



DEPARTMENT OF INSURANCE  
State of North Carolina

P. O. Box 26387  
RALEIGH, N. C. 27611

JIM LONG  
COMMISSIONER OF INSURANCE

COMPANY SERVICES GROUP  
FINANCIAL EVALUATION DIVISION  
(919) 783-8633  
FAX: (919) 715-7230

May 18, 2005

Pamela H. Godwin  
President  
Integon Preferred Insurance Company  
PO Box 3199  
Winston-Salem, NC 27102-3199

Attn: Examination Section

Dear Ms. Godwin:

The North Carolina Department of Insurance ("Department") is conducting a target exam of all domestic insurance entities, pursuant to North Carolina General Statutes ("N.C.G.S.") 58-2-131 to 58-2-133.

The focus of the targeted exam, at this time, is a review of the Director's and Officer's insurance policies.

Please send the Department a copy of the above mentioned insurance policies as soon as possible, but not later than May 25, 2005.

Please send to: Robert Stanfield CPA, CFE  
Chief Financial Examiner  
401 N. Salisbury St.  
Raleigh, NC 27603-5926

Should you have any questions please email me at [RFS@ncdoi.com](mailto:RFS@ncdoi.com).

Sincerely,

A handwritten signature in black ink that reads "Robert Stanfield".

Robert Stanfield CPA, CFE  
Chief Financial Examiner

MAY 24 2005





**DEPARTMENT OF INSURANCE**  
*State of North Carolina*

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RALEIGH, N. C. 27611

**JIM LONG**  
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**COMPANY SERVICES GROUP**  
FINANCIAL EVALUATION DIVISION  
(919) 733-5633  
FAX: (919) 715-7230

May 18, 2005

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President  
Integon Specialty Insurance Company  
PO Box 3199  
Winston-Salem, NC 27102-3199

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JIM LONG  
COMMISSIONER OF INSURANCE

May 18, 2005

Pamela H. Godwin  
President  
New South Insurance Company  
PO Box 3199  
Winston-Salem, NC 27102-3199

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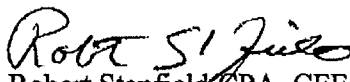
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JIM LONG  
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May 18, 2005

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Integon Casualty Insurance Company  
PO Box 3199  
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FINANCIAL EVALUATION DIVISION  
(919) 733-8633  
FAX: (919) 715-7230

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Integon General Insurance Company  
PO Box 3199  
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Robert Stanfield CPA, CFE  
Chief Financial Examiner

MAY 28 2005





**DEPARTMENT OF INSURANCE**  
*State of North Carolina*

P. O. Box 26387  
RALEIGH, N. C. 27611

**JIM LONG**  
COMMISSIONER OF INSURANCE

**COMPANY SERVICES GROUP**  
FINANCIAL EVALUATION DIVISION  
(919) 733-8833  
FAX: (919) 715-7230

May 18, 2005

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President  
Integon Indemnity Insurance Company  
PO Box 3199  
Winston-Salem, NC 27102-3199

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Chief Financial Examiner

**MAY 23 2005**







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*State of North Carolina*

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May 18, 2005

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Robert Stanfield CPA, CFE  
Chief Financial Examiner

MAY 23 2005





## GMAC Insurance

5/31/05

Robert Stanfield CPA, CFE  
Chief Financial Examiner  
401 N. Salisbury St.  
Raleigh, NC 27603-5926

RE: Target Market Exam

Request to Review the Director's and Officer's Insurance Policies for the Following  
GMAC Insurance Companies

Integon Preferred Insurance Company  
Integon Specialty Insurance Company  
New South Insurance Company  
Integon Casualty Insurance Company  
Integon General Insurance Company  
Integon Indemnity Insurance Company  
Integon National Insurance Company

Dear Mr. Stanfield;

Pursuant to your request, enclosed is the corporate Director's and Officer's insurance policy covering the companies listed above.

Pursuant to the following section of NCGS 58-2-131(l), please treat this document as confidential and proprietary in nature as to the above companies and any other company listed under the insurance policy.

NCGS 58-2-131

(l) Pending, during, and after the examination of any entity, the Commissioner shall not make public the financial statement, findings, or examination report, or any report affecting the status or standing of the entity examined, until the entity examined has either accepted and approved the final examination report or has been given a reasonable opportunity to be heard on the report and to answer or rebut any statements or findings in the report. The hearing, if requested, shall be informal and private.

Sincerely,



Stephen P. Halstead  
Associate General Counsel  
GMAC Insurance Personal Lines



A Member Company of  
American International Group, Inc.

**AMERICAN INTERNATIONAL  
SPECIALTY LINES INSURANCE COMPANY**

(hereinafter "we," "us" or "our")  
A Capital Stock Insurance Company  
175 Water Street  
New York, N.Y. 10038

POLICY NUMBER:  
974-09-37  
RENEWAL OF:  
568-82-94

NOTICE: THIS INSURER IS NOT LICENSED IN THE STATE OF NEW YORK  
AND IS NOT SUBJECT TO ITS SUPERVISION.

**DIRECTORS AND OFFICERS AND COMPANY LIABILITY  
INSURANCE AND EMPLOYEE BENEFIT PLAN FIDUCIARY LIABILITY POLICY**

**NOTICES**

COVERAGES A, B, C AND D ARE CLAIMS MADE. THE COVERAGE OF THIS POLICY IS LIMITED GENERALLY TO LIABILITY FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED AND REPORTED IN WRITING TO THE INSURER PURSUANT TO THE TERMS HEREIN. PLEASE READ THE POLICY CAREFULLY AND DISCUSS THE COVERAGE THEREUNDER WITH YOUR INSURANCE AGENT OR BROKER.

THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED FOR LEGAL DEFENSE. AMOUNTS INCURRED FOR LEGAL DEFENSE SHALL BE APPLIED AGAINST THE RETENTION AMOUNT.

WITH RESPECT TO ALL COVERAGE SECTIONS, THE INSURER DOES NOT ASSUME ANY DUTY TO DEFEND. THE INSURER MUST ADVANCE DEFENSE COSTS, EXCESS OF THE APPLICABLE RETENTION, PURSUANT TO THE TERMS HEREIN PRIOR TO THE FINAL DISPOSITION OF A CLAIM.

**DECLARATIONS**

- ITEM 1. NAMED CORPORATION: GENERAL MOTORS CORPORATION
- MAILING ADDRESS: 300 Renaissance Center  
MC 482 C19 C36  
Detroit, Michigan 48265-3000
- STATE OF INCORPORATION OF THE NAMED CORPORATION: Delaware
- ITEM 2.(a) SUBSIDIARY COVERAGE: any past, present or future Subsidiary of the Named Corporation
- (b) PLAN COVERAGE: any past, present or future Plan

ITEM 3. POLICY PERIOD: FROM: December 15, 2004 TO: December 15, 2005  
(12:01 A.M. standard time at the address stated in Item 1.)

ITEM 4. LIMIT OF LIABILITY: \$25,000,000 for all Loss, in the aggregate, Under all Coverages (including Defense Costs)

ITEM 5. RETENTION:

A. COVERAGE SECTION I. DIRECTORS AND OFFICERS AND COMPANY LIABILITY INSURANCE:

Not applicable to Non-Indemnifiable Loss.

(a) Securities Claims: \$25,000,000

(b) All other Claims: \$25,000,000

Provided, however, with respect to Foreign Subsidiaries, the following Retention shall apply:

1) \$1,000,000 for each Claim made against a Foreign Subsidiaries with assets less than \$1,000,000,000 (1 billion);

2) \$3,000,000 for each Claim made against a Foreign Subsidiaries with assets of \$1,000,000,000 (1 billion) or greater but less than \$2,500,000,000 (2.5 billion).

With respect to Foreign Subsidiaries with assets of \$2,500,000,000 (2.5 billion) or greater, the applicable Retention set forth in subsections (a) and (b) above shall apply.

B. COVERAGE SECTION II. EMPLOYEE BENEFIT PLAN FIDUCIARY LIABILITY INSURANCE:

Not applicable to Non-Indemnifiable Loss.

(a) \$25,000,000 per each Claim made against any Insured, arising out of, based upon, attributable to or in any way related to any securities of the Sponsor Organization or any affiliate thereof (Sponsor Organization Securities Claims).

(b) \$7,500,000 per each Claim, other than Sponsor Organization Securities Claims.

Provided, however, with respect to Foreign Subsidiaries, the following Retention shall apply:

- 1) \$1,000,000 for each Claim made against a Foreign Subsidiaries with assets less than \$1,000,000,000 (1 billion);
- 2) \$3,000,000 for each Claim made against a Foreign Subsidiaries with assets of \$1,000,000,000 (1 billion) or greater but less than \$2,500,000,000 (2.5 billion).

With respect to Foreign Subsidiaries with assets of \$2,500,000,000 (2.5 billion) or greater, the applicable Retention set forth in subsections (a) and (b) above shall apply.

ITEM 6. CONTINUITY DATE (herein "Continuity Date"):

A. COVERAGE SECTION I. DIRECTORS AND OFFICERS AND COMPANY LIABILITY INSURANCE:

- (a) Coverage A and B, other than Outside Entity Executive coverage: N/A
- (b) Coverage C: N/A
- (c) Outside Entity Executive coverage: The date on which the Insured Person first served as an Outside Entity Executive of such Outside Entity

B. COVERAGE SECTION II. EMPLOYEE BENEFIT PLAN FIDUCIARY LIABILITY INSURANCE:

- (a) Coverage D: N/A

ITEM 7. PREMIUM: \$2,945,000

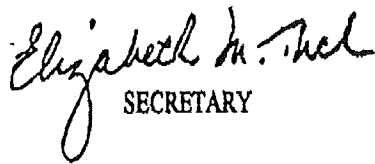
Premium for Certified Acts of Terrorism Coverage under the Terrorism Risk Insurance Act of 2002 ("TRIA"): Not applicable, coverage rejected by insured.

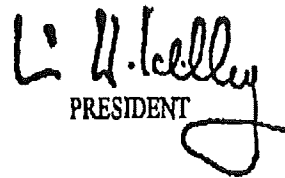
Any coverage provided for losses caused by an act of terrorism as defined by TRIA ("TRIA losses") may be partially reimbursed by the United States of America under a formula established by TRIA as follows: 90% of TRIA losses in excess of the insurer deductible mandated by TRIA, the deductible to be based on a percentage of the insurer's direct earned premiums for the year preceding the act of terrorism. A copy of the TRIA disclosure sent with the original quote is attached hereto.

ITEM 8. NAME AND ADDRESS OF INSURER ("Insurer"):

American International Specialty Lines Insurance Company  
175 Water Street  
New York, NY 10038

IN WITNESS WHEREOF, the Insurer has caused this policy to be signed by its President and a Secretary and signed on the Declarations Page by a duly authorized representative of the Insurer.

  
SECRETARY

  
PRESIDENT

  
AUTHORIZED REPRESENTATIVE





POLICYHOLDER DISCLOSURE STATEMENT  
UNDER  
TERRORISM RISK INSURANCE ACT OF 2002

You are hereby notified that under the federal Terrorism Risk Insurance Act of 2002 (the "Act") effective November 26, 2002, you now have a right to purchase insurance coverage for losses arising out of an Act of Terrorism, which is defined in the Act as an act certified by the Secretary of the Treasury (i) to be an act of terrorism, (ii) to be a violent act or an act that is dangerous to (A) human life; (B) property or (C) infrastructure, (iii) to have resulted in damage within the United States, or outside of the United States in case of an air carrier or vessel or the premises of a U.S. mission and (iv) to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion. You should read the Act for a complete description of its coverage. The Secretary's decision to certify or not to certify an event as an Act of Terrorism and thus covered by this law is final and not subject to review. There is a \$100 billion dollar annual cap on all losses resulting from Acts of Terrorism above which no coverage will be provided under this policy and under the Act unless Congress makes some other determination.

For your information, coverage provided by this policy for losses caused by an Act of Terrorism may be partially reimbursed by the United States under a formula established by the Act. Under this formula the United States pays 90% of terrorism losses covered by this law exceeding a statutorily established deductible that must be met by the insurer, and which deductible is based on a percentage of the insurer's direct earned premiums for the year preceding the Act of Terrorism.

COPY OF DISCLOSURE SENT WITH ORIGINAL QUOTE

Insured Name: *GENERAL MOTORS CORPORATION*

Policy Number: *974-09-37*

Policy Period Effective Date From: *December 15, 2004* To: *December 15, 2005*

**GENERAL MOTORS CORPORATION**

**COVERAGE SECTION I.**

**DIRECTORS AND OFFICERS AND COMPANY LIABILITY COVERAGE**

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

**1. INSURING AGREEMENTS**

With respect to Coverage A, B and C, solely with respect to Claims first made against an Insured during the Policy Period or the Discovery Period (if applicable) and reported to the Insurer pursuant to the terms of this Coverage Section, and subject to the other terms, conditions and limitations of this Coverage Section, this Coverage Section affords the following coverage:

**COVERAGE A: DIRECTORS AND OFFICERS INSURANCE**

This policy shall pay the Loss of each and every Insured Person of the Company arising from any Claim(s) made against the Insured Person for any alleged Wrongful Act of such Insured Person, except when and to the extent that the Company has indemnified such Insured Person. The Insurer shall, in accordance with and subject to Clause 8, advance to each and every Insured Person the Defense Costs of such Claim(s) prior to their final disposition.

**COVERAGE B: COMPANY REIMBURSEMENT INSURANCE**

This policy shall pay the Loss of the Company arising from any Claim(s) made against an Insured Person for any alleged Wrongful Act of such Insured Person, but only to the extent that the Company has indemnified such Insured Person for such Loss.

**COVERAGE C: COMPANY INSURANCE**

This policy shall pay the Loss of the Company arising from a Securities Claim made against the Company for any alleged Wrongful Act of the Company.

**2. DEFINITIONS**

- (a) "Application" means each and every signed application, any attachments to such applications, other materials submitted therewith or incorporated therein and any other documents submitted in connection with the underwriting of this policy or the underwriting of any other directors and officers (or equivalent) liability policy issued by the Insurer, or any of its affiliates, of which this policy is: (i) a renewal, or replacement; or (ii) the next succeeding policy; and any public documents filed by the Company in the ten (10) calendar years immediately preceding the inception date of this policy with the Securities and Exchange Commission ("SEC") (or any similar federal, state, local or foreign regulatory agency), including, but not limited to, the Company's quarterly, annual and other reports to owners of its equity securities, 10Ks, 10Qs, 8Ks, proxy statements and certifications relating to the accuracy of the foregoing.

(b) "Claim" means:

- (1) a written demand for monetary, non-monetary or injunctive relief;
- (2) a civil, criminal, administrative, regulatory or arbitration proceeding for monetary, non-monetary or injunctive relief which is commenced by: (i) service of a complaint or similar pleading; (ii) return of an indictment, information or similar document (in the case of a criminal proceeding); or (iii) receipt or filing of a notice of charges; or
- (3) a civil, criminal, administrative or regulatory investigation of an Insured Person:
  - (i) once such Insured Person is identified in writing by such investigating authority as a person against whom a proceeding described in Definition (b)(2) may be commenced; or
  - (ii) in the case of an investigation by the SEC or a similar state or foreign government authority, after the service of a subpoena upon such Insured Person.

The term "Claim" shall include any Securities Claim.

- (c) "Cleanup Costs" means expenses (including but not limited to legal and professional fees) incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of Pollutants.
- (d) "Company" means the Named Corporation designated in Item 1 of the Declarations and any Subsidiary thereof.
- (e) "Defense Costs" means reasonable fees, costs and expenses (including premiums for any appeal bond, attachment bond or similar bond arising out of a covered judgment, but without any obligation to apply for or furnish any such bond) resulting solely from the investigation, adjustment, defense and/or appeal of any Claim against the Insureds, but excluding any compensation of any Insured Person or any Employees of the Company. Defense Costs shall not include any fees, costs or expenses incurred prior to the time that a Claim is first made against an Insured.
- (f) "Employee" means any past, present or future employee, other than a natural person Director or Officer of the Company, whether such employee is in a supervisory, co-worker or subordinate positions or otherwise, including any full-time, part-time, seasonal and temporary employee.
- (g) "Employment Practices Claim" means a Claim alleging any Employment Practices Violation.
- (h) "Employment Practices Violation" means any actual or alleged:
  - (1) wrongful dismissal, discharge or termination, either actual or constructive, of employment;
  - (2) harassment (including but not limited to sexual harassment);



- (3) discrimination;
- (4) retaliation;
- (5) employment-related misrepresentation;
- (6) employment-related libel, slander, humiliation, defamation or invasion of privacy;
- (7) wrongful failure to employ or promote;
- (8) wrongful deprivation of career opportunity, wrongful demotion or negligent Employee evaluation;
- (9) wrongful discipline;
- (10) failure to grant tenure; or
- (11) with respect to any of the foregoing items (1) through (10) of this definition: negligent hiring, retention, training or supervision, infliction of emotional distress, failure to provide or enforce adequate or consistent corporate policies and procedures, or violation of an individual's civil rights,

but only if such act, error or omission relates to an Employee of or an applicant for employment with a Company or an Outside Entity, whether committed directly, indirectly, intentionally or unintentionally.

(i) "Director(s) or Officer(s)" means any past, present or future:

- (1) duly elected or appointed Directors or Officers of the Company and individuals occupying the same or similar positions of responsibility within the Company;
- (2) employees of the Company who are either unclassified or otherwise eligible for any executive incentive compensation plan adopted by the board of directors of the Company;
- (3) chairman, officers or members of any past, present or future advisory committee or council of the Company or any of its divisions occupying such positions at the direction or request of the Company;
- (4) officers or members of any Civic Involvement Committee or Program of the Company or any of its divisions occupying such positions at the direction or request of the Company;
- (5) trustees, officers, award assembly members or selection committee members of any foundation sponsored by the Company occupying such positions at the direction or request of the Company;
- (6) officers and employees of the Company, as defined in (i)(2) above, of any strategic business or strategic support unit of the Company or any of its divisions occupying such positions at the direction or request of the Company;
- (7) employees of the Company, or retired employees acting as agents of the Company, occupying the positions of directors, officers or trustees of, or individuals occupying the same or similar positions of responsibility, with any Outside Entity at the direction or request of the Company which the Company acknowledges;
- (8) Subsidiaries of the Company (as differentiated from a natural person), occupying positions as directors of Outside Entities or Subsidiaries of the Company, where permitted in any Foreign Jurisdiction at the direction or request of the Company which the Company acknowledges;

- (9) any person engaged by the Named Corporation pursuant to a written engagement letter with the Company that provides for indemnification of such person, provided that such person is named in an endorsement to this policy, and, further provided that coverage hereunder shall be subject to the terms and conditions hereof only in respect of acts or omissions of the person that are within the scope of such person's engagement.
- (j) "Financial Insolvency" means the: (i) appointment by any state or federal official, agency or court of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the Company; or (ii) the Company becoming a debtor-in-possession pursuant to the United States bankruptcy law, and as to both (i) or (ii), the equivalent status outside the United States.
- (k) "Foreign Jurisdiction" means any jurisdiction, other than the United States or any of its territories or possessions.
- (l) "Indemnifiable Loss" means Loss for which the Company has indemnified or is permitted or required to indemnify an Insured Person pursuant to law or contract or the charter, by-laws, operating agreement or similar documents of a Company.

For the purposes of determining whether Loss constitutes Indemnifiable Loss, the Company shall be conclusively deemed to have indemnified the Insured Person to the maximum extent that is permitted or required to provide such indemnification pursuant to law, common or statutory, or contract or by the charter, by-laws, operating agreement or similar documents of the Company, which are hereby deemed to incorporate, for the purposes of this Coverage Section, the broadest provisions of the law which determines or defines such rights of indemnity. The Company hereby agrees to indemnify the Insured Persons to the fullest extent permitted by law, including the making in good faith of any required application for court approval.

- (m) "Independent Directors" means, with respect to a Named Corporation, a "Non-Employee Director" as that term is defined in Rule 16b-3 promulgated under the Securities Exchange Act of 1934, in effect as of December 15, 2003 (and shall not be affected by any amendments or revisions thereto), provided that the term "issuer" as used in that Rule shall be deemed to refer to such Named Corporation.
- (n) "Insured Person" means any:
- (1) natural person Director or Officer; or
  - (2) Employee of the Company, but only with respect to a Securities Claim.
- (o) "Insured" means any:
- (1) Insured Person; or
  - (2) Company, but only with respect to a Securities Claim; or
  - (3) entity Director or Officer as specified in Definition (i)(8) above.

- (p) "Loss" means damages, judgments (including pre/post-judgment interest on a covered judgment), settlements and Defense Costs; however, Loss (other than Defense Costs) shall not include: (1) civil or criminal fines or penalties; (2) taxes; (3) any amounts for which an Insured is not financially liable or which are without legal recourse to an Insured; (4) any reimbursement required pursuant to Section 304 of the Sarbanes-Oxley Act of 2002; and (5) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

Notwithstanding the foregoing paragraph, Loss shall specifically include (subject to this Coverage Section's other terms, conditions and limitations, including, but not limited to, exclusions relating to monetary profit, criminal or deliberate fraudulent acts, omissions, or intentional or knowing violations of law): (1) civil penalties assessed against any Insured Person pursuant to Section 2(g)(2)(B) of the Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-2(g)(2)(B); and (2) with respect to all Claims, punitive, exemplary and multiplied damages imposed upon an Insured Person. Enforceability of this paragraph shall be governed by such applicable law that most favors coverage for such penalties and punitive, exemplary and multiplied damages, including, but not limited to, the law (1) where those damages were awarded or imposed; or (2) where the Wrongful Act occurred; or (3) where the Company is incorporated; or (4) where the Company has its principal place of business; or (5) where any insurer providing directors' and officers' insurance to the Company is domiciled or has its principal place of business, unless in doing so the Insurer would violate any state regulations.

In the event of a Claim alleging that the price or consideration paid or proposed to be paid for the acquisition or completion of the acquisition of all or substantially all of the ownership interest in or assets of any entity is inadequate, Loss with respect to such Claim shall not include any amount of any judgment or settlement representing the amount by which such price or consideration is effectively increased; provided, however, that this paragraph shall not apply to Defense Costs or to any Non-Indemnifiable Loss in connection therewith.

- (q) "Management Control" means: (1) owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of: the Board of Directors of a corporation; the management committee members of a joint venture; the general partners of a limited partnership; or the members of the management board of a limited liability company; or (2) having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of the Named Corporation, to elect, appoint or designate a majority of the Board of Directors of a corporation, the management committee of a joint venture, the general partners of a limited partnership, or the management board of a limited liability company.
- (r) "Non-Indemnifiable Loss" means Loss for which the Company has not indemnified and is not permitted or required to indemnify a Director or Officer pursuant to law or contract or the charter, by-laws, or operating agreement of the Company or because the Company is unable to indemnify solely by reason of Financial Insolvency of the Company or the Company having filed bankruptcy proceedings under the laws of the United States or similar proceedings under the laws of any Foreign Jurisdiction.





- (s) "Outside Entity" shall mean:
- (1) any non-profit or Not For Profit organization;
  - (2) any legal entity (other than the Company).
- (t) "Outside Entity Executive" means any Director or Officer as defined in Definition (i)(7), (8) and (9) above.
- (u) "Policy Period" means the period of time from the inception date shown in Item 3. of the Declarations to the earlier of the expiration date shown in Item 3. of the Declarations or the effective date of cancellation of this Coverage Section.
- (v) "Pollutants" means, but is not limited to, any solid, liquid, gaseous, biological, radiological or thermal irritant or contaminant, including smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals and Waste. "Waste" includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and nuclear materials.
- (w) "Securities Claim" means a Claim, other than an administrative or regulatory proceeding against, or investigation of the Company, made against any Insured:
- (1) alleging a violation of any federal, state, local or foreign regulation, rule or statute regulating securities (including but not limited to the purchase or sale or offer or solicitation of an offer to purchase or sell securities) which is:
    - (a) brought by any person or entity alleging, arising out of, based upon or attributable to the purchase or sale or offer or solicitation of an offer to purchase or sell any securities of the Company; or
    - (b) brought by a security holder of the Company with respect to such security holder's interest in securities of such Company; or
  - (2) brought derivatively on the behalf of the Company by a security holder of such Company, relating to a Securities Claim as defined in subparagraph (1) above.

Notwithstanding the foregoing, the term "Securities Claim" shall include an administrative or regulatory proceeding against the Company, but only if and only during the time that such proceeding is also commenced and continuously maintained against an Insured Person.

- (x) "Subsidiary" means:
- (1) any entity of which the Named Corporation owns directly or indirectly through one or more of its Subsidiaries on or before the inception of the policy, either a) more than 50% of the economic ownership interest of such entity and/or the issued and outstanding voting stock or equivalent, or b) exactly 50% of such economic ownership interest and/or the voting stock or equivalent, but also possesses Management Control over such entity; and

- (2) any entity which is not a Financial Institution or a High-Technology organization and whose total consolidated assets as reported in its most recent financial statements are less than \$5,000,000,000 which becomes a Subsidiary during the Policy Period. No additional premium shall be imposed for such new Subsidiary for this policy; and
- (3) any entity which is a Financial Institution or a High-Technology organization and whose total consolidated assets as reported in its most recent financial statements are less than \$500,000,000 which becomes a Subsidiary during the Policy Period. Prior to the end of the Policy Period, the Named Corporation shall make a good faith effort to provide the Insurer with the name, asset size and industry of the new Subsidiary. No additional premium shall be imposed for such new Subsidiary for this policy; and
- (4) any entity which becomes a Subsidiary during the Policy Period:
  - (i) which is not a Financial Institution or a High-Technology organization and whose total consolidated assets as reported in its most recent financial statements are \$5,000,000,000 or greater; or
  - (ii) which is a Financial Institution or High-Technology organization and whose total consolidated assets as reported in its most recent financial statements are \$500,000,000 or greater;

but only upon the condition that within 120 days of its becoming a Subsidiary, the Named Corporation shall have provided the Insurer with the acquisition and/or organizational documents and the most current annual report, if applicable, of the new Subsidiary and agreed to any additional premium and/or amendment of the provisions of this policy required by the Insurer relating to such new Subsidiary. Further, coverage as shall be afforded to the new Subsidiary is conditioned upon the Named Corporation paying when due any additional premium required by the Insurer relating to such new Subsidiary; provided, however the such additional premium shall not be greater than 25% of the premium listed on the Declarations page, nor based on any factors other than those applicable to the new Subsidiary.

Notwithstanding the foregoing, with respect to an entity that becomes a Subsidiary as a result of an internal reorganization or restructuring of the Company or an existing Subsidiary, the Company is not required to notify the Insurer of such event or pay any additional premium for that additional Subsidiary to be covered hereunder.

An entity becomes a Subsidiary when the Named Corporation owns directly or indirectly through one or more of its Subsidiaries, either a) more than 50% of the economic ownership interest of such entity and/or the issued and outstanding voting stock or equivalent, or b) exactly 50% of such economic ownership interest of such entity and/or the voting stock or equivalent, but also possesses Management Control over such entity and ceases to be a Subsidiary when the Named Corporation ceases to own directly or indirectly through one or more of its Subsidiaries, either a) more than 50% of the economic ownership interest of such entity and/or the issued and outstanding voting stock or equivalent, or b) exactly 50% of such economic

ownership interest of such entity and/or the voting stock or equivalent, but also possesses Management Control over such entity. In all events, coverage as is afforded under this policy with respect to a Claim made against a Subsidiary or any Insured thereof, shall only apply for Wrongful Acts committed or allegedly committed after the effective time such Subsidiary became a Subsidiary and prior to the effective time such Subsidiary ceases to be a Subsidiary.

The term "Financial Institution" shall mean any entity which is a bank (including commercial banks and savings and loan institutions) or any entity which is a diversified financial institution (including insurance companies, brokerage firms and investment companies). The term "High-Technology" entity shall mean any entity primarily involved in the design, development, manufacture, distribution and sale of computer products including but not limited to hardware, software, semiconductors, microprocessors, integrated circuits and other peripherals. "Publicly Traded" shall mean a entity, which has securities that can be traded on the open market or on a national securities exchange.

- (y) "Wrongful Act" means any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act:
- (1) with respect to the Directors or Officers of the Company, in their respective capacities as:
    - (i) duly elected or appointed Directors or Officers of the Company and individuals occupying the same or similar positions of responsibility within the Company;
    - (ii) Employees of the Company who are either unclassified or otherwise eligible for any executive incentive compensation plan adopted by the board of directors of the Company;
    - (iii) chairman, officers or members of any past, present or future advisory committee or council of the Company or any of its divisions occupying such positions at the direction or request of the Company;
    - (iv) officers or members of any Civic Involvement Committee or Program of the Company or any of its divisions occupying such positions at the direction or request of the Company;
    - (v) trustees, officers, award assembly members or selection committee members of any foundation sponsored by the Company occupying such positions at the direction or request of the Company;
    - (vi) officers or members of any strategic business or strategic support unit of the Company or any of its divisions occupying such positions at the direction or request of the Company;
    - (vii) Persons occupying the positions of directors, officers or trustees, or the same or similar positions of responsibility, of any Outside Entity at the direction or request of the Company, who are Employees of the Company, or retired Employees of the Company acting as consultants;
    - (viii) any matter claimed against them solely by reason of their status as Directors or Officers of the Company;
    - (ix) Subsidiaries of the Company (as differentiated from a natural person), occupying positions as directors of Outside Entities or Subsidiaries of the Company, where permitted in any Foreign Jurisdiction at the



- direction or request of the Company which the Company acknowledges; or
- (x) any person engaged by the Named Corporation pursuant to a written engagement letter with the Company that provides for indemnification of such person, provided that such person is named in an endorsement to this Coverage Section, and, further provided that coverage hereunder shall be subject to the terms and conditions hereof and such coverage shall only apply in respect of the acts or omissions of the person that are within the scope of such person's engagement; or
  - (2) with respect to any Employee of the Company, by such Employee in his or her capacity as such, but solely in regard to any Securities Claim; or
  - (3) with respect to the Company, other than an entity Director or Officer as defined in Definition (i)(8), any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by such Company, but solely in regard to a Securities Claim.

### 3. EXTENSIONS

Subject otherwise to the terms hereof, this Coverage Section shall cover Loss arising from a Claim made against the estates, heirs, or legal representatives of deceased Insured Persons, and the legal representatives of Insured Persons in the event of incompetency, insolvency or bankruptcy, who were Insured Persons at the time the Wrongful Acts upon which such Claims are based were committed.

Subject otherwise to the terms hereof, this Coverage Section shall cover Loss arising from a Claim made against the lawful spouse (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) of an Insured Person for a Claim arising solely out of his or her status as the spouse of an Insured Person, including a Claim that seeks damages recoverable from marital community property, property jointly held by the Insured Person and the spouse, or property transferred from the Insured Person to the spouse; provided, however, that this extension shall not afford coverage for any Claim for any actual or alleged Wrongful Act of the spouse, but shall apply only to Claims arising out of any actual or alleged Wrongful Acts of an Insured Person, subject to this Coverage Section's terms, conditions and exclusions.

### 4. EXCLUSIONS

The Insurer shall not be liable to make any payment for Loss in connection with any Claim made against an Insured:

- (a) arising out of or resulting, directly or indirectly, from any gaining in fact of any monetary profit to the Insured to which the Insured was not legally entitled;
- (b) arising out of or resulting, directly or indirectly, from any payments to any Insured of any remuneration without the previous approval of the stockholders or members of an Company, which payment without such previous approval shall be held to have been illegal;

- (c) arising out of, based upon or attributable to, directly or indirectly, from any committing in fact of a criminal or deliberate fraudulent act or omission, or any intentional or knowing violation of the law by any Insured;

For purposes of determining the applicability of the foregoing Exclusions 4(a) through 4(c): (1) the facts pertaining to and knowledge possessed by any Insured shall not be imputed to any other Insured Person; and (2) only facts pertaining to and knowledge possessed by any past, present or future Chairman of the Board, President, Chief Executive Officer, Chief Operating Officer, Chief Financial Officer or General Counsel (or equivalent position) of the Company shall be imputed to the Company;

- (d) alleging, arising out of, based upon or attributable to the facts alleged, or to the same or related Wrongful Acts alleged or contained, in any Claim which has been reported, or in any circumstances of which notice has been given, under any policy of which this policy is a renewal or replacement, or the next succeeding policy;

- (e) which are brought by any Insured or the Company; or which are brought by any security holder of the Company, whether directly or derivatively, unless such claim(s) is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, any Insured or the Company; provided, however, this exclusion shall not apply to:

- (1) any claim brought by an Insured Person in the form of a cross claim, third party claim or otherwise for contribution or indemnity which is part of and results directly from, a Claim that is covered by this Coverage Section;
- (2) in any bankruptcy proceeding by or against the Company, any claim brought by an examiner, trustee, receiver, liquidator or rehabilitator (or any assignee thereof) of such Company, or the debtor in possession, if any;
- (3) any Claim brought by an Insured Person, including an entity Director or Officer as defined in Definition (i)(B), of a Company formed and operating in a Foreign Jurisdiction against such Company or any Insured Person thereof, provided that such Claim is brought and maintained outside the United States, Canada or any other common law country (including any territories thereof);

- (f) alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly:

- (1) the actual, alleged or threatened discharge, dispersal, release or escape of Pollutants, or
- (2) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Pollutants;

including but not limited to Claims alleging damage to the Company's shareholders; provided, however, that other than Cleanup Costs, this exclusion shall not apply to Non-Indemnifiable Loss or Securities Claims;

- (g) alleging, arising out of, based upon or attributable to any actual or alleged act or omission of an Insured Person serving in their capacity as a natural person Director or Officer or an Employee of an entity that is not the Company or an Outside Entity,

or by reason of their status as a natural person Director or Officer or an Employee of such other entity;

- (h) for violation(s) of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, 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, the Occupational Safety and Health Act, 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;
- (i) alleging, arising out of, based upon or attributable to, directly or indirectly, claims for unpaid wages or overtime pay for hours actually performed by any Employee of the Company, for improper payroll deductions 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; provided, however, that this exclusion shall not apply to Non-Indemnifiable Loss or Securities Claims;
- (j) for bodily injury (other than emotional distress or mental anguish), sickness, disease or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof; provided, however, that this exclusion shall not apply to:
  - (1) covered Defense Costs incurred by an Australian Subsidiary in connection with a Claim made against such Subsidiary for bodily injury, sickness, disease or death of any person, provided such Claim is based upon any actual or alleged breach of any occupational or workplace health and safety legislation; or
  - (2) a Securities Claim(s);
- (k) alleging, arising out of, based upon or attributable to the Company's or any Insured's performance of or failure to perform professional services for others, or any act(s), error(s) or omission(s) relating thereto; provided, however, that this exclusion shall not apply to a Securities Claim(s);
- (l) alleging, arising out of, based upon or attributable to:
  - (i) payments, commissions, gratuities, benefits or any other favors to or for the benefit of any full or part-time domestic or foreign governmental or armed services officials, agents, representatives, employees or any members of their family or any entity with which they are affiliated; or
  - (ii) payments, commissions, gratuities, benefits or any other favors to or for the benefit of any full or part-time officials, directors, agents, partners, representatives, principal shareholders, or owners or employees, or Affiliates (as that term is defined in the Securities Exchange Act of 1934, including any of their officers, directors, agents, partners, representatives, principal shareholders, or employees of such Affiliates) of any customers of the Company or any member of their family or any entity with which they are affiliated; or
  - (iii) political contributions, whether domestic or foreign.





- (m) alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly the Hazardous Properties of Nuclear Material, including but not limited to:
- (i) Nuclear Material located at any Nuclear Facility owned by, or operated by or on behalf of, the Company, or discharged or dispersed therefrom; or
  - (ii) Nuclear Material contained in spent fuel or waste which was or is at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of the Company; or
  - (iii) the furnishing by an Insured or the Company of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any Nuclear Facility; or
  - iv) Claims for damages or other injury to the Company or its shareholders which allege, arise from, are based upon, are attributed to or in any way involve, directly or indirectly, the Hazardous Properties of Nuclear Material;
- 1) which is insured under a nuclear energy liability policy issued by the Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be insured under any such policy for its termination upon exhaustion of its Limit of Liability; or
  - 2) with respect to which: (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the Company or any Insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization;

With respect to the foregoing exclusion (m):

"Hazardous Properties" include radioactive, toxic or explosive properties;

"Nuclear Material" means source material, special nuclear material or byproduct material;

"Source Material", "Special Nuclear Material", and "Byproduct Material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"Spent Fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"Waste" means any waste material (1) containing byproduct material and (2) resulting from the operation by an person or organization of any Nuclear Facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;



"Nuclear Facility" means:

- a) any nuclear reactor,
- b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,
- c) any equipment or device used for the processing, fabricating or alloying special nuclear material if at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235.
- d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste, and includes the site on which any of the foregoing is located all operations conducted on such site and all-premises used for such operations;

"Nuclear Reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

- (n) for emotional distress of any person, or for injury from libel, slander, defamation or disparagement, or for injury from a violation of a person's right of privacy;
- (o) for any Wrongful Act arising out of the Insured Person serving as a Director or Officer of an Outside Entity if such Claim is brought by the Outside Entity, its assignees or by any Director or Officer thereof; or which is brought by any security holder of the Outside Entity, whether directly or derivatively, unless such security holder's Claim is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of the Outside Entity, any Director or Officer of the Outside Entity or the Company or any Director or Officer of the Company; however, this Exclusion shall not apply in any bankruptcy proceeding by or against the Outside Entity, to any claim brought by an examiner, trustee, receiver, liquidator or rehabilitator (or any assignee thereof) of such Outside Entity, or the debtor in possession, if any;
- (p) alleging, arising out of, based upon or attributable to any Employment Practices Violations.

**5. LIMIT OF LIABILITY AND ORDER OF PAYMENTS- (FOR ALL LOSS - INCLUDING DEFENSE COSTS)**

The limit of liability stated in Item 4 of the Declarations is the limit of the Insurer's liability for all Loss, under Coverage A, Coverage B, Coverage C and Coverage D combined, arising out of all claims first made against the Insureds and reported to the Insurer during the Policy Period and the Discovery Period (if applicable); however, the limit of liability for the Discovery Period shall be part of, and not in addition to, the limit of liability for the Policy Period. Further, any claim which is made subsequent to the Policy Period or Discovery



Period (if applicable) which pursuant to Clause 7(b) or 7(c) is considered made during the Policy Period or Discovery Period shall also be subject to the one aggregate limit of liability stated in item 4 of the Declarations.

**Defense costs are not payable by the Insurer in addition to the limit of liability. Defense costs are part of Loss and as such are subject to the limit of liability for Loss.**

In the event of Loss arising from a Claim (including a Claim related to such Claim as described in paragraph 7(b), collectively Claim), then the Insurer shall in all events:

- (a) first, pay Loss to the duly elected or appointed directors of the Named Corporation for which coverage is provided under Coverage A and Coverage D, except Indemnifiable Loss under Coverage D, of this policy; then
- (b) only after payment of Loss has been made pursuant to Clause (a) above, with respect to whatever remaining amount of the Limit of Liability is available after such payment, pay Loss to all other Directors and Officers of the Company for which coverage is provided under Coverage A and Coverage D, except Indemnifiable Loss under Coverage D, of this policy; then
- (c) only after payment of Loss has been made pursuant to Clauses (a) and (b) above, with respect to whatever remaining amount of the Limit of Liability is available after such payment, at the written request of the majority of the Independent Directors of the Named Corporation, either pay or withhold payment of such other Loss for which coverage is provided under Coverage B and Coverage D of this policy; and then
- (d) only after payment of Loss has been made pursuant to Clauses (a), (b) and (c) above, with respect to whatever remaining amount of the Limit of Liability is available after such payment, at the written request of the majority of the Independent Directors of the Named Corporation, either pay or withhold payment of such other Loss for which coverage is provided under Coverage C of this policy.

In the event the Insurer withholds payment pursuant to Clause (c) and/or (d) above, then the Insurer shall at such time and in such manner as shall be set forth in written instructions of the majority of the Independent Directors of the Named Corporation remit such payment to the Company or directly to or on behalf of an Insured Person; provided that the Insurer receives full release and indemnity in a form satisfactory to the Insurer.

The bankruptcy or insolvency of the Company or any Insured Person shall not relieve the Insurer of any of its obligations to prioritize payment of Loss under this policy pursuant to this Order of Payments provision.

## **6. RETENTION**

For each Claim, the Insurer shall only be liable for the amount of Loss arising from a Claim which is in excess of the applicable Retention amounts stated in Item 5.A. of the Declarations, such Retention amounts to be borne by the Company and remain uninsured, with regard to all Loss, other than Non-Indemnifiable Loss. The Retention amount specified in:



- (i) Item 5.A.(a) applies to Loss that arise out of a Securities Claim; and
- (ii) Item 5.A.(b) applies to all Loss that arises out of any Claim other than a Securities Claim.

A single Retention amount shall apply to Loss arising from all Claims alleging the same Wrongful Act or related Wrongful Acts.

In the event a Claim triggers more than one of the Retention amounts stated in Items 5.A.(a) and 5.A.(b) of the Declarations, then, as to that Claim, the highest of such Retention amounts shall be deemed the Retention amount applicable to Loss (to which a Retention is applicable pursuant to the terms of this policy) arising from such Claim.

No Retention amount is applicable to Non-Indemnifiable Loss.

No Retention amount is applicable to Indemnifiable Loss, in the event of Financial Insolvency of the Company at the time of payment of Claim by the Insurer.

## 7. NOTICE/CLAIM REPORTING PROVISIONS

Notice hereunder shall be given in writing to **AIG Technical Services, Inc., P.O. Box 1000, New York, NY 10268** to the attention of "D&O Claims Unit." Notice shall include and reference this Policy Number as indicated in the Declarations. If mailed, the date of mailing shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice.

- (a) the Company or an Insured shall, as a condition precedent to the obligations of the Insurer under this policy, give written notice to the Insurer of a Claim made against an Insured as soon as practicable after the Named Corporation's Risk Manager or General Counsel (or equivalent position) first becomes aware of the Claim, but in all events no later than after the earliest occurrence of the following:

- (i) The Claim is or is sought to be certified as a class action; or
- (ii) Total Loss (including Defense Costs) of the Claim is reasonably estimated by the Named Corporation's Risk Manager or General Counsel (or equivalent position) to exceed fifty percent (50%) of the applicable Retention amount as stated in Item 5. of the Declarations; or

but in all events, all Claims, including, but not limited to the Claims listed in (i) and (ii) above, must be reported to the Insurer no later than:

- (1) the end of the Policy Period or the Discovery Period (if applicable); or
- (2) within 60 days after the end of the Policy Period or the Discovery Period (if applicable), as long as such Claim was first made against an Insured within the final 45 days of the Policy Period or the Discovery Period (if applicable).

- (b) If written notice of a Claim has been given to the Insurer pursuant to Clause 7(a) above, then a Claim which is subsequently made against an Insured and reported to the Insurer alleging, arising out of, based upon or attributable to the facts alleged in the Claim for which such notice has been given, or alleging any Wrongful Act which is the same as or related to any Wrongful Act alleged in the Claim of which such

notice has been given, shall be considered related to the first Claim and made at the time such notice was given.

- (c) If during the Policy Period or during the Discovery Period (if applicable) the Company or an Insured shall become aware of any circumstances which may reasonably be expected to give rise to a Claim being made against an Insured and shall give written notice to the Insurer of the circumstances, the Wrongful Act allegations anticipated and the reasons for anticipating such a Claim, with full particulars as to dates, persons and entities involved, then a Claim which is subsequently made against such Insured and reported to the Insurer alleging, arising out of, based upon or attributable to such circumstances or alleging any Wrongful Act which is the same as or related to any Wrongful Act alleged or contained in such circumstances, shall be considered made at the time such notice of such circumstances was given.

**8. DEFENSE COSTS, SETTLEMENTS, JUDGMENTS (INCLUDING THE ADVANCEMENT OF DEFENSE COSTS)**

- (a) *Advancement and Repayment:* Under the Coverages A, B and C of this policy, except as hereinafter stated, the Insurer shall advance, excess of any applicable retention amount, covered Defense Costs no later than ninety (90) days after the receipt by the Insurer of such defense bills. Such advance payments by the Insurer shall be repaid to the Insurer by each and every Insured Person or the Company, severally according to their respective interests, in the event and to the extent that any such Insured Person or the Company shall not be entitled under this policy to payment of such Loss.
- (b) *Defense Obligations/Consent:* The Insurer does not, under this policy, assume any duty to defend. The Insureds shall defend and contest any Claim made against them. The Insureds shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any Defense Costs without the prior written consent of the Insurer. Only those settlements, stipulated judgments and Defense Costs that have been consented to by the Insurer shall be recoverable as Loss under the terms of this policy. The Insurer's consent shall not be unreasonably withheld.

Notwithstanding any of the foregoing, if all Insureds are able to dispose of all Claims that are subject to one retention amount (inclusive of Defense Costs) for an amount not exceeding any applicable retention amount, then the Insurer's consent shall not be required for such disposition.

- (c) *Association/Cooperation:* The Insurer shall have the right to effectively consult with the Company, defense counsel and/or the Insureds about defense and settlements developments and strategies and shall have the right to be given such information as it may reasonably require relating to the defense of any Claim and the cooperation of the Company and the Insureds in such reasonable time and in such a reasonable manner so to enable the Insurer to make meaningful decisions with respect to its right under this policy to consent to Loss. However, other than with the consent of the Company or an Insured, the Insurers shall not directly participate in settlement negotiations with the claimant.



- (d) In connection with any Claim, other than a Claim that is or includes a Securities Claim, with respect to: (i) Defense Costs jointly incurred by, (ii) any joint settlement entered into by, or (iii) any judgment of joint and several liability against any Company and Insured Person, there shall be a fair and equitable allocation as between any such Company and any such Insured Person, taking into account the relative legal and financial exposures and the relative benefits obtained by any such Insured Person and any such Company, without any presumption that the coverage afforded to the Insured Person shall in any way reduce the allocation to the Company which shall not be insured for such allocation. In the event that a determination as to the amount of Defense Costs to be advanced under the policy cannot be agreed to, then the Insurer shall advance Defense Costs excess of any applicable retention amount which the Insurer states to be fair and equitable until a different amount shall be agreed upon or determined pursuant to the provisions of this policy and applicable law.

#### **9. CANCELLATION CLAUSE**

This Coverage Section may be canceled by the Named Corporation at any time only by mailing written prior notice to the Insurer or by surrender of this Coverage Section to the Insurer or its authorized agent. This Coverage Section may only be canceled by or on behalf of the Insurer in the event of non-payment of premium by the Named Corporation. In the event of non-payment of premium by the Named Corporation, the Insurer may cancel this Coverage Section by delivering to the Named Corporation or by mailing to the Named Corporation, by registered, certified, or other first class mail, at the Named Corporation's address as shown in Item 1 of the Declarations, written notice stating when, not less than the minimum time allowed pursuant to the applicable state law, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. The Policy Period terminates at the date and hour specified in such notice, or at the date and time of surrender. The Insurer shall have the right to the premium amount for the portion of the Policy Period during which this Coverage Section was in effect.

If this Coverage Section shall be canceled by the Named Corporation, the Insurer shall retain the customary short rate proportion of the premium herein. If the period of limitation relating to the giving of notice as set forth in this Clause 9 is also set forth in any law controlling the construction thereof, then such period shall be deemed to be amended so as to be equal to the minimum period of limitation set forth in the controlling law.

#### **10. TERMINATION OF COVERAGE FOR SUBSEQUENT WRONGFUL ACTS AFTER CERTAIN TRANSACTIONS**

If during the Policy Period:

1. the Named Corporation shall consolidate with or merge into, or sell all or substantially all of its assets to, any other person or entity or group of persons and/or entities acting in concert; or
2. any person or entity or group of persons and/or entities acting in concert shall acquire Management Control of the Named Corporation;

(either of the above events herein referred to as the "Transaction")

then, this policy shall continue in full force and effect as to Wrongful Acts occurring prior to the effective time of the Transaction, but there shall be no coverage afforded by any provision of this Coverage Section for any actual or alleged Wrongful Act occurring after the effective time of the Transaction. This Coverage Section may not be canceled after the effective time of the Transaction and the entire premium for this policy shall be deemed earned as of such time. The Named Corporation shall also have the right to an offer by the Insurer of a Discovery Period described in Endorsement #4 of this policy.

The Named Corporation shall give the Insurer written notice of the Transaction as soon as practicable, but not later than 30 days after the effective date of the Transaction.

#### **11. SUBROGATION**

In the event of any payment under this policy, the Insurer shall be subrogated to the extent of such payment to all the Company's and the Insureds' rights of recovery therefor, and the Company and the Insureds shall execute all papers required and shall do everything necessary and reasonable to secure such rights including the execution of such documents necessary to enable the Insurer effectively to bring suit in the name of the Company and/or the Insureds.

Provided, however, that this provision shall not permit the Insurer to subrogate against an Insured under the policy except with respect to Wrongful Acts not covered under this Coverage Section.

Any recovery under this section shall be returned or refunded to the Company or the Insured (after reduction for litigation expenses and attorney fees) in the proportion in which the retention amount paid by the Company or an Insured bears to the total amount of Loss paid by the Insurer. Further, the limit of liability shall be reinstated to the extent of the net recovery (after litigation expenses, attorney fees and refunds to the Company or the Insured) received by the Insurer.

#### **12. OTHER INSURANCE AND INDEMNIFICATION**

Such insurance as is provided by this Coverage Section shall apply only as excess over any other valid and collectible insurance.

With respect to any not-for-profit Outside Entity, in the event of a Claim made against any Outside Entity Executive, coverage as is afforded by this policy shall be specifically excess of: (1) any indemnification provided by an Outside Entity; and (2) any insurance coverage afforded to an Outside Entity or its Directors or Officers applicable to such Claim. Further, in the event such other Outside Entity insurance is provided by the Insurer or any other company of American International Group, Inc. (AIG) (or would be provided but for the application of the retention amount, exhaustion of the limit of liability or failure to submit a notice of a claim as required) then the Insurer's maximum aggregate Limit of Liability for all Loss under this policy, as respects any such Claim, shall be reduced by the amount of the limit of liability (as set forth on the Declarations) of the other AIG insurance provided to such Outside Entity.

With respect to any for-profit Outside Entity, in the event of a Claim made against any Outside Entity Executive, coverage as is afforded by this policy shall be specifically excess of: (1) any indemnification provided by an Outside Entity; (2) any insurance coverage afforded to an Outside Entity or its Directors or Officers applicable to such Claim; and (3) any indemnification provided or required to be provided by any Company to such Outside Entity Executives. Further, in the event such other Outside Entity insurance is provided by the Insurer or any other company of American International Group, Inc. (AIG) (or would be provided but for the application of the retention amount, exhaustion of the limit of liability or failure to submit a notice of a claim as required) then the Insurer's maximum aggregate Limit of Liability for all Loss under this policy, as respects any such Claim, shall be reduced by the amount of the limit of liability (as set forth on the Declarations) of the other AIG insurance provided to such Outside Entity.

### **13. REPRESENTATIONS AND SEVERABILITY**

In granting coverage under this policy, it is agreed that the Insurer has relied upon the statements, warranties and representations contained in the Application as being accurate and complete. All such statements, warranties and representations are the basis for this policy and are material to the risk assumed by the Insurer, and are to be considered as incorporated into this policy.

The Insureds agree that in the event that the particulars and statements contained in the Application are not accurate and complete, then this Policy shall be void as to any Insured who knew as of the inception date of the Policy Period of the facts that were not accurately and completely disclosed in the Application (whether or not such Insured knew that such facts were not accurately and completely disclosed in the Application) and as to any Insured to whom such knowledge is imputed.

For purposes of determining whether knowledge shall be imputed to an Insured:

- (1) knowledge possessed by a past or present: (i) Chief Executive Officer or (ii) Chief Financial Officer of the Named Corporation shall be imputed to all Insureds; and
- (2) knowledge possessed by an Insured Person, other than a past or present: (i) Chief Executive Officer or (ii) Chief Financial Officer of the Named Corporation shall not be imputed to any other Insured Person.

Notwithstanding the foregoing, this policy shall provide coverage, subject to the policy's terms, conditions and exclusions, for any Non-Indemnifiable Loss of any Insured Person to whom knowledge is imputed pursuant to subparagraph (1) above, provided that such Insured Person did not have knowledge of the facts that were not accurately and completely disclosed.

### **14. NOTICE AND AUTHORITY**

It is agreed that the Named Corporation shall act on behalf of its Subsidiaries and all Insureds with respect to the giving and receiving of notice of claim or cancellation, the payment of premiums and the receiving of any return premiums that may become due under this Coverage Section, the receipt and acceptance of any endorsements issued to

form a part of this Coverage Section and the exercising or declining to exercise any right to a Discovery Period.

**15. ASSIGNMENT**

This policy and any and all rights hereunder are not assignable without the written consent of the Insurer.

**16. ACTION AGAINST INSURER**

No action shall lie against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Coverage Section, nor (except in respect of the Insurer's duty to advance Defense Costs for Non-Indemnifiable Claims) until the amount of the Insureds' obligation to pay shall have been finally determined either by judgment against the Insureds after actual trial or by written agreement of the Insureds, the claimant and the Insurer.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Insurer as a party to any action against the Insureds or the Company to determine the Insureds' liability, nor shall the Insurer be impleaded by the Insureds or the Company or their legal representatives. Bankruptcy or insolvency of the Company or the Insureds or of the their estates shall not relieve the Insurer of any of its obligations hereunder.

**17. SERVICE OF SUIT**

Subject to Clause 18, it is agreed that in the event of failure of the Insurer to pay any amount claimed to be due hereunder, the Insurer, at the request of the Insured, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this Clause 17 constitutes, or should be understood to constitute, a waiver of the Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon General Counsel, Legal Department, American International Specialty Lines Insurance Company, 70 Pine Street New York, NY 10270, or his or her representative, and that in any suit instituted against the Insurer upon this contract, the Insurer will abide by the final decision of such court or of any appellate court in the event of any appeal.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefor, the Insurer hereby designates the Superintendent, Commissioner, or Director of Insurance, or other officer specified for that purpose in the statute, or his or her successor or successors in office as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the Insured or any beneficiary hereunder arising out of this contract of insurance, and hereby designates the above-named General Counsel as the person to whom the said officer is authorized to mail such process or a true copy thereof.

**18. ALTERNATIVE DISPUTE RESOLUTION PROCESS**

It is hereby understood and agreed that all disputes or differences which may arise under or in connection with this policy, whether arising before or after termination of this policy, including any determination of the amount of Loss, shall be submitted to the alternative dispute resolution ("ADR") process set forth in this clause.

Either the Insurer or an Insured may elect the type of ADR process discussed below; provided, however, that such Insured shall have the right to reject the Insurer's choice of the type of ADR process at any time prior to its commencement, in which case such Insured's choice of ADR process shall control.

The Insurer and each and every Insured agrees that there shall be two choices of ADR process: (1) non-binding mediation administered by the American Arbitration Association, in which the Insurer and any such Insured shall try in good faith to settle the dispute by mediation under or in accordance with its then-prevailing Commercial Mediation Rules; or (2) arbitration submitted to the American Arbitration Association in accordance with its then-prevailing Commercial Arbitration Rules, 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 arbitrators' award 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 the mediation shall have been terminated and at least 120 days shall have elapsed from the date of the termination of the mediation. In all events, each party shall share equally the expenses of the ADR process.

Either choice of ADR process may be commenced in New York, New York; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; or in the state indicated in Item 1(a) of the Declarations as the mailing address for the Named Corporation. The Named Corporation shall act on behalf of each and every Insured in deciding to proceed with an ADR process under this clause.

**20. WORLDWIDE EXTENSION**

Where legally permissible, this policy shall apply to any Claim made against any Insured anywhere in the world.

In regard to Claims brought and maintained solely in a Foreign Jurisdiction against an Organization formed and operating in such Foreign Jurisdiction or an Insured Person thereof for Wrongful Acts committed in such Foreign Jurisdiction, the Insurer shall apply to such Claim(s) those terms and conditions (and related provisions) of the Foreign Policy registered with the appropriate regulatory body in such Foreign Jurisdiction that are more favorable to such Insured than the terms and conditions of this Coverage Section. However, this paragraph shall apply only to Clauses 1-4, 9-12, 15, 16, 17 and 20 of this Coverage Section and the comparable provisions of the Foreign Policy. In addition, this paragraph shall not apply to the non-renewal or claims made and reported provisions of any policy.

Notwithstanding differences in the substantive and procedural laws of any Foreign Jurisdiction as compared to United States federal and state laws, the Insurer agrees that it shall interpret the coverage provided by this policy at least as broadly, and with the same intent of coverage, as if Loss had been sustained, the Claim been asserted, or any Wrongful Act had occurred in the United States.

All premiums, limits, retentions, Loss and other amounts under this Coverage Section are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or other elements of Loss are stated or incurred in a currency other than United States of America dollars, payment of covered Loss due under this policy (subject to the terms, conditions and limitations of this policy) will be made either in such other currency (at the option of the Insurer and if agreeable to the Named Corporation) or, in United States of America dollars, at the rate of exchange published in The Wall Street Journal on the date the Insurer's obligation to pay such Loss is established (or if not published on such date the next publication date of The Wall Street Journal).

"Foreign Policy" means the Insurer's or any other company of American International Group, Inc.'s (AIG) standard executive managerial liability policy (including all mandatory endorsements, if any) approved by AIG to be sold within a Foreign Jurisdiction that provides coverage substantially similar to the coverage afforded under this Coverage Section. If more than one such policy exists, then "Foreign Policy" means the standard policy most recently registered in the local language of the Foreign Jurisdiction, or if no such policy has been registered, then the policy most recently registered in that Foreign Jurisdiction. The term "Foreign Policy" shall not include any partnership managerial, pension trust or professional liability coverage.

#### **21. CHOICE OF LAW**

The Insurer and the Insureds agree that the interpretation of this Policy shall be governed by New York State law, except as otherwise provided pursuant to the terms of Clause 20 and except with respect to the coverage provided for punitive, exemplary or multiplied damages, pursuant to the second paragraph of the Definition of Loss; and any actions will take place in exclusively the Federal District Court of the Southern District of New York.

#### **22. HEADINGS**

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

GENERAL MOTORS CORPORATION

COVERAGE SECTION II.

EMPLOYEE BENEFIT PLAN FIDUCIARY LIABILITY INSURANCE COVERAGE

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

1. INSURING AGREEMENTS

COVERAGE D:

Solely with respect to Claims first made against an Insured during the Policy Period or the Discovery Period (if applicable) and reported to the Insurer pursuant to the terms of this policy, and subject to the other terms, conditions and limitations of this policy, this policy shall pay the Loss of each and every Insured arising from a Claim against an Insured for any actual or alleged Wrongful Act by any such Insured (or by any employee for whom such Insured is legally responsible).

2. DEFENSE COSTS, SETTLEMENTS, JUDGMENTS (INCLUDING THE ADVANCEMENT OF DEFENSE COSTS)

- (a) *Advancement and Repayment:* Under the Coverage D of this policy, except as hereinafter stated, the Insurer shall advance, excess of any applicable retention amount, covered Defense Costs no later than ninety (90) days after the receipt by the Insurer of such defense bills. Such advance payments by the Insurer shall be repaid to the Insurer by each and every Insured Person or the Sponsor Organization, severally according to their respective interests, in the event and to the extent that any such Insured Person or the Sponsor Organization shall not be entitled under this policy to payment of such Loss.
- (b) *Defense Obligations/Consent:* The Insurer does not, under this policy, assume any duty to defend. The Insureds shall defend and contest any Claim made against them. The Insureds shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any Defense Costs without the prior written consent of the Insurer. Only those settlements, stipulated judgments and Defense Costs that have been consented to by the Insurer shall be recoverable as Loss under the terms of this policy. The Insurer's consent shall not be unreasonably withheld.

Notwithstanding any of the foregoing, if all Insureds are able to dispose of all Claims that are subject to one retention amount (inclusive of Defense Costs) for an amount not exceeding any applicable retention amount, then the Insurer's consent shall not be required for such disposition.

- (c) *Association/Cooperation*: The Insurer shall have the right to effectively consult with the Sponsor Organization, defense counsel and/or the Insureds about defense and settlements developments and strategies and shall have the right to be given such information as it may reasonably require relating to the defense of any Claim and the cooperation of the Sponsor Organization and the Insureds in such reasonable time and in such a reasonable manner so to enable the Insurer to make meaningful decisions with respect to its right under this policy to consent to Loss. However, other than with the consent of the Sponsor Organization or an Insured, the Insurers shall not directly participate in settlement negotiations with the claimant.

### 3. DEFINITIONS

"Administrator" means an Insured with respect to any Wrongful Act described in subparagraph (2) of the Definition of Wrongful Act.

"Benefits" means any obligation under a Plan to a participant or beneficiary under a Plan which is a payment of money or property, or the grant of a privilege, right, option or perquisite.

"Breach of Fiduciary Duty" means a violation of the responsibilities, obligations or duties imposed upon Insureds by ERISA.

"Cafeteria Plan" means a plan as defined in Section 125 of the Internal Revenue Code of 1986, as amended or a plan from which the participants may choose among two or more benefits consisting of cash and qualified benefits.

"Claim" means:

- (1) a written demand for monetary, non-monetary or injunctive relief; or
- (2) a civil, criminal or arbitration proceeding for monetary, non-monetary or injunctive relief which is commenced by:
  - (i) service of a complaint or similar pleading; or
  - (ii) return of an indictment, information or similar document (in the case of a criminal proceeding); or
  - (iii) receipt or filing of a notice of charges; or
- (3) a formal agency or regulatory adjudicative proceeding to which an Insured is subject; or
- (4) any fact-finding investigation by the U.S. Department of Labor, the Pension Benefit Guaranty Corporation, or similar governmental agency which is located outside of the United States.

"Cleanup Costs" means expenses (including but not limited to legal and professional fees) incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of Pollutants.



"Defense Costs" means reasonable fees, costs and expenses (including premiums for any appeal bond, attachment bond or similar bond arising out of a covered judgment, but without any obligation to apply for or furnish any such bond) resulting solely from the investigation, adjustment, defense and/or appeal of any Claim against the Insureds, but excluding any compensation of any Insured Person or any Employees of the Sponsor Organization. Defense Costs shall not include any fees, costs or expenses incurred prior to the time that a Claim is first made against an Insured.

"Defense Expenses" means reasonable attorney's fees, costs or expenses resulting solely from the correction of an actual or potential Breach of Fiduciary Duty, but excluding any fees, costs and expenses associated with finding or assessing such Breach of Fiduciary Duty and any compensation of Natural Person Insureds or employees of an Insured.

"Dependent Care Assistance Program" means a dependent care assistance program as defined in Section 129 of the Internal Revenue Code of 1986, as amended.

"Domestic Partner" means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the Named Corporation or any Subsidiary.

"Employee Benefit Law" means:

- (1) ERISA or any similar common or statutory law of the United States, Canada or any state or other jurisdiction anywhere in the world to which a Plan is subject;
- (2) solely with respect to subparagraph (2) of the Definition of Wrongful Act, Employee Benefit Law shall also include Part 164 of the regulations under the Health Insurance Portability and Accountability Act of 1996 (hereinafter "HIPAA Privacy Regulations"), unemployment insurance, Social Security, government-mandated disability benefits or similar law; and
- (3) in no event shall Employee Benefit Law, other than as set forth in paragraph (2) of this definition, include any law concerning worker's compensation, unemployment insurance, Social Security, government-mandated disability benefits or similar law.

"ERISA" means the Employee Retirement Income Security Act of 1974 (including, but not limited to, amendments relating to the Consolidated Omnibus Budget Reconciliation Act of 1985, the Health Insurance Portability and Accountability Act of 1996 as it relates to Sections 102(b) and 104(b)(1) of ERISA, the Newborns' and Mothers' Health Protection Act of 1996, the Mental Health Parity Act of 1996, and the Women's Health and Cancer Rights Act of 1998), and including any amendment or revision thereto.

"ESOP" means any employee stock ownership plan as defined in ERISA, or any other Plan under which investments are made primarily in securities of or issued by: (i) the Sponsor Organization; (ii) the parent of the Sponsor Organization; (iii) any acquired Subsidiary; or (iv) any parent of any acquired Subsidiary; or whose assets at any time within twelve months prior to the Inception Date of this Coverage Section were comprised of 10% or more of securities of the Sponsor Organization, the parent of the Sponsor Organization, any acquired Subsidiary or any parent of any acquired Subsidiary.

"Fiduciary" means a fiduciary as defined in an Employee Benefit Law (if applicable), with respect to a Plan, or a person or entity who exercises discretionary control as respects the management of a Plan or the disposition of its assets.

"Financial Insolvency" means the: (i) appointment by any state or federal official, agency or court of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the Sponsor Organization; or (ii) the Sponsor Organization becoming a debtor-in-possession pursuant to the United States bankruptcy law, and as to both (i) or (ii), the equivalent status outside the United States.

"Foreign Jurisdiction" means any jurisdiction, other than the United States or any of its territories or possessions.

"Foreign Policy" means the Insurer's or any other member company of American International Group, Inc.'s (AIG) standard fiduciary or pension trust liability policy (including all mandatory endorsements, if any) approved by AIG to be sold within a Foreign Jurisdiction, that provides coverage substantially similar to the coverage afforded under this Coverage Section. If more than one such policy exists, then Foreign Policy means the standard policy most recently registered in the local language of the Foreign Jurisdiction, or if no such policy has been registered, then the policy most recently registered in that Foreign Jurisdiction. The term Foreign Policy shall not include any directors and officers, partnership, managerial, comprehensive general liability, employment practices liability or professional liability coverage.

"Fringe Benefit" means any plan or benefit described in Section 132 of the Internal Revenue Code of 1986, as amended.

"Inception Date" means 12:01 a.m. on December 15, 2003.

"Indemnifiable Loss" means Loss for which the Sponsor Organization has indemnified or is permitted or required to indemnify any natural person Insured pursuant to law or contract or the charter, by-laws, operating agreement or similar documents of a Sponsor Organization.

For the purposes of determining whether Loss constitutes Indemnifiable Loss, the Sponsor Organization shall be conclusively deemed to have indemnified the to the maximum extent that a is permitted or required to provide such indemnification pursuant to law, common or statutory, or contract or by the charter, by-laws, operating agreement or similar documents of the Sponsor Organization, which are hereby deemed to incorporate, for the purposes of this policy, the broadest provisions of the law which determines or defines such rights of indemnity. The Sponsor Organization hereby agrees to indemnify the Insured Persons to the fullest extent permitted by law, including the making in good faith of any required application for court approval.

"Insured(s)" means:

- (1) any Natural Person Insured;
- (2) any Plan(s);
- (3) the Sponsor Organization; and

- (4) any other person or entity in his, her or its capacity as a Fiduciary, Administrator or trustee of a Plan and included in the Definition of Insured by specific written endorsement attached to this Coverage Section.

"Loss" means damages, judgments (including pre/post-judgment interest on a covered judgment), settlements and Defense Costs; however, Loss shall not include: (1) civil or criminal fines or penalties imposed by law, except (i) UK Fines and Penalties, (ii) the five percent or less civil penalty imposed upon an Insured under Section 502(i) of ERISA, and (iii) the 20 percent or less penalty imposed upon an Insured under Section 502(l) of ERISA, with respect to covered settlements or judgments; (2) taxes or tax penalties; (3) any amount for which an Insured is not financially liable or which is without legal recourse to the Insured; (4) Benefits, or that portion of any settlement or award in an amount equal to such Benefits, unless and to the extent that recovery of such Benefits is based upon a covered Wrongful Act and is payable as a personal obligation of a Natural Person Insured; or (5) matters which may be deemed uninsurable under the law pursuant to which this Coverage Section shall be construed.

Where permitted by law, Loss shall include punitive, exemplary or multiplied damages imposed upon any Insured (subject to this Coverage Section's other terms, conditions and exclusions, including but not limited to exclusions relating to profit, deliberate fraud or criminal acts and knowing or willful violation of any statute, rule or law, including but not limited to Employee Benefit Law).

Defense Costs shall be provided for items specifically excluded from Loss pursuant to subparagraphs (1)-(5) above of this Definition, subject to the other terms, conditions and exclusions of this Coverage Section.

"Management Control" means: (1) owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of: the Board of Directors of a corporation; the management committee members of a joint venture; the general partners of a limited partnership; or the members of the management board of a limited liability company; or (2) having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of the Named Corporation, to elect, appoint or designate a majority of the Board of Directors of a corporation, the management committee of a joint venture, the general partners of a limited partnership, or the management board of a limited liability company.

"Natural Person Insured" means any:

- (1) past, present or future natural person director, officer, governor, general partner, management committee member, member of the board of managers or employee of a Sponsor Organization or if applicable, of a Plan, and as to all of the above in his or her capacity as a Fiduciary, Administrator or trustee of a Plan; or
- (2) past, present or future natural person in a position equivalent to a position listed in subparagraph (1) of this Definition in the event that the Sponsor Organization is operating in a Foreign Jurisdiction.

"Non-Indemnifiable Loss" means Loss for which the Sponsor Organization has not indemnified and is not permitted or required to indemnify a Director or Officer pursuant to law or contract or the charter, by-laws, or operating agreement of the Sponsor Organization or because the Sponsor Organization is unable to indemnify solely by reason of Financial Insolvency of the Sponsor Organization or the Sponsor Organization having filed bankruptcy proceedings under the laws of the United States or similar proceedings under the laws of any Foreign Jurisdiction."

"Non-qualified Plan" means any of the following plans for a select group of management or highly compensated directors, officers and/or employees: deferred compensation plan, supplemental executive retirement plan, top-hat plan, or excess benefit plan.

"Pension Plan" means a pension plan as defined in any Employee Benefit Law.

"Plan" means automatically, any qualified plan, fund, trust or program (including, but not limited to, any Pension Plan, Welfare Plan, Cafeteria Plan, Dependent Care Assistance Program, Fringe Benefit, and VEBA) or Non-qualified Plan, established anywhere in the world, which was, is or shall be sponsored solely by the Sponsor Organization, or sponsored jointly by the Sponsor Organization and a labor organization, solely for the benefit of the employees and/or the directors, officers, governors, management committee members, members of the board of managers or natural person general partners of the Sponsor Organization, unless the Plan:

- (1) is a stock option plan or ESOP acquired after the inception date of this Coverage Section, unless the Sponsor Organization has provided written notice of such stock option plan or ESOP to the Insurer and such stock option plan or ESOP has been added to the Definition of Plan by specific written endorsement to this Coverage Section; or
- (2) has undergone a cash balance conversion or implementation of a pension equity formula after the inception date of this Coverage Section; or
- (3) such Plan, other than those Plans described in (1) above, has been acquired during the Policy Period and its assets total more than \$500,000,000;

then, with respect to the Plans described in (2) and (3) above, this Coverage Section shall apply to such Plan(s) (but, with respect to the Plan described in (3) above, solely with respect to Wrongful Acts occurring after the date of such acquisition), but only upon the condition that within ninety (90) days of the conversion to a cash balance or implementation of a pension equity formula, or of the Plan's acquisition, the Named Corporation shall have provided the Insurer with a completed application for such Plan and agreed to any additional premium or amendment of the provisions of the policy required by the Insurer relating to such Plan.

The Definition of Plan shall also include: (i) the following government-mandated programs: unemployment insurance, Social Security, or disability benefits, but solely with respect to a Wrongful Act defined in subparagraph (2) of the Definition of Wrongful Act in this Coverage Section; (ii) any Pension Plan (other than an ESOP or stock option plan) considered or created by the Sponsor Organization during the Policy Period; or (iii) any other plan, fund or program, which is included in the Definition of Plan by specific written endorsement attached to this Coverage Section.

In no event, however, shall the Definition of Plan include any multiemployer plan as defined in Employee Benefit Law.

"Policy Period" means the period of time from the Inception Date, as defined in this Coverage Section, to the earlier of the expiration date shown in Item 3 of the Declarations or the effective date of cancellation of this Coverage Section.

"Pollutants" include (but are not limited to) any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes (but is not limited to) materials to be recycled, reconditioned or reclaimed.

"Sponsor Organization" means the Named Corporation designated in Item 1 of the Declarations and any Subsidiary thereof; and, in the event any bankruptcy proceeding shall be instituted by or against the Named Corporation or any Subsidiary thereof, the resulting debtor in possession (or equivalent status outside the United States), if any.

"Subsidiary" means any past, present or future: (1) for-profit entity of which the Named Corporation has Management Control either directly or indirectly through one or more other Subsidiaries; and (2) not-for-profit entity under section 501(c)(3) of the Internal Revenue Code of 1986 (as amended) sponsored exclusively by the Named Corporation. The term Subsidiary shall automatically apply to any new Subsidiary acquired or created during the Policy Period.

A for-profit entity ceases to be a Subsidiary when the Named Corporation no longer maintains Management Control of such Subsidiary. A not-for-profit entity ceases to be a Subsidiary when the Named Corporation no longer exclusively sponsors such Subsidiary.

"UK Fines and Penalties" means civil fines and penalties assessed against an Insured by either the Pensions Ombudsman appointed by the Secretary of State for Social Services in the United Kingdom or by the Occupational Pensions Regulatory Authority in the United Kingdom or any successor body thereto, subject to the other terms, conditions and exclusions of the policy.

"VEBA" means a voluntary employees' beneficiary association as defined in Section 501(c)(9) of the Internal Revenue Code of 1986, as amended and the regulations thereunder, the purpose of which is to provide for life, sickness, accident or other benefits and that is funded solely by the Sponsor Organization, and provides benefits for voluntary members who are employees or former employees of the Sponsor Organization and/or their beneficiaries.

"Welfare Plan" means a welfare plan as defined in Employee Benefit Law.

"Wrongful Act" means:

- (1) as respects an Insured: a violation of any of the responsibilities, obligations or duties imposed upon Fiduciaries by Employee Benefit Law with respect to a Plan; or any matter claimed against an Insured solely by reason of his, her or its status as a Fiduciary, but only with respect to a Plan;



(2) as respects an Administrator, any act, error or omission solely in the performance of one or more of the following administrative duties or activities, but only with respect to a Plan:

- (i) counseling employees, participants and beneficiaries; or
- (ii) providing interpretations; or
- (iii) handling of records; or
- (iv) activities affecting enrollment, termination or cancellation of employees, participants and beneficiaries under the Plan,

or any matter claimed against an Insured solely by reason of his, her or its status as an Administrator, but only with respect to a Plan; and

(3) as respects a Natural Person Insured, any matter claimed against him or her arising out of his or her service as a Fiduciary or Administrator of any multiemployer plan as defined by ERISA, but only if such service is at the specific written request or direction of the Sponsor Organization and such multiemployer plan is added by specific written endorsement attached to this Coverage Section, identified as a multiemployer plan and any required premium is paid. In no event shall coverage under this Coverage Section extend to a Claim against a multiemployer plan itself, its contributing employer(s) or any other fiduciaries or administrators of such plan, other than a Natural Person Insured.

#### 4. **WORLDWIDE EXTENSION**

Where legally permissible, this Coverage Section shall apply to a Claim made against any Insured anywhere in the world.

With regard to a Claim(s) brought and maintained solely in a Foreign Jurisdiction against an Insured formed and operating in such Foreign Jurisdiction, the Insurer shall apply to such Claim(s) those terms and conditions (and related provisions) of the Foreign Policy registered with the appropriate regulatory body in such Foreign Jurisdiction that are more favorable to such Insured than the terms and conditions of this Coverage Section. However, this paragraph shall apply only to Clauses 1, 3-5, 9-12, 15-17 and 21 of this Coverage Section and the comparable provisions of the Foreign Policy. In addition, this paragraph shall not apply to the non-renewal or claims made and reported provisions of any policy.

Notwithstanding differences in the substantive and procedural laws of any Foreign Jurisdiction as compared to United States federal and state laws, the Insurer agrees that it shall interpret the coverage provided by this policy at least as broadly, and with the same intent of coverage, as if Loss had been sustained, the Claim been asserted, or any Wrongful Act had occurred in the United States.

All premiums, limits, retentions, Loss and other amounts under this Coverage Section are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or other elements of Loss are stated or incurred in a currency other than United States of America dollars, payment of covered Loss due under this Coverage Section (subject to the terms, conditions and limitations of this Coverage Section) will be made either in such other currency (at the option of the Insurer and if agreeable to the Named Corporation) or, in United States of America dollars, at the rate of

exchange published in The Wall Street Journal on the date the Insurer's obligation to pay such Loss is established (or if not published on such date the next publication date of The Wall Street Journal).

## 5. EXCLUSIONS

The Insurer shall not be liable to make any payment for Loss in connection with a Claim made against an Insured(s):

- (a) arising out of, based upon or attributable to the gaining in fact of any monetary profit to the Insured to which the Insured was not legally entitled;
- (b) arising out of, based upon or attributable to the committing in fact of any criminal or deliberate fraudulent act, or any knowing or willful violation of any statute, rule or law, including, but not limited to Employee Benefit Law;

The Wrongful Act of any Insured shall not be imputed to any other Insured for the purpose of determining the applicability of the foregoing exclusions 5(a) and 5(b);

- (c) for discrimination in violation of any law, except that this exclusion shall not apply to discrimination in violation of Employee Benefit Law;
- (d) alleging, arising out of, based upon or attributable to the facts alleged, or to the same or related Wrongful Act alleged or contained, in any claim which has been reported, or in any circumstances of which notice has been given, under any policy of which this Coverage Section is a renewal or replacement or which it may succeed in time;
- (e) alleging, arising out of, based upon or attributable to, as of the Continuity Date, any pending or prior: (1) litigation; or (2) administrative or regulatory proceeding or investigation of which an Insured had notice, or alleging or derived from the same or essentially the same facts as alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation;
- (f) for failure to fund a Plan in accordance with Employee Benefit Law or the Plan Instrument, or the failure to collect contributions owed to the Plan; except that this exclusion shall not apply to:
  - (1) Defense Costs; or
  - (2) the extent that recovery of such Loss is payable as a personal obligation of a Natural Person Insured, which is based upon a covered Wrongful Act;
- (g) alleging, arising out of, based upon or attributable to any act or omission in his, her or its capacity as a Fiduciary or Administrator of any plan, fund or program, other than a Plan as defined in this Coverage Section, or by reason of his, her or its status as a Fiduciary or Administrator of such other plan, fund or program;
- (h) for bodily injury, sickness, disease, or death or emotional distress of any person, or damage to or destruction of any tangible property, including the loss of use thereof; except that this exclusion shall not apply to:



- (i) Defense Costs incurred in the defense of a Claim for Breach of Fiduciary Duty; or
  - (ii) Non-Indemnifiable Loss incurred in connection with a Plan that contains securities issued by the Sponsor Organization;
- (i) alleging, arising out of, based upon or attributable to any Wrongful Act as respects the Plan taking place at any time when the Sponsor Organization did not sponsor such Plan or when the Natural Person Insured was not a Fiduciary, Administrator, trustee, director, officer, governor, management committee member, member of the board of managers, general partner or employee of the Sponsor Organization or if applicable, a Plan;
- (j) alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly: (1) the actual, alleged or threatened discharge, dispersal, release or escape of Pollutants; or (2) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Pollutants; provided, however, that this exclusion shall not apply to Non-Indemnifiable Loss arising from a Claim alleging damage to a Plan, other than Non-Indemnifiable Loss constituting Cleanup Costs.

#### **6. LIMIT OF LIABILITY (FOR ALL LOSS - INCLUDING DEFENSE COSTS)**

The Limit of Liability stated in Item 4 of the Declarations is the limit of the Insurer's liability for all Loss, including Defense Costs, under this policy arising out of all Claims first made against the Insured during the Policy Period or the Discovery Period (if applicable). The Limit of Liability for the Discovery Period shall be part of, and not in addition to, the Limit of Liability for the Policy Period. Further, any Claim which is made subsequent to the Policy Period or Discovery Period (if applicable), which pursuant to Clause 8(b) or 8(c) is considered made during the Policy Period or Discovery Period, shall also be subject to the aggregate Limit of Liability stated in Item 4 of the Declarations.

Defense Costs of this Coverage Section, are not payable by the Insurer in addition to the Limit of Liability. Defense Costs are part of Loss and as such are subject to the Limit of Liability for Loss.

#### **7. RETENTION CLAUSE**

For each Claim, the Insurer shall only be liable for the amount of Loss arising from a Claim which is in excess of the applicable Retention amount stated in Item 5.B. of the Declarations, such Retention amount to be borne by the Insured and shall remain uninsured, with regard to all Loss, other than Non-Indemnifiable Loss. The Retention amount specified in:

- (i) Item 5.B.(a) applies to Loss that arise out of a Sponsor Organization Securities Claim (as such term is defined on the Declarations); and
- (ii) Item 5.B.(b) applies to all Loss that arises out of any Claim other than a Sponsor Organization Securities Claim.

A single Retention amount shall apply to Loss arising from all Claims alleging the same Wrongful Act or related Wrongful Acts.

In the event a Claim triggers more than one of the Retention amounts stated in Items 5.B.(a) and 5.B.(b) of the Declarations, then, as to that Claim, the highest of such Retention amounts shall be deemed the Retention amount applicable to Loss (to which a Retention is applicable pursuant to the terms of this policy) arising from such Claim.

No Retention amount is applicable to Non-Indemnifiable Loss.

No Retention amount is applicable to Indemnifiable Loss, in the event of Financial Insolvency of the Company at the time of payment of Claim by the Insurer.

#### **8. NOTICE/CLAIM REPORTING PROVISIONS**

Notice hereunder shall be given in writing to AIG Technical Services, Inc., P.O. Box 1000, New York, NY 10268 to the attention of "D&O Claims Unit." Notice shall include and reference this Policy Number as indicated in the Declarations. If mailed, the date of mailing shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice.

(a) The Insured(s) shall, as a condition precedent to the obligations of the Insurer under this policy, give written notice to the Insurer of a Claim made against an Insured as soon as practicable after the Named Corporation's Risk Manager or General Counsel (or if no such position exists, then such equivalent position) first becomes aware of the Claim, but in all events no later than after the earliest occurrence of the following:

- (i) The Claim is or is sought to be certified as a class action; or
- (ii) Total Loss (including Defense Costs) of the Claim is reasonably estimated by the Named Corporation's Risk Manager or General Counsel (or equivalent position) to exceed fifty percent (50%) of the applicable Retention amount as stated in Item 5 of the Declarations;

but in all events, all Claims, including but not limited to the Claims listed in (i) and (ii) above, must be reported to the Insurer no later than:

- (1) the end of the Policy Period or the Discovery Period (if applicable); or
- (2) within 60 days after the end of the Policy Period or the Discovery Period (if applicable), as long as such Claim was first made against an Insured within the final 45 days of the Policy Period or the Discovery Period (if applicable).

(b) If written notice of a Claim has been given to the Insurer pursuant to Clause 8(a) above, then a Claim which is subsequently made against an Insured and reported to the Insurer alleging, arising out of, based upon or attributable to the facts alleged in the Claim for which such notice has been given, or alleging any Wrongful Act which is the same as or related to any Wrongful Act alleged in the Claim of which such notice has been given, shall be considered related to the first Claim and made at the time such notice was given.

(c) If during the Policy Period or during the Discovery Period (if applicable) the Sponsor Organization or an Insured(s) shall become aware of any circumstances which may reasonably be expected to give rise to a Claim being made against an Insured and

shall give written notice to the Insurer of the circumstances, the Wrongful Act allegations anticipated and the reasons for anticipating such a Claim, with full particulars as to dates, persons and entities involved, then a Claim which is subsequently made against such Insured and reported to the Insurer alleging, arising out of, based upon or attributable to such circumstances or alleging any Wrongful Act which is the same as or related to any Wrongful Act alleged or contained in such circumstances, shall be considered made at the time such notice of such circumstances was given.

#### **9. PRE-AUTHORIZED DEFENSE ATTORNEYS**

This Clause 9 applies only to: (1) a Claim brought by any government entity; or (2) a Claim brought in the form of a class or representative action.

Affixed as Appendix B hereto and made a part of this Coverage Section is a list of Panel Counsel law firms ("Panel Counsel Firm(s)") from which a selection of legal counsel shall be made to conduct the defense of any Claim against an Insured to which this Clause 9 applies and pursuant to the terms set forth below:

The Insureds shall select a Panel Counsel Firm to defend the Insured. In addition, with the express prior written consent of the Insurer, which consent shall not be unreasonably withheld, the Insured may select a Panel Counsel Firm different from that selected by other Insureds if such selection is required due to an actual conflict of interest or is otherwise reasonably justifiable.

The selection of a Panel Counsel Firm from the attached list to defend the Claim against the Insureds shall not be restricted to the jurisdiction in which the Claim is brought.

The list of Panel Counsel Firms may be amended from time to time by the Insurer. However, no change shall be made to the specific list attached to this Coverage Section during the Policy Period without the consent of the Named Corporation. At the request of the Named Corporation, the Insurer may in its discretion add one or more law firms to the attached list of Panel Counsel Firms for the purposes of defending the Claim made against the Insureds. The list of Panel Counsel Firms may also be amended to add, at the sole discretion of the Insurer, a non-Panel Counsel Firm for the purpose of acting as "local counsel" to assist an existing Panel Counsel Firm, which Panel Counsel Firm will act as "lead counsel" in conducting the defense of the Claim, for Claims brought in a jurisdiction in which the chosen Panel Counsel Firm does not maintain an office.

#### **10. CANCELLATION CLAUSE**

This Coverage Section may be canceled by the Named Corporation at any time only by mailing written prior notice to the Insurer or by surrender of this Coverage Section to the Insurer or its authorized agent. This Coverage Section may only be canceled by or on behalf of the Insurer in the event of non-payment of premium by the Named Corporation. In the event of non-payment of premium by the Named Corporation, the Insurer may cancel this Coverage Section by delivering to the Named Corporation or by mailing to the Named Corporation, by registered, certified, or other first class mail, at the Named Corporation's address as shown in Item 1 of the Declarations, written notice stating when, not less than the minimum time allowed pursuant to the applicable state law, the cancellation shall be

effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. The Policy Period terminates at the date and hour specified in such notice, or at the date and time of surrender. The Insurer shall have the right to the premium amount for the portion of the Policy Period during which this Coverage Section was in effect.

If this Coverage Section shall be canceled by the Named Corporation, the Insurer shall retain the customary short rate proportion of the premium herein. If the period of limitation relating to the giving of notice as set forth in this Clause 11 is also set forth in any law controlling the construction thereof, then such period shall be deemed to be amended so as to be equal to the minimum period of limitation set forth in the controlling law.

## 11. ORGANIZATIONAL CHANGES

(a) If during the Policy Period:

- (1) the Named Corporation shall consolidate with, merge into, or sell all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert; or
- (2) any person or entity or group of persons or entities acting in concert shall acquire Management Control of the Named Corporation;

(any of such events being a "Transaction"), then this Coverage Section shall continue in full force and effect as to Wrongful Acts occurring prior to the effective time of the Transaction, but there shall be no coverage afforded by any provision of this Coverage Section for any actual or alleged Wrongful Act occurring after the effective time of the Transaction. This Coverage Section may not be canceled after the effective time of the Transaction and the entire premium for this Coverage Section shall be deemed earned as of such time. The Named Corporation shall also have the right to an offer by the Insurer of a Discovery Period described in Endorsement #4, attached to this policy.

(b) *Other Organizational Changes:* In all events, coverage as is afforded under this Coverage Section with respect to a Claim made against any Sponsor Organization and/or any Insured thereof shall only apply for Wrongful Acts committed or allegedly committed after the effective time such Sponsor Organization became a Sponsor Organization and such Insured became an Insured, and prior to the effective time that such Sponsor Organization ceases to be a Sponsor Organization or such Insured ceases to be an Insured.

With regard to any Plan that was sold, spun-off or terminated either prior to the Inception Date of this Coverage Section or during the Policy Period, this Coverage Section shall apply but solely with respect to a Wrongful Act(s) that occurred prior to the date of such sale or spin-off, or prior to the date that the Sponsor Organization or Natural Person Insured ceases to be a Fiduciary or Administrator of, a sold or spun-off Plan, or in the case of a terminated Plan, prior to the final date of asset distribution of such Plan, provided that in the event of a sale, spin-off or termination prior to the Inception Date of this Coverage Section, notice of such sale, spin-off or termination is provided to the Insurer prior to the Inception Date of this Coverage Section and any required premium is paid, or in the event of a sale, spin-

off or termination during the Policy Period, notice of such sale, spin-off or termination is provided to the Insurer before the end of the Policy Period.

## **12. SUBROGATION AND WAIVER OF RECOURSE**

In the event of any payment under this Coverage Section, the Insurer shall be subrogated to the extent of such payment to all the Insureds' rights of recovery thereof, and the Insureds shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Insurer effectively to bring suit in the name of the Insureds. In no event shall the Insurer exercise its rights of subrogation against an Insured under this Coverage Section unless such Insured has been convicted of a criminal act, or been determined to have in fact committed a deliberate fraudulent act or knowingly or willingly violated any statute, rule or law (including but not limited to Employee Benefit Law), or been determined to have in fact obtained any profit or advantage to which such Insured was not legally entitled.

In the event this Coverage Section has been purchased by an Insured other than a Plan, the Insurer shall have no right of recourse against an Insured. Notwithstanding the foregoing, the Insurer shall have a right of recourse against an Insured arising out of a Claim by an Insured against another Insured unless such Claim is instigated and continued totally independent of, and totally without the solicitation of, assistance of or active participation by the Insured claimed against.

It is further provided that in the event of any recovery under this Clause 13, the Limit of Liability of this Coverage Section shall be restored to the extent of such recovery after subtracting any costs, expenses or reimbursements incurred by the Insurer in connection therewith.

## **13. OTHER INSURANCE**

Such insurance as is provided by this Coverage Section shall apply only as excess over any other valid and collectible insurance, unless such other insurance is written only as specific excess insurance over the Limit of Liability provided by this Coverage Section. This Coverage Section shall specifically be excess of any other valid and collectible insurance pursuant to which any other insurer has a duty to defend a Claim for which this Coverage Section may be obligated to pay Loss.

## **14. NOTICE AND AUTHORITY**

It is agreed that the Named Corporation shall act on behalf of its Subsidiaries and each and every Insured with respect to the giving of notice of Claim, the giving and receiving of notice of cancellation, the payment of premiums and the receiving of any return premiums that may become due under this Coverage Section, the receipt and acceptance of any endorsements issued to form a part of this Coverage Section and the exercising or declining of any right under this Coverage Section and the exercising or declining to exercise any right to a Discovery Period.

## **15. ASSIGNMENT**

This policy and any and all rights hereunder are not assignable without the written consent of the Insurer.

**16. ACTION AGAINST INSURER**

No action shall lie against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Coverage Section, nor until the amount of the Insured's obligation to pay shall have been finally determined either by judgment against the Insureds after actual trial or by written agreement of the Insureds, the claimant and the Insurer.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Coverage Section to the extent of the insurance afforded by this Coverage Section. No person or organization shall have any right under this Coverage Section to join the Insurer as a party to any action against any Insured to determine the Insured's liability, nor shall the Insurer be impleaded by any Insured or his or her spouse or Domestic Partner or his, her or its legal representatives. Bankruptcy or insolvency of any Insured or of his, her or its estate shall not relieve the Insurer of any of its obligations hereunder.

**17. SPOUSAL, DOMESTIC PARTNER AND LEGAL REPRESENTATIVE EXTENSION**

If a Claim against a Natural Person Insured includes a Claim against: (i) the lawful spouse or Domestic Partner of such Natural Person Insured; or (ii) a property interest of such spouse or Domestic Partner, and such Claim arises from any actual or alleged Wrongful Act of such Natural Person Insured, this Coverage Section shall cover Loss arising from the Claim made against that spouse or Domestic Partner or the property of that spouse or Domestic Partner to the extent that such Loss does not arise from a Claim for any actual or alleged act, error or omission of such spouse or Domestic Partner. This Coverage Section shall cover Loss arising from a Claim made against the estate, heirs, or legal representatives of any deceased Natural Person Insured, and the legal representatives of any Natural Person Insured, in the event of incompetency, insolvency or bankruptcy, who was a Natural Person Insured at the time the Wrongful Act(s) upon which the Claim is based was committed.

**18. REPRESENTATIONS AND SEVERABILITY**

In granting coverage under this policy, it is agreed that the Insurer has relied upon the statements, warranties and representations contained in the application as being accurate and complete. All such statements, warranties and representations are the basis for this policy and are material to the risk assumed by the Insurer, and are to be considered as incorporated into this policy.

The Insureds agree that in the event that the particulars and statements contained in the application are not accurate and complete, then this Policy shall be void as to any Insured who knew as of the inception date of the Policy Period of the facts that were not accurately and completely disclosed in the application (whether or not such Insured knew that such facts were not accurately and completely disclosed in the Application) and as to any Insured to whom such knowledge is imputed.

For purposes of determining whether knowledge shall be imputed to an Insured:

- (1) knowledge possessed by a past or present: (i) chief executive officer or (ii) chief financial officer of the Named Corporation shall be imputed to all Insureds; and
- (2) knowledge possessed by an Insured Person, other than a past or present: (i) chief executive officer or (ii) chief financial officer of the Named Corporation shall not be imputed to any other Insured Person.

Notwithstanding the foregoing, this policy shall provide coverage, subject to the policy's terms, conditions and exclusions, for any Non-Indemnifiable Loss of any Insured Person to whom knowledge is imputed pursuant to subparagraph (1) above, provided that such Insured Person did not have knowledge of the facts that were not accurately and completely disclosed.

#### **19. CHOICE OF LAW**

The Insurer and the Insureds agree that the interpretation of this Policy shall be governed by New York State law, except as otherwise provided pursuant to the terms of Clause 4 and except with respect to the coverage provided for punitive, exemplary or multiplied damages, pursuant to the second paragraph of the Definition of Loss; and any actions will take place in exclusively the Federal District Court of the Southern District of New York.

#### **20. SERVICE OF SUIT**

It is agreed that in the event of failure of the Insurer to pay any amount claimed to be due hereunder, the Insurer, at the request of the Insured, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this Clause 21 constitutes, or should be understood to constitute, a waiver of the Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon General Counsel, Legal Department, American International Specialty Lines Insurance Company, 70 Pine Street New York, NY 10270, or his or her representative, and that in any suit instituted against the Insurer upon this contract, the Insurer will abide by the final decision of such court or of any appellate court in the event of any appeal.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefor, the Insurer hereby designates the Superintendent, Commissioner, or Director of Insurance, or other officer specified for that purpose in the statute, or his or her successor or successors in office as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the Insured or any beneficiary hereunder arising out of this contract of insurance, and hereby designates the above-named General Counsel as the person to whom the said officer is authorized to mail such process or a true copy thereof.

#### **21. HEADINGS**

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





ENDORSEMENT# 1

This endorsement, effective 12:01 am December 15, 2004 forms a part of  
policy number 974-09-37  
issued to GENERAL MOTORS CORPORATION

by American International Specialty Lines Insurance Company

**ADDITION TO THE TERM DIRECTOR OR OFFICER**

In consideration of the premium charged, it is hereby understood and agreed that Clause 2. DEFINITIONS, Definition of "Director or Officer" is amended to include the individuals listed below, who are engaged by the Named Corporation pursuant to a written engagement letter with the Company:

INDIVIDUALS

Vincent P. Barabba  
Joseph A. Walker

It is further understood and agreed that the coverage afforded by the policy to the above listed individuals shall be subject to the terms, conditions and exclusions of such policy and such coverage shall only apply with respect to Wrongful Acts committed or allegedly committed by such individuals within the scope of such individual's engagement with the Company.

Furthermore, provided that for the purpose of the applicability of the coverage provided by the policy with respect to the above listed individuals, the Company shall provide indemnification to the above listed individuals pursuant to the terms and conditions of such individual's written engagement letter with the Company.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE  
Or Countersignature (In states where applicable)

**END 1**

ENDORSEMENT# 2

This endorsement, effective 12:01 am December 15, 2004 forms a part of  
policy number 974-09-37  
issued to GENERAL MOTORS CORPORATION

by American International Specialty Lines Insurance Company

**DIRECTOR AND OFFICER EMPLOYMENT PRACTICES COVERAGE**

In consideration of the premium charged, it is hereby understood and agreed that the coverage as is afforded by this policy is extended to Employment Practices Claims made against any Insured(s) (as defined within this endorsement) and the following shall amend this policy and be made a part thereof:

I.

The Section of Coverage Section I. of the policy entitled DEFINITIONS is amended as follows:

- (1) Solely for the purposes of Employment Practices Claims, the term "Insured(s)" means any: (i) past, present or future duly elected directors of the Named Corporation; and (ii) any other employees of the Named Corporation listed herein or holding the positions listed herein.

POSITIONS:

- (i) Chief Financial Officer of the Named Corporation
  - (ii) Vice President - Global Human Resources of the Named Corporation
  - (iii) Chief Operating Officer - North American Automotive Operations of the Named Corporation
  - (iv) General Counsel of the Named Corporation
- (2) The Definition (b), "Claim, is hereby amended by adding the following at the end thereof:

The term "Claim" shall include an Equal Employment Opportunity Commission ("EEOC") (or similar state, local or foreign agency) proceeding or investigation commenced by the filing of a notice of charges, service of a complaint or similar document of which notice has been given to an Insured.

However, in no event, shall the term "Claim" include any labor or grievance proceeding which is subject to a collective bargaining agreement.

**END 2**

ENDORSEMENT# 2 (Continued)

This endorsement, effective 12:01 am December 15, 2004 forms a part of  
policy number 974-09-37  
issued to GENERAL MOTORS CORPORATION

by American International Specialty Lines Insurance Company

(3) The Definition of "Loss" is amended by adding the following to the end thereof:

With respect to an Employment Practices Claim, "Loss" shall also not include:

- (i) any liability or costs incurred by any Insured to modify any building or property in order to make said building or property more accessible or accommodating to any disabled person; or any liability or costs incurred in connection with any educational, sensitivity or other corporate program, policy or seminar relating to an Employment Practices Claim; or
- (ii) any liability or costs incurred by any Insured to modify any building or property in order to make said building or property more accessible or accommodating to any disabled person.


II.

The Section of Coverage Section I. of the policy entitled EXCLUSIONS is amended as follows:

- 1) Solely with respect to the coverage afforded pursuant to this Endorsement for Employment Practices Claims, Exclusion (p) is hereby deleted in its entirety.
- 2) The following exclusion is hereby added to Coverage Section I.:
  - (aa) alleging, arising out of, based upon or attributable to any obligation pursuant to any workers' compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law;

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

END 2

  
\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE  
Or Countersignature (In states where applicable)

**ENDORSEMENT# 3**

This endorsement, effective 12:01 am December 15, 2004 forms a part of  
policy number 974-09-37  
issued to **GENERAL MOTORS CORPORATION**

by *American International Specialty Lines Insurance Company*

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**TOTAL TERRORISM EXCLUSION**

This insurance does not apply to loss, injury, damage, claim or suit, arising directly or indirectly as a result of or in connection with "terrorism" including but not limited to, any contemporaneous or ensuing loss caused by fire, looting or theft.

DEFINITION - The following definition of terrorism shall apply:

"Terrorism" means the use or threatened use of force or violence against person or property, or commission of an act dangerous to human life or property, or commission of an act that interferes with or disrupts an electronic or communication system, undertaken by any person or group, whether or not acting on behalf of or in any connection with any organization, government, power, authority or military force, when the effect is to intimidate, coerce or harm:

- (1) A government;
- (2) The civilian population of a country, state or community; or
- (3) To disrupt the economy of a country, state or community.

"Terrorism" includes a certified act of terrorism defined by Section 102. Definitions, of the Terrorism Risk Insurance Act of 2002 and any revisions or amendments.

All other terms and conditions of the policy are the same.



\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE  
Or Countersignature (In states where applicable)

**END 003**

ENDORSEMENT# 4

This endorsement, effective 12:01 am December 15, 2004 forms a part of policy number 974-09-37 issued to GENERAL MOTORS CORPORATION

by American International Specialty Lines Insurance Company

**DISCOVERY CLAUSE ADDED  
(APPLICABLE TO BOTH COVERAGE SECTIONS I. AND II.)**

In consideration of the premium charged, it is hereby understood and agreed that notwithstanding any other provision of this policy (including any endorsement attached hereto whether such endorsement precedes or follows this endorsement in time or sequence), the policy is hereby amended to add the following Clause to the end thereof:

**DISCOVERY CLAUSE**

Except as indicated below, if the Named Corporation shall cancel or Named Corporation or the Insurer shall refuse to renew this policy, the Named Corporation shall have the right to a period of one (1) year following the effective date of such cancellation or nonrenewal (the "Discovery Period") upon payment of 200% of the Full Annual Premium (the "Additional Premium Amount") in which to give to the Insurer written notice pursuant to Clause 7(a) and 7(c) of Coverage Section I and Clause 8(b) and 8(c) of Coverage Section II of the policy of: (i) Claims first made against an Insured; and (ii) circumstances of which the Company or an Insured shall become aware, in either case, during said Discovery Period and solely with respect to a Wrongful Act occurring prior to the end of the Policy Period and that is otherwise covered by this policy. Alternate Discovery Periods of up to five (5) years at a price to be determined may be available at the Insurer's absolute discretion. As used herein, "Full Annual Premium" means the premium level in effect immediately prior to the end of the Policy Period.

In the event of a Transaction as defined in Clause 10 of Coverage Section I and Clause 11(a) of Coverage Section II, the Named Corporation shall have the right to request an offer from the Insurer of a Discovery Period (with respect to Wrongful Acts occurring prior to the effective time of the Transaction). The Insurer shall offer such Discovery Period pursuant to such terms, conditions, exclusions and additional premium as the Insurer may reasonably decide. In the event of a Transaction, the right to a Discovery Period shall not otherwise exist except as indicated in this paragraph.

The Discovery Period is not cancelable and the additional premium charged shall be fully earned at inception. This Clause shall not apply to any cancellation resulting from non-payment of premium. The rights contained in this Clause shall terminate unless written notice of election of a Discovery Period together with any additional premium due is received by the Insurer no later than thirty (30) days subsequent to the effective date of the cancellation, nonrenewal or Transaction.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



AUTHORIZED REPRESENTATIVE  
Or Countersignature (In states where applicable)

END 4

ENDORSEMENT# 5

This endorsement, effective 12:01 am December 15, 2004 forms a part of  
policy number 974-09-37  
issued to GENERAL MOTORS CORPORATION

by American International Specialty Lines Insurance Company

**RUN-OFF ENDORSEMENT FOR SPECIFIC SUBSIDIARY  
(APPLICABLE TO COVERAGE SECTION I. ONLY)  
(HUGHES ELECTRONICS CORPORATION)**

In consideration of the premium charged, it is hereby understood and agreed that as of December 22, 2003 (hereinafter the "Effective Date"), solely with respect to the coverage afforded to Hughes Electronics Corporation and any "Director or Officer" thereof, the policy is hereby amended as follows:

I.

The Clause of Coverage Section I. entitled DEFINITIONS is hereby amended by deleting the Definition of "Director(s) or Officer(s)" in its entirety and replacing it with the following:

"Director(s) or Officer(s)" means any individual who served at any time during the six (6) year period commencing on December 22, 1997 through December 22, 2003 as a director, director nominee or officer of the above listed Subsidiary, Hughes Electronic Corporation and any direct or indirect Subsidiary thereof, or of any corporation of which Hughes Electronic Corporation is a successor, but solely for Wrongful Acts committed or allegedly committed in their capacities as directors, directors nominee or officers of Hughes Electronic Corporation, any Affiliate thereof or any corporation to which Hughes Electronic Corporation is a successor.

II.

The Clause entitled DISCOVERY CLAUSE, as set forth in Endorsement #5 [DISCOVERY CLAUSE ADDED] is hereby deleted in its entirety and replaced with the following:

**RUN-OFF COVERAGE CLAUSE**

The Named Corporation shall have the right to a period of six years (6) following the Effective Date (herein referred to as the Discovery Period) in which to give written notice to the Insurer of any Claim first made against any Insured during said 6 year period for any Wrongful Act occurring on or prior to the Effective Date and otherwise covered by this policy.

**END 5**

**ENDORSEMENT# 5 (Continued)**

This endorsement, effective 12:01 am December 15, 2004 forms a part of  
policy number 974-09-37  
issued to GENERAL MOTORS CORPORATION

by American International Specialty Lines Insurance Company

**III.**

The Clause of Coverage Section I. entitled CANCELLATION CLAUSE is deleted in its entirety and replaced by the following:

**CANCELLATION CLAUSE**

This Coverage Section may not be canceled by the Named Corporation, any Insured or by the Insurer, except as indicated below.

Notwithstanding the foregoing, this Coverage Section may only be canceled by or on behalf of the Insurer in the event of non-payment of premium by the Named Corporation. In the event of non-payment of premium by the Named Corporation, the Insurer may cancel this Coverage Section by delivering to the Named Corporation or by mailing to the Named Corporation, by registered, certified, or other first class mail, at the Named Corporation's address as shown in Item 1 of the Declarations, written notice stating when, not less than the minimum time allowed pursuant to the applicable state law, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. The Policy Period terminates at the date and hour specified in such notice, or at the date and time of surrender. The Insurer shall have the right to the premium amount for the portion of the Policy Period during which this Coverage Section was in effect.

If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law. It is further understood and agreed that the premium charged for this endorsement shall be fully earned as of the Effective Date.

**IV.**

Clause 12 is deleted in its entirety.

**END 5**





**ENDORSEMENT# 5 (Continued)**

This endorsement, effective 12:01 am December 15, 2004 forms a part of  
policy number 974-09-37  
issued to GENERAL MOTORS CORPORATION

by American International Specialty Lines Insurance Company

V.

It is further understood and agreed that notwithstanding any other provision of this policy,  
this policy shall not provide coverage for any Wrongful Act occurring after the Effective  
Date.

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.



\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE  
Or Countersignature (In states where applicable)

**END 5**

ENDORSEMENT# 6

This endorsement, effective 12:01 am December 15, 2004 forms a part of  
policy number 974-09-37  
issued to GENERAL MOTORS CORPORATION

by American International Specialty Lines Insurance Company

**PANEL COUNSEL-SECURITIES CLAIMS PANEL COUNSEL AMENDED  
SECURITIES CLAIMS**

In consideration of the premium charged, it is hereby understood and agreed that the policy is hereby amended as follows:

1. The following Clause is hereby added to Coverage Section 1. DIRECTORS AND OFFICERS AND COMPANY LIABILITY COVERAGE as follows:

**PRE-AUTHORIZED SECURITIES DEFENSE ATTORNEYS**

Affixed as Appendix A hereto and made a part of this policy is a list of Panel Counsel law firms ("Panel Counsel Firms"). The list provides the Insureds with a choice of law firms from which a selection of legal counsel shall be made to conduct the defense of any Securities Claim made against such Insureds.

The Insureds shall select a Panel Counsel Firm to defend the Securities Claim made against the Insureds in the jurisdiction in which the Securities Claim is brought. In the event the Claim is brought in a jurisdiction not included on the list, the Insureds shall select a Panel Counsel Firm in the listed jurisdiction which is the nearest geographic jurisdiction to either where the Securities Claim is brought or where the corporate headquarters of the Named Corporation is located. In such instance the Insureds also may, with the express prior written consent of the Insurer, which consent shall not be unreasonably withheld, select a non-Panel Counsel Firm in the jurisdiction in which the Securities Claim is brought to function as "local counsel" on the Claim to assist the Panel Counsel Firm which will function as "lead counsel" in conducting the defense of the Securities Claim.

With the express prior written consent of the Insurer, an Insured may select a Panel Counsel Firm different from that selected by another Insured defendant if such selection is required due to an actual conflict of interest or is otherwise reasonably justifiable. The list of Panel Counsel Firms may be amended from time to time by the Insurer. However, no firm shall be removed from the specific list attached to this policy during the Policy Period, without the consent of the Named Corporation.

**END 6**

ENDORSEMENT# 6 (Continued)

This endorsement, effective 12:01 am December 15, 2004 forms a part of  
policy number 974-09-37  
issued to GENERAL MOTORS CORPORATION

by *American International Specialty Lines Insurance Company*

2. Appendix A of the policy entitled "SECURITIES CLAIMS COVERAGE PANEL COUNSEL LIST APPLICABLE TO COVERAGE SECTION I" is hereby amended for purposes of Coverage Section I. to include the following law firm(s) (the "Listed Firms") in its (their) respective jurisdiction(s) listed below:

LAW FIRM

JURISDICTION :

- (a) Kirkland & Ellis
- (b) Richards, Layton & Finger
- (c) Jones Day LLP

California & Washington, D.C.  
Delaware  
Delaware, New York & California

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE  
Or Countersignature (In states where applicable)

END 6



**ENDORSEMENT# 7**

This endorsement, effective 12:01 am December 15, 2004 forms a part of  
policy number 974-09-37  
issued to GENERAL MOTORS CORPORATION

by American International Specialty Lines Insurance Company

**PANEL COUNSEL-EMPLOYEE BENEFIT PLAN FIDUCIARY LIABILITY AMENDED**

In consideration of the premium charged, it is hereby understood and agreed as follows:

1. Appendix B of the policy entitled "EMPLOYEE BENEFIT PLAN FIDUCIARY LIABILITY PANEL COUNSEL LIST APPLICABLE TO COVERAGE SECTION II" is hereby amended for purposes of Coverage Section II. to include the following law firm(s) (the "Listed Firms"):

**LAW FIRM**

Hardy Lewis  
(David Davis, Esq.)  
[add office address]

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

**END 7**

  
\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE  
Or Countersignature (In states where applicable)

ENDORSEMENT# 8

This endorsement, effective 12:01 am December 15, 2004 forms a part of  
policy number 974-09-37  
issued to GENERAL MOTORS CORPORATION

by American International Specialty Lines Insurance Company

**NOTICE/CLAIM REPORTING AMENDED  
COVERAGE SECTION I.  
DIRECTORS AND OFFICERS AND COMPANY LIABILITY COVERAGE**

In consideration of the premium charged, it is hereby understood and agreed that Clause 7, NOTICE/CLAIM REPORTING PROVISIONS, of COVERAGE SECTION I. is hereby amended by deleting subparagraph (a) in its entirety and replacing it with the following:

**7. NOTICE/CLAIM REPORTING PROVISIONS**

Notice hereunder shall be given in writing to AIG Technical Services, Inc., P.O. Box 1000, New York, NY 10268 to the attention of "D&O Claims Unit." Notice shall include and reference this Policy Number as indicated in the Declarations. If mailed, the date of mailing shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice.

- (a) the Company or an Insured shall, as a condition precedent to the obligations of the Insurer under this policy, give written notice to the Insurer of a Claim made against an Insured as soon as practicable after the Named Corporation's Risk Manager or General Counsel (or equivalent position) first becomes aware of the Claim, but in all events as soon as practicable after the earliest occurrence of the following:
- (i) The Claim is or is sought to be certified as a class action; or
  - (ii) Total Loss (including Defense Costs) of the Claim is reasonably estimated by the Named Corporation's Risk Manager or General Counsel (or equivalent position) to exceed fifty percent (50%) of the applicable Retention amount as stated in Item 5. of the Declarations;

but in all events, all Claims, including, but not limited to the Claims listed in (i) and (ii) above, must be reported to the Insurer no later than:

- (1) the end of the Policy Period or the Discovery Period (if applicable); or
- (2) within 60 days after the end of the Policy Period or the Discovery Period (if applicable), as long as such Claim was first made against an Insured within the final 45 days of the Policy Period or the Discovery Period (if applicable).

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE  
Or Countersignature (In states where applicable)

**END 8**

ENDORSEMENT# 9

This endorsement, effective 12:01 am December 15, 2004 forms a part of  
policy number 974-09-37  
issued to GENERAL MOTORS CORPORATION

by American International Specialty Lines Insurance Company

**NOTICE/CLAIM REPORTING PROVISIONS CLAUSE AMENDED  
COVERAGE SECTION II.  
EMPLOYEE BENEFIT PLAN FIDUCIARY LIABILITY INSURANCE COVERAGE**

In consideration of the premium charged, it is hereby understood and agreed that Clause 8, NOTICE/CLAIM REPORTING PROVISIONS, of COVERAGE SECTION II. is hereby amended by deleting subparagraph (a) in its entirety and replacing it with the following:

**8. NOTICE/CLAIM REPORTING PROVISIONS**

Notice hereunder shall be given in writing to AIG Technical Services, Inc., P.O. Box 1000, New York, NY 10268 to the attention of "D&O Claims Unit." Notice shall include and reference this Policy Number as indicated in the Declarations. If mailed, the date of mailing shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice.

- (a) the Insured(s) shall, as a condition precedent to the obligations of the insurer under this policy, give written notice to the Insurer of a Claim made against an Insured as soon as practicable after the Named Corporation's Risk Manager or General Counsel (or equivalent position) first becomes aware of the Claim, but in all events as soon as practicable after the earliest occurrence of the following:
- (i) The Claim is or is sought to be certified as a class action; or
  - (ii) Total Loss (including Defense Costs) of the Claim is reasonably estimated by the Named Corporation's Risk Manager or General Counsel (or equivalent position) to exceed fifty percent (50%) of the applicable Retention amount as stated in Item 5. of the Declarations;

but in all events, all Claims, including, but not limited to the Claims listed in (i) and (ii) above, must be reported to the Insurer no later than:

- (1) the end of the Policy Period or the Discovery Period (if applicable); or
- (2) within 60 days after the end of the Policy Period or the Discovery Period (if applicable), as long as such Claim was first made against an Insured within the final 45 days of the Policy Period or the Discovery Period (if applicable).

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



AUTHORIZED REPRESENTATIVE  
Or Countersignature (In states where applicable)

**END 9**

ENDORSEMENT# 10

This endorsement, effective 12:01 am December 15, 2004 forms a part of  
policy number 974-09-37  
issued to GENERAL MOTORS CORPORATION

by American International Specialty Lines Insurance Company

**SUBSIDIARY - ADDITION TO THE DEFINITION OF "SUBSIDIARY"**

In consideration of the premium charged, it is hereby understood and agreed that the Definition of "Subsidiary" is hereby amended to include the following entity(ies), subject to such entity's(ies') respective Continuity Date.

**SUBSIDIARY**

**CONTINUITY DATE**

GMAC Automotive Bank	August 2, 2004
----------------------	----------------

For the purpose of the applicability of the coverage provided by this endorsement, the entities listed above and the Organization will be conclusively deemed to have indemnified the Insureds of the each respective entity to the extent that such entity or the Organization is permitted or required to indemnify such Insureds pursuant to law or contract or the charter, bylaws, operating agreement or similar documents of an Organization. The entity and the Organization hereby agree to indemnify the Insureds to the fullest extent permitted by law, including the making in good faith of any required application for court approval.

Furthermore, for the purpose of the applicability of the coverage provided by this endorsement, the Insurer shall not be liable for any Loss in connection with any Claim, made against any Subsidiary listed above or any Insured(s) thereof:

- (a) alleging, arising out of, based upon or attributable to, as of the Continuity Date, any pending or prior: (1) litigation; or (2) administrative or regulatory proceeding or investigation of which an Insured had notice, or alleging or derived from the same or essentially the same facts as alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation; or
- (b) alleging any Wrongful Act occurring prior to the Continuity Date if an Insured, as of the Continuity Date knew or could have reasonably foreseen that such Wrongful Act could lead to a Claim under this policy.

In all events, coverage as is afforded under this endorsement with respect to a Claim made against each respective entity listed above or any Insureds thereof shall only apply for Wrongful Acts committed or allegedly committed after the respective entity's Continuity Date and prior to the time that the Named Entity no longer maintains Management Control of such entity either directly or indirectly through one or more of its Subsidiaries.

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.



AUTHORIZED REPRESENTATIVE  
Or Countersignature (In states where applicable)

END 10



ENDORSEMENT# 11

This endorsement, effective 12:01 am December 15, 2004 forms a part of  
policy number 974-09-37  
issued to GENERAL MOTORS CORPORATION

by American International Specialty Lines Insurance Company

**APPLICATION DEFINITION AMENDED**

In consideration of the premium charged, it is hereby understood and agreed that the Definition of **Application** is hereby deleted in its entirety and replaced by the following:

"Application" means each and every signed application, any attachments to such applications, other materials submitted therewith or incorporated therein and any other documents submitted in connection with the underwriting of this policy or the underwriting of any other directors and officers (or equivalent) liability policy issued by the Insurer, or any of its affiliates, of which this policy is: (i) a renewal, or replacement; or (ii) the next succeeding policy; and any public documents filed by the Company in the seven (7) calendar years immediately preceding the inception date of this policy with the Securities and Exchange Commission ("SEC") (or any similar federal, state, local or foreign regulatory agency), including, but not limited to, the Company's quarterly, annual and other reports to owners of its equity securities, 10Ks, 10Qs, 8Ks, proxy statements and certifications relating to the accuracy of the foregoing.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE  
Or Countersignature (In states where applicable)

**END 11**

ENDORSEMENT# 12

This endorsement, effective 12:01 am December 15, 2004 forms a part of  
policy number 974-09-37  
issued to GENERAL MOTORS CORPORATION

by American International Specialty Lines Insurance Company

**SEVERABILITY OF THE APPLICATION ENDORSEMENT**

In consideration of the premium charged, it is hereby understood and agreed that the following Clause is added to the policy at the end thereof:

**SEVERABILITY**

In granting coverage under this policy, it is agreed that the **Insurer** has relied upon the statements, warranties and representations contained in the **Application** as being accurate and complete. All such statements, warranties and representations are the basis for this policy and are material to the risk assumed by the **Insurer**, and are to be considered as incorporated into this policy.

The **Insureds** agree that in the event that the particulars and statements contained in the **Application** are not accurate and complete, then this Policy shall be void as to any **Insured** who knew as of the inception date of the **Policy Period** of the facts that were not accurately and completely disclosed in the **Application** (whether or not such **Insured** knew that such facts were not accurately and completely disclosed in the **Application**) and as to any **Insured** to whom such knowledge is imputed.

For purposes of determining whether knowledge shall be imputed to an **Insured**:

- (1) knowledge possessed by a past or present: (i) chief executive officer or (ii) chief financial officer of the **Named Entity** shall be imputed to all **Insureds**; and
- (2) knowledge possessed by an **Insured Person**, other than a past or present: (i) chief executive officer or (ii) chief financial officer of the **Named Entity** shall not be imputed to any other **Insured Person**.

Notwithstanding the foregoing, this policy shall provide coverage, subject to the policy's terms, conditions and exclusions:

- (i) for any **Non-Indemnifiable Loss** of any **Insured Person** to whom knowledge is imputed pursuant to subparagraph (1) above, provided that such **Insured Person** did not have knowledge of the facts that were not accurately and completely disclosed; and

**END 12**

ENDORSEMENT# 12 (Continued)

This endorsement, effective 12:01 am December 15, 2004 forms a part of  
policy number 974-09-37  
issued to GENERAL MOTORS CORPORATION

by American International Specialty Lines Insurance Company

- (ii) for any **Insured Person** to whom knowledge is imputed pursuant to subparagraph (1) above, provided that such **Insured Person** is an **Independent Director** and provided that such **Insured Person** did not have knowledge of the facts that were not accurately and completely disclosed.

Solely for purposes of this endorsement, "**Independent Director**" means with respect to the **Organization**, a "Non-Employee Director" as that term is defined in Rule 16b-3 promulgated under the Securities Exchange Act of 1934 provided that the term "issuer" as used in that Rule shall be deemed to refer to such **Organization**.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE  
Or Countersignature (In states where applicable)

**END 12**



**AMERICAN INTERNATIONAL  
SPECIALTY LINES INSURANCE COMPANY**  
(a Capital Stock Company, herein called the "Insurer")  
175 Water Street, New York, NY 10038

**NOTICE: THIS INSURER IS NOT LICENSED IN THE STATE OF NEW YORK  
AND IS NOT SUBJECT TO ITS SUPERVISION.**

**ExecSecure<sup>SM</sup>**

**SIDE-A EXCESS EXECUTIVE LIABILITY INSURANCE**

**NOTICES**

EXCEPT TO SUCH EXTENT AS MAY OTHERWISE BE PROVIDED HEREIN, THE COVERAGE OF THIS POLICY IS LIMITED GENERALLY TO LIABILITY FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED IN WRITING TO THE INSURER PURSUANT TO THE TERMS OF THIS POLICY. PLEASE READ THE POLICY CAREFULLY AND DISCUSS THE COVERAGE THEREUNDER WITH YOUR INSURANCE AGENT OR BROKER.

THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED FOR LEGAL DEFENSE. AMOUNTS INCURRED FOR LEGAL DEFENSE SHALL BE APPLIED AGAINST THE RETENTION AMOUNT.

Policy Number: 983-82-12

Replacement of

Policy Number: 349-00-16

**DECLARATIONS**

ITEM 1. NAMED ENTITY: GENERAL MOTORS CORPORATION (herein the "Named Entity")

MAILING ADDRESS: 300 RENAISSANCE CENTER  
DETROIT, MI. 48265-0001

STATE OF INCORPORATION/FORMATION OF THE NAMED ENTITY: Delaware

ITEM 2. (a) FOLLOWED POLICY shall be the following:

INSURER: American International Specialty Lines Insurance Company

POLICY NO.: 974-09-37

(b) FOLLOWED POLICY SECTION

This policy shall only follow the terms and conditions of the following coverage sections of the Followed Policy:

COVERAGE SECTIONForm Number

Coverage A

American International Specialty Lines Insurance  
Company Manuscript Management Liability and  
Company Reimbursement Liability Insurance Policy

ITEM 3. POLICY PERIOD: From: December 15, 2004 To: December 15, 2005  
(12:01 A.M. at the address stated in Item 1.)

ITEM 4. (a) LIMIT OF LIABILITY: \$10,000,000 aggregate for all coverages and all Insured(s)  
afforded coverage under this policy combined and excess of Total Underlying Limits in  
Item 4(b) (including Defense Costs),

(b) TOTAL UNDERLYING LIMITS:

\$400,000,000

ITEM 5. SCHEDULE OF PRIMARY AND UNDERLYING EXCESS POLICIES:

	<u>Insurer</u>	<u>Policy Number</u>	<u>Limits</u>	<u>Policy Period</u>
Primary Policy:	AMERICAN INTERNATIONAL SPECIALTY LINES INSURANCE COMPANY	974-09-37	\$25,000,000	12/15/04 - 12/15/05
Underlying Excess Policy(ies):				
1.	Zurich American Insurance Company	DOC 9273198-02	\$25m x/s \$25m	12/15/04 - 12/15/05
2.	Twin City Fire Insurance Company	00 DA 0200454 04	\$25m x/s \$50m	12/15/04 - 12/15/05
3.	Ace American Insurance Company	DOX G21650961 002	\$15m x/s \$75m	12/15/04 - 12/15/05
4.	U.S. Specialty Insurance Company (HCC)	14-MGU-04-A4669	\$15m x/s \$90m	12/15/04 - 12/15/05
5.	American Casualty Company of Reading PA	169737324	\$15m x/s \$105m	12/15/04 - 12/15/05
6.	Lloyd's of London	FD0403600	\$10m x/s \$120m	12/15/04 - 12/15/05
7.	SR International Business Insurance Company Ltd.	MH 34341.1	\$24m part of \$100m x/s \$130m	12/15/04 - 12/15/05
8.	Allied World Insurance Company Ltd.	C002768/002	\$15m part of \$100m x/s \$130m	12/15/04 - 12/15/05
9.	Ace Bermuda Insurance Ltd.	GM - 11256D	\$15m part of \$100m x/s \$130m	12/15/04 - 12/15/05
10.	Endurance Specialty Insurance Ltd.	P001824002	\$15m part of \$100m x/s \$130m	12/15/04 - 12/15/05

11.	Starr Excess Liability Insurance International Ltd.	4649509	\$15m part of \$100m x/s \$130m	12/15/04 - 12/15/05
12.	Max Re Ltd.	5705-553-PLFF-2004	\$10m part of \$100m x/s \$130m	12/15/04 - 12/15/05
13.	Arch Reinsurance Ltd.	B4-DOX-01904-01	\$5m part of \$100m x/s \$130m	12/15/04 - 12/15/05
14.	SR International Business Insurance Company Ltd.	MH 34341.2	\$25m part of \$65m x/s \$230m	12/15/04 - 12/15/05
15.	Starr Excess Liability Insurance International Ltd.	4649510	\$15m part of \$65m x/s \$230m	12/15/04 - 12/15/05
16.	Ace Bermuda Insurance Ltd.	GM-11256D	\$5m part of \$65m x/s \$230m	12/15/04 - 12/15/05
17.	Axis Specialty Limited Bermuda	1127780104QA	\$10m part of \$65m x/s \$230m	12/15/04 - 12/15/05
18.	Max Re Ltd.	6272-554-PLFF-2004	\$5m part of \$65m x/s \$230m	12/15/04 - 12/15/05
19.	Arch Reinsurance Ltd.	B4-DOX-01905-01	\$5m part of \$65m x/s \$230m	12/15/04 - 12/15/05
20.	Steadfast Insurance Company	IPR 2185703 02	\$20m x/s \$295m	12/15/04 - 12/15/05
21.	Federal Insurance Company	81597116	\$25m part of \$80m x/s \$315m	12/15/04 - 12/15/05
22.	St. Paul Mercury Insurance Company	512CM0406	\$20m part of \$80m x/s \$315m	12/15/04 - 12/15/05
23.	Axis Reinsurance Company	RCN 504722 00	\$25m part of \$80m x/s \$315m	12/15/04 - 12/15/05
24.	Arch Insurance Company	DOX0003240-00	\$10m part of \$70m x/s \$330m	12/15/04 - 12/15/05
25.	Starr Excess Liability Insurance International Ltd.	4649511	\$5m x/s \$395m	12/15/04 - 12/15/05

ITEM 6. PREMIUM: \$135,000

Premium for Certified Acts of Terrorism Coverage under the Terrorism Risk Insurance Act of 2002 ("TRIA"): Not applicable, coverage rejected by insured.

Any coverage provided for losses caused by an act of terrorism as defined by TRIA ("TRIA losses") may be partially reimbursed by the United States of America under a formula established by TRIA as follows: 90% of TRIA losses in excess of the insurer deductible mandated by TRIA, the deductible to be based on a percentage of the insurer's direct earned premiums for the year preceding the act of terrorism.

A copy of the TRIA disclosure sent with the original quote is attached hereto.

ITEM 7. NAME AND ADDRESS OF INSURER ("Insurer")

**American International Specialty Lines Insurance Company**  
**175 Water Street**  
**New York, NY 10038**

POLICYHOLDER DISCLOSURE STATEMENT  
UNDER  
TERRORISM RISK INSURANCE ACT OF 2002

You are hereby notified that under the federal Terrorism Risk Insurance Act of 2002 (the "Act") effective November 26, 2002, you now have a right to purchase insurance coverage for losses arising out of an Act of Terrorism, which is defined in the Act as an act certified by the Secretary of the Treasury (i) to be an act of terrorism, (ii) to be a violent act or an act that is dangerous to (A) human life; (B) property or (C) infrastructure, (iii) to have resulted in damage within the United States, or outside of the United States in case of an air carrier or vessel or the premises of a U.S. mission and (iv) to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion. You should read the Act for a complete description of its coverage. The Secretary's decision to certify or not to certify an event as an Act of Terrorism and thus covered by this law is final and not subject to review. There is a \$100 billion dollar annual cap on all losses resulting from Acts of Terrorism above which no coverage will be provided under this policy and under the Act unless Congress makes some other determination.

For your information, coverage provided by this policy for losses caused by an Act of Terrorism may be partially reimbursed by the United States under a formula established by the Act. Under this formula the United States pays 90% of terrorism losses covered by this law exceeding a statutorily established deductible that must be met by the insurer, and which deductible is based on a percentage of the insurer's direct earned premiums for the year preceding the Act of Terrorism.

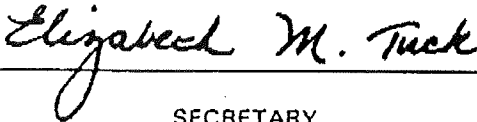
**COPY OF DISCLOSURE SENT WITH ORIGINAL QUOTE**

Insured Name: *GENERAL MOTORS CORPORATION*

Policy Number: *983-82-12*

Policy Period Effective Date From: *December 15, 2004* To: *December 15, 2005*

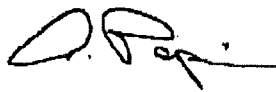
IN WITNESS WHEREOF, the Insurer has caused this policy to be signed on the Declarations Page by its President, a Secretary and a duly authorized representative of the Insurer.

  
\_\_\_\_\_

SECRETARY

  
\_\_\_\_\_

PRESIDENT

  
\_\_\_\_\_

AUTHORIZED REPRESENTATIVE

Or Countersignature (In states where applicable)

AON Financial Services Group, Inc.  
200 East Randolph Street, 11<sup>th</sup> Floor  
Chicago, IL. 60601-6060





AMERICAN INTERNATIONAL SPECIALTY LINES INSURANCE COMPANY

**ExecSecure<sup>SM</sup>**

**SIDE-A EXCESS EXECUTIVE LIABILITY INSURANCE**

In consideration of the payment of the premium, and in reliance upon the statements made to the Insurer by application forming a part hereof and its attachments and the material incorporated therein, the Insurer agrees as follows:

**I. INSURING AGREEMENTS**

This policy shall provide the Insureds with coverage in accordance with the same terms, conditions, exclusions and limitations of the Followed Policy as listed in Item 2 of the Declarations as they were in existence on the inception date of this policy as described in Item 3 of the Declarations (except as regards the premium, limits of liability and the policy period) subject to:

- (a) the warranties, terms, conditions, exclusions and limitations of this policy, including any endorsement attached hereto, and
- (b) the provision that, notwithstanding any other provision of this policy, in no event shall this policy provide coverage broader than that provided by the Followed Policy, unless such broader coverage is specifically agreed to by the Insurer and identified as broader coverage in a written endorsement attached hereto; and
- (c) the provision that, in no event shall this policy be construed to follow any terms, conditions or endorsements of the Followed Policy which provide coverage other than for Non-Indemnifiable Loss.

**II. DEFINITIONS**

Unless otherwise indicated below, the Definitions of the Followed Policy shall have the same meaning in this policy.

- (a) "Claim", "Defense Costs", "Discovery Clause", "Insured(s)", "Loss", "Subsidiary" and "Wrongful Act" shall have the same meaning in this policy as is attributed to it in the Followed Policy; provided, however, in no event shall the Definition of "Insured" include any Company.
- (b) "Company" shall mean the Named Entity and any Subsidiary thereof.
- (c) "Followed Policy" shall mean the policy listed in Item 2 of the Declarations.
- (d) "Insurer" shall mean the entity listed in Item 7 of the Declarations.
- (e) "Indemnifiable Loss" means Loss for which a Company has indemnified or is permitted or required to indemnify an Insured pursuant to law or contract or the charter, by-laws, operating agreement or similar documents of a Company.

- (f) "Non-Indemnifiable Loss" means Loss of an Insured which is not Indemnifiable Loss.
- (g) "Policy Period" shall mean the period of time from the inception date shown in Item 3 of the Declarations to the earlier of the expiration date shown in Item 3 of the Declarations or the effective date of cancellation of this policy.
- (h) "Total Underlying Limits" shall mean the amount set forth in Item 4(b) of the Declarations, which is the aggregate sum of the limit of liability of all Underlying Policies.
- (i) "Underlying Insurers" means the insurer(s) of each respective Underlying Policy.
- (j) "Underlying Policy(ies)" means the policy(ies) set forth in Item 5 of the Declarations.

### III. NON-FOLLOW FORM

The following shall apply and supersede any inconsistent terms, conditions, exclusions or endorsements of the Followed Policy:

(a) Non-Rescindable:

The Insurer shall not be entitled under any circumstances to rescind this policy.

(b) Indemnification Agreement:

For the purposes of determining whether Loss constitutes Indemnifiable Loss, the Company shall be conclusively deemed to have indemnified the Insureds to the maximum extent that a Company is permitted or required to provide such indemnification pursuant to law, common or statutory, or contract, or by the charter, by-laws, operating agreement or similar document of a Company, which are hereby deemed to incorporate, for the purposes of this policy, the broadest provisions of the law which determines or defines such rights of indemnity. The Company hereby agrees to indemnify the Insureds to the fullest extent permitted by law including the making in good faith of any required application for court approval.

(c) Defense and Allocation:

No Company is covered in any respect under this policy. Accordingly, this policy affords no coverage for Defense Costs incurred by, settlements by or on behalf of, contractual obligations of, or judgments against any Company whether or not arising out of a Claim made against a Company, based upon any legal obligation to pay Loss that a Company has or may have to a claimant, or derived from the acts or omissions of any Insured.

With respect to: (i) Defense Costs jointly incurred by, (ii) any joint settlement entered into by, or (iii) any judgment of joint and several liability against any Company and any Insured, there shall be a fair and equitable allocation as between any such Company and any such Insured, taking into account the relative legal and financial exposures and the relative benefits obtained by any such Insured and any such Company, without any presumption that the coverage afforded to the Insured shall

applicable to the specific Insured(s) who is the target of such rescission or intent to rescind; or

- (iii) coverage under all Underlying Policies has been denied due to the application of an explicit exclusion for the restatement of financials; or
- (iv) the Underlying Insurers refuse to pay Loss under the Underlying Policies due to the Followed Policy having been alleged to be part of the proceeds of a debtor's bankruptcy estate.

- (c) This policy shall "drop down" (continue in force as primary insurance) only in the event of (b)(i), (b)(ii), (b)(iii) or (b)(iv) above and shall not drop down for any other reason, including, but not limited to, uncollectability (in whole or in part) of any limit of liability of any Underlying Policy (other than uncollectability by reason of the application of (b)(ii) or (b)(iii) above), the existence of a sub-limit of liability in any Underlying Policy, or any Underlying Policy containing terms and conditions different from the Followed Policy.

#### V. UNDERLYING LIMITS

It is a condition of this policy that each Underlying Policy shall be maintained in full effect with solvent insurers during the Policy Period, except for any application of Clause IV (b)(i), (b)(ii), (b)(iii) or (b)(iv). Failure to comply with the foregoing shall not invalidate this policy, but in the event of such failure, the Insurer shall be liable only to the extent that it would have been liable had the Insureds and the Company complied with such condition.

Unless the Insurer otherwise agrees in writing, this policy shall immediately and automatically terminate if the Company fails to notify the Insurer as set forth in Clause VI(c) of this policy that any Underlying Policy has ceased to be in full effect. If such notification is made, then this policy shall continue in effect; provided, however, that, except in the case of rescission of such Underlying Policy, the Company, the Insured(s) or an insurer providing replacement coverage (if such replacement coverage is obtained) shall be liable for the amount of the underlying limit of such ceased Underlying Policy, and the Insurer shall be liable only to the extent that it would have been liable had the Underlying Policy not ceased. Unless the Insurer otherwise agrees in writing, this policy shall automatically terminate 30 days following the date any Underlying Insurer becomes subject to a receivership, liquidation, dissolution, rehabilitation or any similar proceeding or is taken over by any regulatory authority, unless (a) the Named Entity obtains replacement coverage for such Underlying Policy within such 30 day period or (b) this policy shall have "dropped down" (continued as primary insurance) pursuant to Clause IV(c). Except as otherwise provided in Clause IV (b)(i), (b)(ii), (b)(iii) and (b)(iv), the risk of uncollectability of (in whole or in part) of any limit of liability of any Underlying Policy, whether because of financial impairment or insolvency of an Underlying Insurer, or for any other reason, is expressly retained by the Insureds and the Company and is not in any way or under any circumstances insured or assumed by the Insurer.

If, during the Policy Period or any Discovery Period (if applicable), the terms, conditions, exclusions or limitations of the Followed Policy are changed in any manner, the Company or the Insureds shall, as a condition precedent to their rights under this policy, give to the Insurer, as soon as practicable, written notice of the full particulars thereof. This policy shall become subject to any such changes upon the effective date of the changes in the Followed Policy, but only upon the condition that the Insurer agrees to follow such changes by written endorsement attached hereto, and the Named Entity agrees to any additional premium or amendment of the provisions of this policy required by the Insurer relating to such changes.



Further, such new coverage is conditioned upon the Named Entity paying, when due, any additional premium required by the Insurer relating to such changes.

## VI. NOTICES AND CLAIM REPORTING PROVISIONS

- (a) The Company or the Insureds shall, as a condition precedent to the obligations of the Insurer under this policy, give written notice to AIG Technical Services, Inc., P.O. Box 1000, New York, NY 10268 to the attention of "D&O Claims Unit" in the same manner and to the extent permitted by the terms and conditions of the Followed Policy, of any Claim made against the Insureds. In all event, notice shall include and reference this Policy Number as indicated in the Declarations. If mailed, the date of mailing shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice.
- (b) If during the Policy Period or during the Discovery Period (if applicable), (i) written notice of a Claim has been given to the Insurer pursuant to Clause VI(a) above, or (ii) to the extent permitted by the terms and conditions of the Followed Policy, written notice of circumstances that might reasonably be expected to give rise to a Claim has been given to the Insurer, then any Claim that is subsequently made against the Insureds and reported to the Insurer alleging, arising out of, based upon or attributable to the facts alleged in the Claim or circumstances of which such notice has been given, or alleging any Wrongful Act which is the same as or related to any Wrongful Act alleged in the Claim or circumstances of which such notice has been given, shall be considered made at the time such Claim or circumstances has been given to the Insurer.
- (c) The Company or the Insureds shall, as a condition precedent to the obligations of the Insurer under this policy, give written notice to the Insurer of the following events as soon as practicable, but in no event later than 30 days after an Insured or the Company becomes aware of the following:
  - (i) The cancellation or nonrenewal of any Underlying Policy or any Underlying Policy otherwise ceasing to be in effect or any part of the Total Underlying Limits being uncollectible (in part or in whole); or
  - (ii) Any Underlying Insurer becoming subject to a receivership, liquidation, dissolution, rehabilitation or any similar proceeding, or being taken over by any regulatory authority.
  - (iii) The Named Entity consolidating with or merging into, or selling all or substantially all of its assets to, any other person or entity or group of persons or entities acting in concert; or
  - (iv) Any person or entity or group of persons or entities acting in concert acquiring an amount of the outstanding securities representing more than 50% of the voting power for the election of Directors of the Named Entity, or acquiring the voting rights of such an amount of such securities.

## VII. CLAIM PARTICIPATION

The Insurer shall have the right, in its sole discretion, but not the obligation, to associate fully and effectively with the Insureds in the defense and settlement of any Claim or any counterclaim, cross-claim or third party claim of any Claim that involves, or appears reasonably likely to involve, the Insurer including, but not limited to, negotiating a settlement.

Each and every such Insured shall give the Insurer full cooperation and such information as it may reasonably require relating to the defense of any Claim and the prosecution of any counterclaim, cross-claim or third party claim, including without limitation, the assertion of indemnification rights. The Insureds shall defend and contest any such Claim. The failure of the Insurer to exercise any right under this paragraph at any point in the handling of the defense and settlement of a Claim shall not act as a waiver of or limit the right of the Insurer to exercise such rights at any other point in the handling of the defense and settlement of a Claim, including the right to associate fully and effectively in the negotiation of a settlement. Each and every obligation of such Insured hereunder is a condition precedent to the coverage afforded by this policy.

The Insurer does not assume any duty to defend any Claim, unless the term and conditions of the Followed Policy state otherwise, and in such event only to the extent permitted or required by the terms and conditions of the Followed Policy. The Insureds shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any Defense Costs without the prior written consent of the Insurer. Only those settlements, stipulated judgments and Defense Costs that have been consented to by the Insurer and judgments which the Insurer was permitted to fully and effectively associate in the defense of shall be recoverable as Loss under the terms of this policy. The Insurer's consent shall not be unreasonably withheld, provided that the Insurer shall be entitled to associate fully and effectively in the defense, the prosecution of any counterclaim, cross-claim or third party claim, and the negotiation of any settlement of any Claim that involves or appears reasonably likely to involve the Insurer.

#### **VIII. CANCELLATION CLAUSE**

This policy may not be canceled by any Insured, the Company or the Insurer, other than by or on behalf of the Insurer in the event of non-payment of premium for this policy.

In any such event of non-payment of premium, the Insurer may cancel this policy by delivering to the Named Entity or by mailing to the Named Entity, by registered, certified, or other first class mail, at the Named Entity's address as shown in Item 1 of the Declarations, written notice stating when, not less than 15 days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. The Policy Period terminates at the date and hour specified in such notice, or at the date and time of surrender. The Insurer shall have the right to the premium amount for the portion of the Policy Period during which the policy was in effect.

If the period of limitation relating to the giving of notice as set forth in this Clause VIII is also set forth in any law controlling the construction thereof, then such period shall be deemed to be amended so as to be equal to the minimum period of limitation set forth in the controlling law.

It is further understood and agreed that the premium set forth in the Declarations shall be fully earned as of the inception date of this policy.

#### **IX. OTHER CONDITIONS**

The Insurer be entitled to all the rights, privileges and protections afforded to the insurer of the Followed Policy in accordance with all the terms and conditions of the Followed Policy, specifically including, but not limited to other insurance, notice and authority, assignment and

action against the insurer.

**X. PREMIUM**

The premium under this policy is a flat premium and is not subject to adjustment except as otherwise provided herein.

**XI. CHANGES**

Notice to or knowledge possessed by any person shall not effect a waiver of or a change in any part of this policy or estop the Insurer from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part hereof, signed by the Insurer or its authorized representative.

**XII. DISPUTE RESOLUTION PROCESS**

It is hereby understood and agreed that all disputes or differences which may arise with regard to the construction or interpretation of the provisions of this policy, whether arising before or after termination of this policy shall be submitted to the alternative dispute resolution ("ADR") process set forth in this Clause.

Either the Insurer or an Insured may elect the type of ADR process discussed below; provided, however, that such Insured shall have the right to reject the Insurer's choice of the type of ADR process at any time prior to its commencement, in which case such Insured's choice of ADR process shall control.

The Insurer and each and every Insured agree that there shall be two choices of ADR process: (1) non-binding mediation administered by any mediator to which the Insurer and Insured mutually agree, in which the Insurer and any such Insured shall try in good faith to settle the dispute by mediation under or in accordance with its then-prevailing commercial mediation rules; or (2) arbitration submitted to an arbitration panel of three (3) arbitrators. The Insureds shall select one (1) arbitrator, the Insurer shall select one (1) arbitrator and said arbitrators shall mutually agree upon the selection of the third arbitrator. 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.

The dispute or differences considered by the mediator or arbitrators shall be governed by the internal laws of the State of New York; provided, however that New York law shall not apply to: (i) procurement, issuance or delivery of this policy, including cancellation or nonrenewal provisions of this policy (if any) or any other New York State regulations or requirements regarding policies issued pursuant to New York State Insurance Law; or (ii) to the determination of the availability of punitive damages, unless New York law otherwise applies. In the event of arbitration, the decision of the arbitrators shall be final and binding and provided to both parties, and the arbitrators' award 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 the mediation shall have been terminated and at least 120 days shall have elapsed from the date of the termination of the mediation. In all events, each party shall share equally the expenses of the ADR process.

Either choice of ADR process may be commenced in New York, New York; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; or in the state indicated in Item 1 of the Declarations as the mailing address for the Named Entity. The Named Entity shall act on behalf of each and every Insured in deciding to proceed with an ADR process under this clause.

### **XIII. SERVICE OF SUIT**

Subject to Clause XII., it is agreed that in the event of failure of the Insurer to pay any amount claimed to be due hereunder, the Insurer, at the request of the Insured, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this Clause XIII constitutes, or should be understood to constitute, a waiver of the Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon General Counsel, Legal Department, American International Specialty Lines Insurance Company, 70 Pine Street New York, NY 10270, or his or her representative, and that in any suit instituted against the Insurer upon this contract, the Insurer will abide by the final decision of such court or of any appellate court in the event of any appeal.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefore, the Insurer hereby designates the Superintendent, Commissioner, or Director of Insurance, or other officer specified for that purpose in the statute, or his or her successor or successors in office as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the Insured or any beneficiary hereunder arising out of this contract of insurance, and hereby designates the above-named General Counsel as the person to whom the said officer is authorized to mail such process or a true copy thereof.

### **XIV. HEADINGS**

The descriptions in the headings and any subheadings of this policy (including any titles given to any endorsement attached hereto) are inserted solely for convenience and do not constitute any part of the terms or conditions hereof.



ENDORSEMENT# 1

This endorsement, effective 12:01 am December 15, 2004 forms a part of policy number 983-82-12 issued to GENERAL MOTORS CORPORATION

by American International Specialty Lines Insurance Company

**SPECIFIC TERM/CONDITION/ENDORSEMENT  
NON-FOLLOW FORM ENDORSEMENT  
(ORDER OF PAYMENTS)**

In consideration of the premium charged it is hereby understood and agreed that this policy follows the terms and conditions of the Followed Policy, (pursuant to the terms, conditions and exclusions of this policy), except that in no event shall this policy be construed to follow the following terms, conditions and/or endorsement(s) of the Followed Policy:

TERMS/CONDITIONS/ENDORSEMENTS

TITLE/DESCRIPTION

**ORDER OF PAYMENTS SECTION**

**LIMIT OF LIABILITY AND ORDER OF PAYMENTS (FOR ALL LOSS - INCLUDING DEFENSE COSTS) CLAUSE OF COVERAGE SECTION I.**

It is further understood and agreed that the policy is hereby amended to include the following clause at the end thereof:

**ORDER OF PAYMENTS**

In the event of Loss arising from a Claim (including any subsequent Claim alleging, arising out of, based upon or attributable to any of the same, similar or related facts alleged in the Claim) then the Insurer shall in all events:

- (a) first, pay Loss to the duly elected or appointed directors of the Named Entity shown in Item 1 of the Declarations for which coverage is provided under this policy; then
- (b) only after payment of Loss has been made pursuant to paragraph (a) above, with respect to whatever remaining amount of the Limit of Liability is available after such payment, pay Loss to all other Directors and Officers of the Company for which coverage is provided under this policy.

In the event the Insurer provides payment pursuant to sections (a) and (b) above, the Insureds shall provide the Insurer with a full release and indemnity in a form satisfactory to the Insurer.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



AUTHORIZED REPRESENTATIVE

ENDORSEMENT# 2

This endorsement, effective 12:01 am December 15, 2004 forms a part of  
policy number 983-82-12  
issued to GENERAL MOTORS CORPORATION

by American International Specialty Lines Insurance Company

**EXECSECURE POLICY AMENDMENTS**

In consideration of the premium charged, it is hereby understood and agreed that the policy is hereby amended as follows:

I.

Clause I. **INSURING AGREEMENTS** is hereby deleted in its entirety and replaced with the following:

I. **INSURING AGREEMENTS**

This policy shall provide the Insureds with coverage in accordance with the same terms, conditions, exclusions and limitations of the Followed Policy as listed in Item 2 of the Declarations (except as regards the premium, limits of liability and the policy period) subject to:

- (a) the warranties, terms, conditions, exclusions and limitations of this policy, including any endorsement attached hereto, and
- (b) the provision that, notwithstanding any other provision of this policy, in no event shall this policy provide coverage broader than that provided by the Followed Policy, unless such broader coverage is specifically agreed to by the Insurer and identified as broader coverage in a written endorsement attached hereto; and
- (c) the provision that, in no event shall this policy be construed to follow any terms, conditions or endorsements of the Followed Policy which provide coverage other than for Non-Indemnifiable Loss.

II.

Clause II. **DEFINITIONS** is hereby amended as follows:

1. The Definition of "Non-Indemnifiable Loss" is hereby deleted in its entirety and replaced with the following:

"Non-indemnifiable Loss" means Loss for which the Company has not indemnified and is not permitted or required to indemnify an Insured pursuant to law or contract or the charter, by-laws, or operating agreement of the Company or because the Company is unable to indemnify solely by reason of Financial Insolvency of the Company or the Company having filed bankruptcy proceedings under the laws of the United States or similar proceedings under the laws of any Foreign Jurisdiction.

ENDORSEMENT# 2 (Continued)

This endorsement, effective 12:01 am December 15, 2004 forms a part of policy number 983-82-12 issued to GENERAL MOTORS CORPORATION

by American International Specialty Lines Insurance Company

2. The following definitions are hereby added to the policy as follows:

"Financial Insolvency" means the: (i) appointment by any state or federal official, agency or court of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the Company; or (ii) the Company becoming a debtor-in-possession pursuant to the United States bankruptcy law, and as to both (i) or (ii), the equivalent status outside the United States.

"Foreign Jurisdiction" means any jurisdiction, other than the United States or any of its territories or possessions.

III.

Clause III. **NON-FOLLOW FORM** is hereby amended as follows:

1. The following paragraph is hereby added to the end of Paragraph (b) "Indemnification Agreement" as follows:

This clause shall not apply in the event the Company is unable to indemnify solely by reason of Financial Insolvency (as defined within this endorsement) of the Company or the Company having filed bankruptcy proceedings under the laws of the United States or similar proceedings under the laws of any Foreign Jurisdiction (as defined within this endorsement).

2. Paragraph (d) "Subrogation" is hereby deleted in its entirety and replaced with the following:

(d) Subrogation:

In the event of any payment under this policy, the Insurer shall be subrogated to the extent of such payment to all of each and every Company's and Insureds' rights of recovery thereof, and each such Company and Insured shall execute all papers required and shall do everything that may be necessary, including, without limitation, the assertion of indemnification or contribution rights, to secure such rights including the execution of any and all documents necessary to enable the Insurer effectively to bring suit in the name of each such Company and each such Insured. In no event, however, shall the Insurer exercise its rights of

ENDORSEMENT# 2 (Continued)

This endorsement, effective 12:01 am December 15, 2004 forms a part of  
policy number 983-82-12  
issued to GENERAL MOTORS CORPORATION

by American International Specialty Lines Insurance Company

subrogation against an Insured under this policy unless such Insured has been: (i) convicted of a criminal act; or (ii) been determined to have in fact committed a deliberate fraudulent act; or (iii) been determined to have in fact obtained any profit or advantage to which such Insured was not legally entitled; or (iv) or such Insured received payment of illegal remuneration without the previous approval of the stockholders or members of a Company.

IV.

Clause V. **UNDERLYING LIMITS** is hereby amended by deleting the third paragraph thereof in its entirety.

V.

Clause VII. **CLAIM PARTICIPATION** is hereby deleted in its entirety and replaced with the following:

The Insurer shall have the right to effectively consult with the Company, defense counsel and/or the Insureds about defense and settlement developments and strategies and shall have the right to be given such information as it may reasonably require relating to the defense of any Claim and the cooperation of the Company and the Insureds in such reasonable time and in such a reasonable manner so to enable the Insurer to make meaningful decisions with respect to its rights under this policy to consent to Loss. However, other than with the consent of the Insureds, the Insurer shall not directly participate in settlement negotiations with the claimant. The Insureds shall defend and contest any such Claim. The failure of the Insurer to exercise any right under this paragraph at any point in the handling of the defense and settlement of a Claim shall not act as a waiver of or limit the right of the Insurer to exercise such rights at any other point in the handling of the defense and settlement of a Claim, including the right to associate fully and effectively in the negotiation of a settlement. Each and every obligation of such Insured hereunder is a condition precedent to the coverage afforded by this policy.

The Insurer does not assume any duty to defend any Claim, unless the term and conditions of the Followed Policy state otherwise, and in such event only to the extent permitted or required by the terms and conditions of the Followed Policy. The Insureds shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any Defense Costs without the prior written consent of the Insurer. Only those settlements, stipulated judgments and

ENDORSEMENT# 2 (Continued)

This endorsement, effective 12:01 am December 15, 2004 forms a part of  
policy number 983-82-12  
issued to GENERAL MOTORS CORPORATION

by American International Specialty Lines Insurance Company

Defense Costs that have been consented to by the Insurer shall be recoverable as Loss under the terms of this policy. The Insurer's consent shall not be unreasonably withheld, provided that the Insurer shall be entitled to associate fully and effectively in the defense, the prosecution of any counterclaim, cross-claim or third party claim, and the negotiation of any settlement of any Claim that involves or appears reasonably likely to involve the Insurer.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

**ENDORSEMENT# 3**

This endorsement, effective 12:01 am December 15, 2004 forms a part of  
policy number 983-82-12  
issued to GENERAL MOTORS CORPORATION

by American International Specialty Lines Insurance Company

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

**TERRORISM EXCLUSION ENDORSEMENT**

In consideration of the premium charged, it is hereby understood and agreed that this insurance does not apply to any loss, injury, damage, claim or suit, arising directly or indirectly as a result of a certified "act of terrorism" defined by Section 102. Definitions, of the Terrorism Risk Insurance Act of 2002 and any revisions or amendments.

Wherever used in this endorsement: 1) "Insurer" means the insurance company which issued this policy; and 2) "Insured" means the Named Employer, Named Corporation, Named Sponsor, Named Organization, Named Entity, Named Insured or Insured stated in Item 1. of the Declarations.

For purposes of this endorsement and in compliance with the Terrorism Risk Insurance Act of 2002, an "act of terrorism" shall mean:

(1) Act of Terrorism -

(A) Certification. - The term "act of terrorism" means any act that is certified by the Secretary of the Treasury of the United States of America, in concurrence with the Secretary of State, and the Attorney General of the United States of America --

(i) to be an act of terrorism;

(ii) to be a violent act or an act that is dangerous to --

(I) human life;

(II) property; or

(III) infrastructure;

(iii) to have resulted in damage within the United States of America, or outside of the United States of America in the case of --

(I) an air carrier or vessel described in paragraph (5)(B); [for the convenience of this endorsement, paragraph (5)(B) reads: occurs to an air carrier (as defined in Section 40102 of title 49, United States Code) to a United States flag vessel (or a vessel based principally in the United States of America, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States of America), regardless of where the loss occurs, or at the premises of any United States of America mission]; or

(II) the premises of a United States of America mission; and

(iv) to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States of America or to influence the policy or affect the conduct of the United States Government by coercion.

ENDORSEMENT# 3 (continued)

- (B) Limitation. -- No act shall be certified by the Secretary as an act of terrorism if --
- (i) the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers' compensation; or
  - (ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed \$5,000,000.
- (C) Determinations Final. - Any certification of, or determination not to certify, an act as an act of terrorism under this paragraph shall be final, and shall not be subject to judicial review.
- (D) Nondelegation. - The Secretary may not delegate or designate to any other officer, employee, or person, any determination under this paragraph of whether, during the effective period of the Program, an act of terrorism has occurred.

For the purposes of this endorsement, the Insured: 1) acknowledges that it has received a Policyholder Disclosure Statement Under Terrorism Risk Insurance Act of 2002; 2) has elected not to purchase insurance coverage for losses arising out of an Act of Terrorism; 3) has not paid any premium for such coverage; and 4) has affirmatively authorized the Insurer to attach this exclusion.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



AUTHORIZED REPRESENTATIVE

Or Countersignature (In states where applicable)

