and for each member. We were able to collect $91,081.20 in the month of September.
Jan  | Feb  | Mar  | Apr  | May  | June | July | Aug  | Sept | Oct  | Nov  | Dec  
2017 | $27,465 | $59,053 | $91,362 | $60,324 | $68,281 | $6,984 | $4,227 | $4,617 | $42,146 | $93,164 | $249,572 | $168,986 
2018 | $124,363 | $164,980 | $131,449 | $163,161 | $147,172 | $186,333 | $183,762 | $157,090 | $91,081 |
The difference between subrogation and recovery by member is due to other collections, such as: awarded attorney fees, salvage checks, reinsurance payments, and refunds/credits other than subrogation.
UPCOMING WSTIP-RELATED MEETINGS AND EVENTS

2018
Oct 25 – Executive Committee, WSTIP Offices, Olympia
Dec 6 & 7 – Quarterly Board, Great Wolf Lodge, Grand Mound

2019
Jan 16-18 – Executive Committee Retreat, Cedarbrook Lodge, SeaTac
Feb 28 - Executive Committee, WSTIP Offices, Olympia
Mar 3-6 – AGRiP Spring Conference, St. Louis, MO
Mar 28-29 - Quarterly Board, Holiday Inn, Bellingham
April 25 – Executive Committee, WSTIP Offices, Olympia
April 25-26 - GEM Meeting, Washington DC
May 23 – Executive Committee, WSTIP Offices, Olympia
June 9-12 – PRIMA Annual Conference, Orlando, FL
June 27-28 – Quarterly Board, SpringHill Suites, Kennewick
July 25 – Executive Committee, WSTIP Offices, Olympia
July 25-26 – GEM Meeting, Madison, WI
July 28-31 – AON Risk Pooling Symposium, Manchester Village, VT
August 4-7 – AGRiP CEO & Senior Leadership, Grand Rapids, MI
August 10-14 or 17-21 – WSTA Roadeo & Public Transportation Conference, SeaTac
August 22 – Executive Committee, WSTIP Offices, Olympia
Sep 10-13 – CAJPA Conference, Lake Tahoe, NV
September 26-27 – Quarterly Board, Wenatchee
Oct 6-9 – AGRiP Fall Conference, Cleveland, OH
October 24-25 – GEM Meeting, Spokane, WA
October 24 – Executive Committee, WSTIP Offices, Olympia
December 5-6 – Quarterly Board, Hotel Murano, Tacoma

Board Member Representative travel is in bold.
October 15, 2018

TO:  WSTIP Executive Committee
FROM:  Tracey Christianson, Executive Director
SUBJECT:  2019-2020 Executive Committee and Board Meeting Schedule

**Action Request:**
Adoption of the WSTIP’s 2019-2020 Meeting Schedule. This item was included in the Executive Staff Report at the October Executive Committee meeting.

**Background:**
The Board President and Executive Director have developed a meeting schedule based on minimizing conflicts with Member Board meetings and other significant meetings/staff commitments.

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>Time</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 16-18</td>
<td>Executive Committee Retreat</td>
<td>6:00 pm</td>
<td>Cedarbrook Lodge @ SeaTac</td>
</tr>
<tr>
<td>Jan 31 - Feb 1</td>
<td>GEM Board Meeting</td>
<td></td>
<td>Scottsdale, AZ</td>
</tr>
<tr>
<td>February 28</td>
<td>Executive Committee Meeting</td>
<td>9:00 am</td>
<td>WSTIP Conference Room</td>
</tr>
<tr>
<td>March 3-6</td>
<td>AGRIP Spring Conference</td>
<td></td>
<td>St. Louis, MO</td>
</tr>
<tr>
<td>March 28</td>
<td>Executive Committee Meeting</td>
<td>9:00 am</td>
<td></td>
</tr>
<tr>
<td>March 28</td>
<td>Work Session</td>
<td>1:00 pm</td>
<td>Holiday Inn - Bellingham</td>
</tr>
<tr>
<td>March 29</td>
<td>Quarterly Board Meeting</td>
<td>9:00 am</td>
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</tr>
<tr>
<td>April 25</td>
<td>Executive Committee Meeting</td>
<td>9:00 am</td>
<td>WSTIP Conference Room</td>
</tr>
<tr>
<td>April 25-26</td>
<td>GEM Meeting</td>
<td></td>
<td>Washington D.C.</td>
</tr>
<tr>
<td>May 23</td>
<td>Executive Committee Meeting</td>
<td>9:00 am</td>
<td>WSTIP Conference Room</td>
</tr>
<tr>
<td>June 9-12</td>
<td>PRIMA Annual Conference</td>
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<td>Orlando, FL</td>
</tr>
<tr>
<td>June 27</td>
<td>Executive Committee Meeting</td>
<td>9:00 am</td>
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<tr>
<td>June 27</td>
<td>Work Session</td>
<td>1:00 pm</td>
<td>SpringHill Suites - Kennewick</td>
</tr>
<tr>
<td>June 28</td>
<td>Quarterly Board Meeting</td>
<td>9:00 am</td>
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<tr>
<td>July 25</td>
<td>Executive Committee Meeting</td>
<td>9:00 am</td>
<td>WSTIP Conference Room</td>
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<tr>
<td>July 25-26</td>
<td>GEM Meeting</td>
<td></td>
<td>Madison, WI</td>
</tr>
<tr>
<td>July 28-31</td>
<td>AON Pooling Symposium</td>
<td></td>
<td>Manchester Village, VT</td>
</tr>
<tr>
<td>August 4-7</td>
<td>AGRIP CEO &amp; Senior Leadership</td>
<td></td>
<td>Grand Rapids, MI</td>
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<tr>
<td>August 10-14</td>
<td>WSTA Roadeo</td>
<td></td>
<td>SeaTac Area</td>
</tr>
<tr>
<td>or 17-21</td>
<td>Public Transportation Conference</td>
<td></td>
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<tr>
<td>August 22</td>
<td>Executive Committee Meeting</td>
<td>9:00 am</td>
<td>WSTIP Conference Room</td>
</tr>
<tr>
<td>Sept 10-13</td>
<td>CAJPA Conference</td>
<td></td>
<td>Lake Tahoe, NV</td>
</tr>
<tr>
<td>Date</td>
<td>Meeting</td>
<td>Meeting Time</td>
<td>Meeting Location</td>
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<tr>
<td>September 26</td>
<td>Executive Committee Meeting</td>
<td>9:00 am</td>
<td>Holiday Inn/Confluence Technology Center - Wenatchee</td>
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<tr>
<td>September 26</td>
<td>Work Session</td>
<td>1:00 pm</td>
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<tr>
<td>September 27</td>
<td>Quarterly Board Meeting</td>
<td>9:00 am</td>
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<tr>
<td>October 6-9</td>
<td>AGRiP Fall Education Conference</td>
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<td>Cleveland, OH</td>
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<tr>
<td>October 24-25</td>
<td>GEM Board Meeting</td>
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<td>Spokane, WA</td>
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<tr>
<td>October 24</td>
<td>Executive Committee Meeting</td>
<td>9:00 am</td>
<td>WSTIP Office</td>
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<tr>
<td>December 5</td>
<td>Executive Committee Meeting</td>
<td>9:00 am</td>
<td>Hotel Murano - Tacoma</td>
</tr>
<tr>
<td>December 5</td>
<td>Work Session</td>
<td>1:00 pm</td>
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<tr>
<td>December 6</td>
<td>Quarterly Board Meeting</td>
<td>9:00 am</td>
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### 2020

<table>
<thead>
<tr>
<th>Date</th>
<th>Meeting</th>
<th>Meeting Time</th>
<th>Meeting Location</th>
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<tbody>
<tr>
<td>January 15-17</td>
<td>Executive Committee Retreat</td>
<td>6:00 pm</td>
<td>TBD</td>
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<tr>
<td>January 17</td>
<td>Executive Committee</td>
<td>11:00 am</td>
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<td>January 29-30</td>
<td>GEM Meeting</td>
<td></td>
<td>Cape Coral, FL</td>
</tr>
<tr>
<td>February 27</td>
<td>Executive Committee</td>
<td>9:00 am</td>
<td>WSTIP Conference Room</td>
</tr>
<tr>
<td>March</td>
<td>AGRiP Spring Conference</td>
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<tr>
<td>March 26</td>
<td>Executive Committee</td>
<td>9:00 am</td>
<td>Enzian Inn - Leavenworth</td>
</tr>
<tr>
<td>March 26</td>
<td>Work Session</td>
<td>1:00 pm</td>
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<tr>
<td>March 27</td>
<td>Quarterly Board Meeting</td>
<td>9:00 am</td>
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<tr>
<td>April 23</td>
<td>Executive Committee</td>
<td>9:00 am</td>
<td>WSTIP Conference Room</td>
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<tr>
<td>April 23</td>
<td>GEM Meeting</td>
<td></td>
<td>Washington D.C.</td>
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<tr>
<td>May 28</td>
<td>Executive Committee</td>
<td>9:00 am</td>
<td>WSTIP Conference Room</td>
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<tr>
<td>June 14-17</td>
<td>PRIMA Annual Conference</td>
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<td>Nashville, TN</td>
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<tr>
<td>June 25</td>
<td>Executive Committee</td>
<td>9:00 am</td>
<td>Everett</td>
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<tr>
<td>June 25</td>
<td>Work Session</td>
<td>1:00 pm</td>
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<tr>
<td>June 26</td>
<td>Quarterly Board Meeting</td>
<td>9:00 am</td>
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<tr>
<td>July 23</td>
<td>Executive Committee</td>
<td>9:00 am</td>
<td>WSTIP Conference Room</td>
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<tr>
<td>July 23 &amp; 24</td>
<td>GEM Meeting</td>
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<td>Columbus, OH</td>
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<td>August</td>
<td>AGRiP CEO &amp; Senior Leadership</td>
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<td>August 22-23</td>
<td>WSTA Roadeo</td>
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<td>Spokane</td>
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<td>August 24-25</td>
<td>Public Transportation Conference</td>
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<td>Executive Committee</td>
<td>9:00 am</td>
<td>WSTIP Conference Room</td>
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<tr>
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<td>CAJPA Conference</td>
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<td>Lake Tahoe, NV</td>
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<td>September 24</td>
<td>Executive Committee Meeting</td>
<td>9:00 am</td>
<td>Moses Lake</td>
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<tr>
<td>September 24</td>
<td>Work Session</td>
<td>1:00 pm</td>
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<td>September 25</td>
<td>Quarterly Board Meeting</td>
<td>9:00 am</td>
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<tr>
<td>October</td>
<td>AGRiP Fall Education Conference</td>
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<td>Grand Rapids, MI</td>
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<td>October 29</td>
<td>GEM Board Meeting</td>
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<tr>
<td>October 22</td>
<td>Executive Committee Meeting</td>
<td>9:00 am</td>
<td>WSTIP Conference Room</td>
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<tr>
<td>December 3</td>
<td>Executive Committee Meeting</td>
<td>9:00 am</td>
<td>Olympia Area</td>
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<td>December 3</td>
<td>Work Session</td>
<td>1:00 pm</td>
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</tr>
<tr>
<td>December 4</td>
<td>Quarterly Board Meeting</td>
<td>9:00 am</td>
<td></td>
</tr>
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</table>
TO: Board of Directors

FROM: Nominations and Elections Committee (Jordan, Shipman, Shinners)

SUBJECT: Slate of Candidates for 2019 Executive Committee as of October 17, 2018

DATE: October 25, 2018

In accordance with the Nominations and Elections Policy which states “at least ten days prior to the annual meeting, the nominating committee shall issue a report to all members of its recommended potential candidates “.

The nominees for the Executive Committee are as follows:

<table>
<thead>
<tr>
<th>Large</th>
<th>Medium</th>
<th>Small</th>
<th>At-Large</th>
<th>Secretary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Geri Beardsley</td>
<td>Danette Brannin</td>
<td>Amy Asher</td>
<td>Amy Asher</td>
<td>Amy Asher</td>
</tr>
<tr>
<td>Rob Huyck</td>
<td>Nick Covey</td>
<td>Sara Crouch</td>
<td>Geri Beardsley</td>
<td>Danette Brannin</td>
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<tr>
<td>Jim Thoelke</td>
<td>Tom Hingson</td>
<td>Jenny George</td>
<td>Danette Brannin</td>
<td>Sara Crouch</td>
</tr>
<tr>
<td>Lynda Warren</td>
<td>Ken Mehin</td>
<td>Leann Hubbard</td>
<td>Nick Covey</td>
<td>Tom Hingson</td>
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<tr>
<td>Agustin Ortega</td>
<td>Jesse Kinney</td>
<td>Jenny George</td>
<td>Sara Crouch</td>
<td>Rob Huyck</td>
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<td></td>
<td>Steve Mertens</td>
<td>Brandy Heston</td>
<td>Jenny George</td>
<td>Ken Mehin</td>
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<td></td>
<td>Derrick Wojcik-Damers</td>
<td>Tom Hingson</td>
<td>Agustin Ortega</td>
<td>Agustin Ortega</td>
</tr>
</tbody>
</table>

If you have questions regarding the slate of candidates or if you would like to nominate someone or withdraw your name please, contact Staci Jordan, Shonda Shipman, or Paul Shinners.

/ab