

# ***Westport Insurance Corporation***

## **ACCOUNTANTS' PROFESSIONAL LIABILITY COVERAGE UNIT THIS IS A CLAIMS MADE AND REPORTED POLICY. PLEASE READ CAREFULLY.**

### **I. INSURING AGREEMENTS**

- A. We will pay on behalf of any insured all “loss” in excess of the Deductible which any insured becomes legally obligated to pay as a result of “claims” first made against any insured during the “policy period” and reported to us in writing, during the “policy period” or within sixty (60) days thereafter, by reason of any “wrongful act” occurring on or after the “retroactive date,” if any;
- B. If, during the “policy period,” a “disciplinary proceeding” is commenced against any insured, by reason of any “wrongful act” in the performance of “professional services” for others occurring on or after the “retroactive date,” if any, and the insured reports the alleged “wrongful act” to us during the “policy period,” we will reimburse the insured for reasonable attorney fees, costs, and expenses incurred in responding to such “disciplinary proceeding.” The maximum amount payable, regardless of the number of “disciplinary proceedings” or the number of insureds, shall be \$5,000 per “policy period.” The deductible shall not apply to this provision, however, any payments made by us under this provision will be included within the applicable limit of liability and not in addition thereto. We shall not be obligated to defend, or pay any fine, penalty, or award resulting from any “disciplinary proceeding.”

### **II. WHO IS AN INSURED**

The following are insured(s) under this “coverage unit”:

- A. you or your firm;
- B. any “predecessor firm” or “successor firm”;
- C. any past or present partner, officer, director, stockholder, or employee of yours or any entity specified in Item II.B. above, but only as respects “professional services” rendered on your behalf, or on the behalf of any “predecessor firm”;
- D. any accountant or accounting firm while performing “professional services” for and under contract with you, or a “predecessor firm,” or a “successor firm”; and
- E. the heirs, executors, administrators, and legal representatives of any insured in the event of that insured’s death, incapacity, or bankruptcy, but only as respects “professional services” rendered prior to such insured’s death, incapacity, or bankruptcy and only to the extent that such insured would otherwise be covered by this “coverage unit.”

### **III. DEFENSE, INVESTIGATION, AND SETTLEMENT OF CLAIMS**

In addition to the Defense, Investigation, and Settlement of Claims section of the GENERAL TERMS AND CONDITIONS, as respects such insurance as is afforded by this “coverage unit,” we shall:

- A. have the right and duty to select counsel and arbitrators and to defend any “claim” against any insured covered by the Insuring Agreement, even if such “claim” is groundless, false, or fraudulent and shall have the right to make such investigation, negotiation, and settlement, subject to III.B. below, of any “claim” as we deem expedient;
- B. not settle any “claim” without your written consent which consent shall not be unreasonably withheld. If, however, you refuse to consent to a settlement recommended by us and elect to contest the “claim” or continue legal proceedings in connection with such “claim,” our liability for the “claim” shall not exceed the amount for which the “claim” could have been settled, including “claims expenses” up to the date of such refusal, or the applicable Limits of Liability, whichever is less; and
- C. reimburse up to \$300 to each insured for each day for his or her attendance at our request at trial, court-imposed hearing, settlement conference, mediation, or arbitration proceeding involving a “claim,” but the total amount so payable shall not exceed \$6,000 per “claim.” Such payments shall be based upon 50% of the normal hourly billing rates for each insured. The Deductible shall not apply to this provision, however, any payments made by us under this provision shall be included within the applicable Limit of Liability and not in addition thereto.

We shall not be obligated to pay any “loss” or defend or continue to defend any “claim” after the Per Claim Limit of Liability or Aggregate Limit of Liability under this “coverage unit” has been exhausted by payment of “loss” or the deposit in a court having jurisdiction of sums exhausting the Per Claim Limit of Liability or Aggregate Limit of Liability.

Except for reasonable fees, costs, and expenses incurred in responding to a “disciplinary proceeding,” no insured shall, without our prior written consent, incur any “claims expenses,” make any admission or payment, admit liability, settle any “claims,” assume any obligation, agree to arbitration, or any similar means of resolution of any dispute, or waive any rights.

### **IV. EXCLUSIONS**

In addition to those Exclusions contained in the GENERAL TERMS & CONDITIONS, this “coverage unit” shall not apply to any “claim” based upon, arising out of, attributable to, or directly or indirectly resulting from:

- A.
  - 1. mental or emotional injury or distress of any person; or
  - 2. bodily injury to, or sickness, disease, or death of any person. This exclusion does not apply to mental illness, emotional distress, or humiliation caused by libel, slander, or invasion of privacy;

- B. any insured's activities as an officer, director, partner, joint venture, manager, employee, or independent contractor of any company, corporation, operation, organization, or association other than yours;
- C. any actual or alleged violations of state or federal anti-trust, price-fixing, restraint of trade, copyright, or deceptive trade practice laws, rules, or regulations;
- D. the alleged certification or acknowledgment by any insured, in his or her capacity as a Notary Public, of a signature on a document which the insured did not witness being placed on the document;
- E. "professional services" performed for any: trust; estate; organization; corporation; company; partnership; person; operation; or entity other than yours;
  - 1. to whom any insured promoted, solicited, or sold securities, real estate, or other investments; or
  - 2. for which any insured received a fee or commission prohibited by the Rules of Conduct of the American Institute of Certified Public Accountants or any state or federal law or regulations;
- F. the sale or solicitation for sale of securities, real estate, insurance products, or any other investments by any insured. This exclusion does not apply to "claims" arising out of your preparation of pro forma financial statements for public or private offerings;
- G. "professional services," performed pre or post formation, in connection with any organization, corporation, company, partnership, joint venture, operation, or entity (other than yours) while any insured was or became an officer, director, partner, manager, or holder of more than a 10% equity interest;
- H. any insured's activities as a trustee for any mutual or investment fund or trust, or a trust set up in connection with a pension, profit sharing, or other employee benefit plan subject to ERISA or any similar state law;
- I. conversion, misappropriation, or improper commingling of client funds or funds held for the benefit of a client;
- J. any wrongful act occurring prior to the "retroactive date" specified in the Declarations or any endorsement;
- K. any "disciplinary proceedings" except as provided in the Insuring Agreement;
- L. asbestos or any asbestos-related injury or damage arising from any alleged act, error, or omission by any insured, or duty of any insured involving asbestos, its use, exposure, presence, existence, detection, removal, elimination, or avoidance, or the use, exposure, presence, existence, detection, removal, elimination, or avoidance of asbestos in any environment, building, or structure by any insured; and

- M. Any employment related to, or personnel practices, acts, or omissions including, but not limited to:
1. Actual or alleged discrimination because of race, religion, color, sex, national origin, age, or disability against a past or present employee, partner, or officer of, or applicant for employment with the insured;
  2. Refusal to employ;
  3. Termination of employment;
  4. Coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, or any violation of a person's right of privacy; or
  5. Any consequential injury or damage as a result of (1) through (4) above.

This exclusion applies to all "claims" by any person or organization for "loss" because of such injury or liability including "loss" for care and loss of services, whether the insured may be held liable as an employer or in any other capacity and to any obligation to share "loss" with or to repay someone else who must pay "loss" because of the injury or liability.

**Exclusion C. of GENERAL TERMS & CONDITIONS SHALL NOT APPLY TO THIS "COVERAGE UNIT."**

**Exclusions A. and E. of GENERAL TERMS & CONDITIONS and Exclusion I. of this "coverage unit" do not invalidate this insurance as to any insured who did not act with knowledge of or consent to in the matter to which the exclusion applies.**

## **V. DEFINITIONS**

In addition to the Definitions contained in the GENERAL TERMS AND CONDITIONS, as respects such insurance as is afforded by this "coverage unit," the following Definitions shall apply:

- A. "Disciplinary proceeding" means any proceeding by a regulatory or disciplinary official or agency to investigate charges made by a client or former client alleging professional misconduct in rendering or failure to render "professional services";
- B. "Executor" means the person appointed by a testator in his or her will to carry out the directions and requests in the will, and to dispose of the property according to the testamentary provisions of the will;
- C. "Loss" means "claims expenses" and monetary compensation for past harms or injuries, provided always that "loss" shall not include:
  1. punitive or exemplary damages; or

2. sanctions, fees, fines, or penalties imposed on any insured; or
  3. the amount of any multiplied damage awarded that is in excess of the damage award so multiplied; or
  4. fees or other consideration paid to any insured; or
  5. liquidated damages as provided under a contract or statute;
- D. "Potential claim" means any act, error, or omission which might reasonably give rise to a "claim" against any insured under this "coverage unit";
- E. "Predecessor firm" means an accounting firm or practice, some or all of whose principals, owners, partners, or officers have joined you provided such individuals were responsible for producing in excess of 50% of the prior firm's annual gross billings and such billings have been assigned or set over to you;
- F. "Professional services" means:
1. services performed or advice given by any insured to others for a fee or otherwise in the conduct of the insured's practice as an accountant, including without limitation, duties performed or advice given in connection with the American Institute of Certified Public Accountants or any state society of certified public accountants;
  2. services performed by any insured as a notary public;
  3. services performed by any insured as a "trustee," "receiver," or "executor";
  4. activities of the insured as a member of a formal accreditation, ethics, peer review, licensing board, standards review, or similar professional board or committee for the accounting profession. Exclusion C., of this "coverage unit" as it applies to restraint of trade or anti-trust violation, shall not apply to these activities; and
  5. if arising out of 1, 2, 3, or 4 above, libel, slander, or invasion of privacy;
- G. "Receiver" means a person appointed by a court for the purpose of preserving property of a debtor pending an action against him or her whenever there is danger that in the absence of such appointment the property will be lost, removed, or injured; or a person who receives, collects, cares for, and disposes of the property of another or others in accordance with a written agreement made between persons having interests in such property;

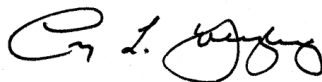
- H. "Successor firm" means after your dissolution, any accounting firm or practice in which some or all of your principals, owners, officers, and/or partners have joined an existing or formed a new accounting firm, provided such persons were responsible for producing in excess of 50% of your annual gross billings at the time of dissolution and such billings have been assigned or transferred to the successor accounting firm; provided this "policy" does not apply to "professional services" if the "successor firm" is also an insured under any similar professional liability or indemnity "policy," or would be an insured under any such "policy" but for exhaustion of its Limits of Liability. This coverage shall terminate on this "policy's" expiration date or 90 days from the date of your dissolution, whichever is earlier, unless written notice is given to us, together with such information as we may request, and the "successor firm" shall pay any additional premium required in the event we agree to continue the "policy";
- I. "Trustee" means one who holds legal title to property under an express trust agreement to administer the property for the benefit or use of another and who must carry out specific duties with regard to the property; and
- J. "Wrongful Act" means any negligent act, error, or omission in the performance of "professional services" rendered after the "retroactive date," if any, and prior to the end of the "policy period."

## VI. LIBERALIZATION

If, during the "policy period" we adopt revised provisions for this "policy" in order to afford, without additional premium, broader insurance to all insureds of the types of professionals covered by this "policy," such provision will apply to this "policy" effective the date the provision has been approved by the appropriate regulatory authority and such revision shall apply only to "claims" first made, or potential claims of which you first became aware, after the date of such approval.

IN WITNESS WHEREOF, the WESTPORT INSURANCE CORPORATION has caused the facsimile signatures of its President and Secretary to be affixed hereto, and has caused this policy to be countersigned by its duly authorized representative.

### WESTPORT INSURANCE CORPORATION



President



Secretary