

DECLARATIONS

EMPLOYMENT PRACTICES LIABILITY INSURANCE

Insurance is provided by: Various Insurers as per Schedule attached

Policy Number

1. NAMED INSURED:

NOTICE:

This is a Claims First Made Policy which includes Costs of Defense within Coverage Limits. Please read this Policy carefully and discuss the coverage with your insurance agent. The Application Form and attachments are hereby attached and made a part of this Policy.

Individual

Partnership

Corporation Other

2. POLICY PERIOD:

at 12:01a.m.

(Standard Time at YOUR address shown below).

3. ADDRESS:

4. LIMIT OF LIABILITY (INCLUDES COSTS OF DEFENSE):

a) Each Insured Event Limit

b) Total Aggregate Limit:

5. DEDUCTIBLE:

Each Insured Event:

6. CO-PAYMENT:

(This is your portion of PARTICIPATION for each Insured Event).

7. CONTINUITY DATE:

8. PREMIUM:

9. AUTHORISED REPRESENTATIVES:

Davidson, Mandell & Menkes
333 West Wacker Drive, Suite 1900
Chicago, Illinois 60606

Attention: Mr. Leonard S. Surdyk, Esq.

Telephone: (312) 251-1000 ext. 108

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FIRST CITY

EMPLOYMENT PRACTICES LIABILITY INSURANCE

This is a Claims Made Policy which includes costs of defense within coverage limits.

This policy covers Claims first made against the Insured during the Policy Period or an extension thereof arising from Insured Events within the terms, conditions, limitations and exclusion set forth in this policy. It has been issued in reliance upon statements made to us in the application and any attachments thereto which, application and attachments, are incorporated herein and form part of this policy.

Throughout this policy the words “you” and “your” refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured.

Under this policy the words “we”, “us” and “our” refer to the Underwriters providing this insurance.

The word “Insured” means any person or organization qualifying as such under Who Is Insured.

**READ THIS POLICY CAREFULLY TO DETERMINE THE EXTENT OF COVERAGE.
IMPORTANT: THIS IS A CLAIMS MADE POLICY WHICH INCLUDES COST OF
DEFENSE WITHIN THE COVERAGE LIMITS.**

I. COVERAGE: WHAT IS COVERED

- A. We will pay Loss amounts that the Insured is legally obligated to pay on account of a Claim because of an Insured Event to which this policy applies; provided, however, that 1) the Insured Event does not arise from incidents or circumstances of which any Insured had knowledge prior to the Continuity Date of the policy, or 2) the Insured Event was not the subject of notice under any prior policy. The amount we will pay is limited as described in the Coverage Limits, Co-payment and Self Insured Retention sections of this policy.
- B. Subject to its terms, conditions and exclusions, this policy applies if:
 - 1. A Claim is first made against an Insured during the Policy Period or any extension

thereof. Underwriters will not pay more than the applicable Coverage Limits; and

2. The Insured Event takes place within the Coverage Territory.

- C. **Defense.** We have the right and duty to defend any Claim for an Insured Event made or brought against any Insured to which this policy applies. We will give consideration to your preference for defense counsel, however the final decision rests with us. We have no duty to provide other services or take other actions. Our duty to defend any Claim ends when the Coverage Limits that apply have been exhausted.
- D. **Duty to pay.** We have the duty to pay any Loss that results from any Claim for an Insured Event made or brought against any Insured to which this policy applies. Our duty to pay ends when the available Coverage Limits have been exhausted. We will not pay more than the applicable Coverage Limits.

We have the duty to pay Defense Costs incurred for the defense of any Claim which is controlled by us. Payment of Defense Costs are included in the Coverage Limits, they are not in addition to the Coverage Limits.

- E. **Consent To Settle.** We have the right to investigate and settle any Claim in the manner and to the extent that we believe is proper. We will not settle any Claim without your consent. If you refuse to consent to any settlement recommended by us or our Authorized Representatives and you elect to contest or continue any legal proceedings, then our liability shall not exceed the amount for which the Claim could have been settled including Defense Costs incurred with our consent, up to the date of such refusal.
- F. **Transfer of Control.** You may take over control of any outstanding Claim previously reported to us only if we agree that you should or if a court orders you to take over control.

If your Coverage Limits are exhausted, we will notify you of all outstanding Claims so that you can take over control of their defense. We will transfer control to you.

During the transfer of control, we agree to take whatever steps are necessary to continue the defense of any outstanding Claims and avoid a default judgment during the transfer of control to you. If we do so, you agree to pay reasonable expenses we incur for taking such steps after the Coverage Limits are exhausted.

II. **EXCLUSIONS: WHAT IS NOT COVERED**

- A. **Worker's Compensation.** This policy does not cover any Loss arising out of any obligation under worker's compensation, disability benefits or unemployment compensation law, or any similar law. This exclusion does not apply to any Claim for retaliation, Discrimination or Inappropriate Employment Conduct on account of the filing of a workers' compensation claim, a claim for disability benefits, a claim for

unemployment compensation, or a claim under any similar law.

- B. **Liability Assumed by a Contract.** This policy does not cover any Loss which any Insured is obligated to pay by reason of the assumption of another's liability for an Insured Event in a contract or agreement. This exclusion does not apply to liability for damages because of an Insured Event that any Insured would have without such contract or agreement.
- C. **Employee Retirement Income Security Act (ERISA).** This policy does not cover any Loss arising from the Employee Retirement Income Security Act of 1974 Public Law 93-406, or any amendments thereto, or any similar federal, state or local law. This exclusion does not apply to any claim for retaliation, Discrimination or Inappropriate Employment Conduct on account of the filing of an ERISA claim.
- D. **Strikes and Lockouts.** This policy does not cover any Loss arising from a lockout, strike, picket line, replacement or other similar actions resulting from labor disputes or labor negotiations or any protections contained within the National Labor Relations Act. This exclusion does not apply to any claim for retaliation, Discrimination or Inappropriate Employment Conduct on account of the filing of a National Labor Relations Act claim.
- E. **W.A.R.N. Act.** This policy does not cover any Loss arising from the Worker's Adjustment and Restraining Notification Act, Public Law 100-379 (1988) or any amendment thereto, or any similar federal, state or local law.

III. **WHEN COVERAGE IS PROVIDED**

- A. This policy applies only to Claims arising out of an Insured Event which are first made during the Policy Period or Limited Reporting Period, if applicable. A Claim is considered to be first made on the date the Claim is made or brought and not on the date an Insured is served or first receives notice of a Claim.

All Claims because of One Insured Event will be considered to have been made or brought on the date that the first of those Claims was first made or brought.

- B. **Limited Reporting Period** means the thirty (30) day period after the policy ends, during which Claims because of Insured Events which happen or commence during the Policy Period can be made.

The Limited Reporting Period will apply if this policy is not renewed by us. Coverage under the Limited Reporting Period may not be canceled. However, the Limited Reporting Period will not apply to Claims if other insurance the Insureds buy covers them or would cover them if its limits of coverage had not been exhausted. A change in the premium, terms or conditions we require shall not be deemed non-renewal by us.

The Limited Reporting Period does not extend the Policy Period, as shown in the Declarations, or change the scope of coverage provided. We will consider any Claim because of an Insured Event which was first made during the Limited Reporting Period to have been made on the last date on which this policy is in effect.

- C. **Extended Reporting Period.** If this policy is non-renewed or canceled, an Extended Reporting Period of twelve (12) months from the end of the Policy Period, or the effective date of cancellation, whichever ever is earlier can be added by us issuing you an Extended Reporting Period Endorsement in exchange for your payment of an additional premium.

Coverage under the Extended Reporting Period is limited to Claims because of Insured Events which happen or commence before the policy is canceled or the Policy Period ends and which are otherwise covered by this policy.

The Extended Reporting Period Endorsement will not be issued unless we receive a written request for it within fifteen (15) days after the policy ends, nor will it take effect unless the additional premium is paid within thirty (30) days after the policy ends, as shown in the Declarations. Once [that] the additional premium is paid, the Extended Reporting Period Endorsement may not be canceled and the premium will be fully earned.

The additional premium for the Extended Reporting Period Endorsement will be one hundred percent (100%) of the premium charged for the last Policy Period.

However, the Extended Reporting Period will not apply to any Claim if other insurance you buy covers you or would cover you if its limits of coverage had not been exhausted.

- D. **Coverage Limits For Limited and Extended Reporting Periods.** The Coverage Limits that apply to the policy at the end of the Policy Period shall not be renewed or increased and the Coverage Limits, as shown in the Declarations, shall not be increased in any way by the Limited Reporting Period or the addition of an Extended Reporting Period.

IV. **WHERE COVERAGE IS PROVIDED**

This policy covers Claims brought in the Coverage Territory for Insured Events that happen anywhere in the world. Coverage Territory means the United States of America, its territories and possessions, and Canada.

V. **WHO IS INSURED**

- A. **Individual.** If you are shown in the Declarations as an individual, you or your spouse are Insureds but only for the conduct of a business of which you are the sole owner.
- B. **Corporation.** If you are shown in the Declarations as a corporation or organization other than a partnership or joint venture, you are an Insured. Your stockholders are also Insureds, but only with respect to their liability as your stockholders.
- C. **Partnership or joint venture.** If you are shown in the Declarations as a partnership or joint venture, you are an Insured. Your partners or co-ventures and their spouses are also Insureds, but only for the conduct of your business.

However, no person nor organization is covered for the conduct of any current or past partnership or joint venture not named in the Declarations.

- D. **Employees.** Your Employees, executive officers, directors and your trustees are Insureds only for the conduct of your business within the scope of their employment. Your Employees status as an Insured will be determined as of the date of the Discrimination, Harassment or Inappropriate Employment Conduct which caused the Insured Event.
- E. **Newly Acquired or Formed Entities.** Any organization that you newly acquire, or form while this policy is in effect is an Insured, if you own at least fifty one percent (51%) of it. However, no newly acquired or formed organization is covered for more than sixty (60) days or the remainder of the Policy Period, whichever is less, from the date acquired or formed unless we agree to cover such acquisition or newly formed organization within such sixty (60)day period in consideration of an additional premium to be determined by us. Notwithstanding the foregoing, any acquired or formed entity is not covered for Loss that results from an Insured Event that happened or first commenced before the Insured acquired or formed it; nor for Loss covered under any other insurance.

This paragraph does not apply to a partnership or joint venture. Nor does it apply to any organization once it is shown Declarations of this policy.

VI. COVERAGE LIMITS

- A. The Limits of Liability shown in the Declarations of this policy and the information contained in the Coverage Limits Section establish the most we will pay regardless of the number of Insureds or Claims made.
- B. **Each Insured Event Limit.** This is the most we will pay for Claims first made or brought during the Policy Period for Loss that results from any One Insured Event regardless of the number of Claims.

- C. **Total Aggregate Limit.** This is the most we will pay for the combined total of all Claims first made or brought during the Policy Period for Loss that results from all Insured Events.
- D. **How the Coverage Limits apply to an extension of the Policy Period.** If this Policy Period is extended, the Coverage Limits, as shown in the Declarations, shall not in any way increase. For purposes of the Limits of Liability any policy extension is considered to be part of and not in addition to the former Policy Period.

VII. SELF INSURED RETENTION

Our obligation to pay under the policy applies only to the amount of Loss in excess of any Self Insured Retention amount, as shown in the Declarations, and the Coverage Limits will not be reduced by the amount of such Self Insured Retention. The Self Insured Retention amount applies to all Claims arising out of any One Insured Event regardless of the number of claimants who allege damages.

VIII. CO-PAYMENT

After the Self Insured Retention, as shown in the Declarations, has been paid by the Insured, we will pay the amount of the Loss excess of the Co-Payment percentage, as shown in the Declarations.

IX. CONDITIONS

We have no duty to provide coverage under this policy unless there has been full compliance with all of the conditions contained in this policy.

A. **Duties in the event of a Claim**

1. You must see to it that we or our Authorized Representatives, as shown in the Declarations, are notified as soon as practicable, but in no event more than thirty (30) days after the making of a Claim. Notice should include:
 - a) The identity of the person(s) alleging Discrimination, Harassment, or Inappropriate Employment Conduct;
 - b) The identity of the Insured(s) who allegedly committed the Discrimination, Harassment or Inappropriate Employment Conduct;
 - c) The identity of any witnesses to the alleged Discrimination, Harassment or Inappropriate Employment Conduct;

- d) The date(s) the Insured Event took place; and
- e) Copies of any demands, notices, summonses or legal papers received in connection with the Claim.

2. You and any other Insured must:

- a) Authorize us or our Authorized Representatives, as shown in the Declarations, to obtain records and other information;
- b) Co-operate with us or our Authorized Representatives, as shown in the Declarations, in the investigation or defense of the Claim; and
- c) Assist us or our Authorized Representatives, as shown in the Declarations, in the enforcement of any right against any person or organization which may be liable to the Insured because of Loss to which this policy may also apply.

B. Prior Consent

No Insured will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expenses without our consent. Subsequent payments which are deemed by us as having been prejudiced by any such voluntary payment will also be the sole responsibility of the Insured.

C. Notice of a Potential Claim

Solely at the Insured's option, the Insured may within the Policy Period provide notice to us of an oral complaint by an Employee, former Employee or applicant for employment alleging an Insured Event. If such notice of such a Potential Claim is given within the Policy Period, then any Claim subsequently arising from such oral complaint or Insured Event will be deemed to have been made on the date such notice was given. Such notice must include the identity of the potential Claimant(s) and must describe the potential Insured Event in reasonable detail.

D. Legal Action Against Us

1. No person or organization has the right under this policy:

- a) To join us as a party or otherwise bring us into a suit asking for damages from an Insured; or

b) To sue us on this policy unless all of its terms have been fully complied with.

2. A person or organization may sue us to recover on an agreed settlement or on final judgment against an Insured obtained after an actual trial, but we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable Coverage Limits. An agreed settlement means a settlement and release of liability signed by us, the Insured and the claimant's legal representative.

E. Other Insurance

If other valid and collectable insurance is available to the Insured covering a Loss also covered by this policy, other than insurance that is specifically stated to be in excess of this policy, the insurance afforded by this policy shall be in excess of and shall not contribute with such other insurance. Nothing herein shall be construed to make this policy subject to the terms, conditions and limitations of any other insurance.

F. Premium

1. The Premium shown in the Declarations, is for the Policy Period shown in the Declarations.
2. The Policy is subject to a minimum earned premium of twenty five percent (25%) of the total Premium shown in the Declarations.

G. Cancellation

You may cancel this policy by mailing to us written notice stating when thereafter such cancellation shall be effective. We may cancel this policy for non-payment of premium only by mailing to the Named Insured, at the address shown in the Declarations, written notice stating when not less than thirty (30) days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The effective date and hour of cancellation as stated in the notice shall become the end of the Policy Period. Delivery of such written notice shall be equivalent to mailing.

If you cancel, earned premium shall be computed in accordance with the short rate table and procedures shown in Section XI of this policy. If we cancel for non-payment of premium, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

H. Representations In Application

By accepting this policy you agree that:

1. The statements and representations made in the application and any attachments thereto are accurate and complete;
2. The statements made in the application and any attachments are representations you have made to us, and
3. We have issued this policy in reliance upon your representations and statements in the application and attachments.
4. The application and any attachments thereto, whether the original or a copy, including a facsimile copy, are deemed a part of this policy.

I. When We Do Not Renew

If we decide not to renew this policy, we will mail or deliver to the Named Insured shown in the Declarations, written notice of the non-renewal not less than thirty (30) days before the expiration date.

If notice is mailed, proof of mailing will be sufficient notice of non-renewal.

J. Transfer Of Rights Of Recovery Against Others to Us

If the Insured has rights to recover all or part of any payments we have made under this policy those rights are transferred to us; the Insured must do nothing after a Loss to impair them. At our request, the Insured will bring suit or transfer those rights to us and help us enforce them.

K. Bankruptcy

Bankruptcy or insolvency of the Insured or of the Insured's estate will not relieve us of our obligations under this policy.

L. False Or Fraudulent Claims

If any Insured proffers any Claim knowing the same to be false or fraudulent as regards amount or otherwise, this policy will become void and all Claims hereunder shall be forfeited.

X. DEFINITIONS

- A. **Insured Event** means: 1) actual or alleged acts of Discrimination, Harassment, and/or Inappropriate Employment Conduct, by an Insured against an Employee, former Employee or applicant for employment with an Insured Entity; or 2) actual or alleged acts of Discrimination or Harassment by an Insured against any person who is not an Employee, former Employee or applicant for employment which violate any federal, state or local statute which prohibits Discrimination or Harassment.
- B. **One Insured Event** means: 1) one or more covered allegations which are related by an unbroken chain of events; 2) related allegations brought by the same claimant; or 3) class action or multiple plaintiff suits arising out of related Insured Events.
- C. **Loss** means damages, Punitive Damages, judgments (including prejudgment and post judgment interest awarded against an Insured or that part of any judgment paid by us), settlements, statutory attorney fees, back pay, front pay, damages representing lost insurance benefits, and Defense Costs.

With respect to Punitive Damages only, the applicable law for purposes of insurability will be the law most favorable to the Insured provided the most favorable law has a reasonable relationship to the Claim. Law which will be deemed reasonably related to the Claim shall include: 1) the law of the state where the Insured is incorporated; 2) the law of the state where the Claim is pending or 3) the law of the state where any Insured Event happened.

Loss Shall Not Include:

1. civil or criminal fines or penalties imposed by law;
2. non-monetary relief;
3. payment of insurance plan benefits claimed by or on behalf of retired Employees, or that a claimant would have been entitled as an Employee had the Insured provided the Claimant with a continuation of insurance;
4. costs incurred by an Insured to modify or adapt any building or property in order to make such building or property more accessible or accommodating to any disabled person;
5. matters which may be deemed uninsurable according to the law under which this policy is construed;
6. amounts owed under federal, state, or local wage and hour laws;

7. commissions, bonuses, profit sharing or benefits pursuant to a contract of employment;
8. severance payments;
9. amounts owed under a written or express contract of employment for a definite period of time, including, but not limited to, severance payments. However, Defense Costs for Claims of breach of a written express contract of employment for a definite period of time are covered.

D. **Punitive Damages** means Punitive Damages, exemplary damages and additional damages resulting from the multiplication of compensatory damages.

E. **Defense Costs** mean those reasonable and necessary expenses that result from the investigation, settlement or defense of a specific Claim because of an Insured Event including attorney fees and expenses, the cost of legal proceedings, the cost of appeal bonds, the cost of bonds to release property being used to secure a legal obligation (but only for bond amounts within the Coverage Limits of this policy that apply; we have no obligation to furnish any bonds).

We do not consider the following to be Defense Costs:

- 1) salaries and expenses of our employees, including in-house and/or coverage attorneys and/or independent adjusters; 2) salaries and expenses of any Insured.

Defense Costs shall not include any amount incurred by you or any Insured before you gave notice to us or our Authorized Representatives, as shown in the Declarations.

F. **Claim** means a written complaint or a written demand where specific charges of Discrimination, Harassment and/or Inappropriate Employment Conduct are made against an Insured.

Claim includes a civil action, suit or an administrative proceeding or an arbitration proceeding to which any Insured must submit or to which any Insured submits with our consent.

Claim shall not include criminal proceedings or labor or grievance arbitration subject to a collective bargaining agreement.

The date of Claim, for purposes of Section I. Coverage A and Section III. When Coverage is Provided, will be the date a written Claim is made against the Insured and not the date

the Insured is served or first receives notice of a Claim.

- G. **Discrimination** means termination of the employment relationship, a demotion, a failure or refusal to hire or promote, denial or an employment benefit or the taking of any adverse or differential employment actions because of race, color, religion, age, sex, disability (including AIDS), pregnancy, sexual orientation, sexual preference, national origin, or any other basis prohibited by federal, state or local law.
- H. **Harassment** means unwelcome sexual or non-sexual advances, requests for sexual or non-sexual favors or other verbal or physical conduct of a sexual or non-sexual nature that: 1) explicitly or implicitly are made a condition of employment, 2) are used as basis for employment decisions, or 3) create a work environment that interferes with performance.
- I. **Inappropriate Employment Conduct** means:
1. Any actual or alleged wrongful dismissal, discharge or termination (either actual or constructive) of employment, including breach of an implied employment contract or an alleged implied covenant of good faith and fair dealing in the employment contract;
 2. Any actual or alleged wrongful demotion, wrongful discipline, negligent Employee evaluation and investigation, retaliation, retaliatory discharge, whistle blowing, violation of public policy, promissory estoppel or intentional interference with an employment contract;
 3. Any actual or alleged wrongful failure to employ or promote;
 4. Any actual or alleged employment related misrepresentation to an Employee or applicant for employment;
 5. Any actual or alleged employment related infliction of emotional distress (whether negligently or intentionally), mental injury or mental anguish;
 6. Any actual or alleged employment related false imprisonment, detention or malicious prosecution;
 7. Any actual or alleged employment related libel, slander, defamation, invasion of

right of privacy; or

- 8. Any actual or alleged violation of the Family Medical Leave Act or Uniformed Services Employment and Re-employment Rights Act or any similar state law,

Inappropriate Employment Conduct shall not include any allegations other than those set forth above.

J. **Employee** means an individual whose labor or service is engaged by and directed by the Named Insured, or any covered entity. This includes volunteers, part time, seasonal, temporary and leased Employees as well as any individual employed in a supervisory, managerial or confidential position. Independent Contractors who claim to be an Employee of an insured entity are claimants but only with respect to the conduct of the insured entity's business. No coverage is available for claims made by Independent Contractors for over-time pay, vacation pay, severance, bonuses, commissions, profit-sharing or any employee benefits. Employees leased to others are not Employees. Temporary employees provided to another employer are not Employees.

XI.

XII.

XIII.

XIV. **SHORT RATE TABLE AND PROCEDURES**

NOTWITHSTANDING anything to the contrary contained herein and in consideration of the premium for which this insurance is written it is agreed that in the event of cancellation thereof by the Insured the earned premium shall be computed as follows:

SHORT RATE CANCELLATION TABLE

A. For insurance written for one year:

Days Insurance In Force		Per Cent of One Year Premium
1-54	.....	25%
55-58	.....	26
59-62	(2 months)	27
63-65	.....	28

66-69	.....	29
70-73	.....	30
74-76	.....	31
77-80	.....	32
81-83	.....	33
84-87	.....	34

88-91	.....	35
92-94	.....	36
95-98	.....	37
99-102	.....	38
103-105	.....	39
106-109	.....	40
110-113	.....	41
114-116	.....	42
117-120	.....	43
121-124	.....	44
125-127	.....	45
128-131	.....	46
132-135	.....	47
136-138	.....	48
139-142	.....	49
143-146	.....	50
147-149	.....	51
150-153	.....	52
154-156	.....	53
157-160	.....	54
161-164	.....	55
165-167	.....	56
168-171	.....	57
172-175	.....	58
176-178	.....	59
179-182	.....	60
Days Insurance In Force		Per Cent of One Year Premium
192-196	.....	63%
197-200	.....	64
201-205	.....	65
206-209	.....	66
210-214	(7 months)	67
215-218	.....	68
219-223	.....	69
224-228	.....	70
229-232	.....	71

233-237	.....	72
238-241	.....	73
242-246	.....	74
247-250	.....	75
251-255	.....	76
256-260	.....	77
261-264	.....	78
265-269	.....	79
270-273	.....	80
274-278	.....	81
279-282	.....	82
283-287	.....	83
288-291	.....	84
292-296	.....	85
297-301	.....	86
302-305	.....	87
306-310	.....	88
311-314	.....	89
315-319	.....	90
320-323	.....	91
324-328	.....	92
329-332	.....	93
333-337	.....	94
338-342	95
343-346	96
347-351	97
352-355	98
183-187	61
188-191	62

356-360	99

361-365	100
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B. For insurance written for more or less than one year:

1. If insurance has been in force for 12 months or less, apply the standard short rate table for annual insurances to the full annual premium determined as for an insurance written for a term of one year.
2. If insurance has been in force for more than 12 months:
 - a) Determine full annual premium as for an insurance written for a term of one year.
 - b) Deduct such premium from the full insurance premium, and on the remainder calculate the pro rata earned premium on the basis of the ratio of the length of time beyond one year the insurance has been in force to the length of time beyond one year for which the insurance was originally written.
 - c) Add premium produced in accordance with items a) and b) to obtain earned premium during full period insurance has been in force.