

MEMORANDUM

To: Preston Carlson

From: Oliver Goodenough

Cc: Chris Reed and Damien Zillas

Re: Structure and Topics for D & O Insurance Policy Automation

Date: December 12, 2023

A. Necessary elements of an insurable event:

1. The coverage request is made by or on behalf of, or with respect to:
 - a. a Member, consisting of (LINKED BY OR)
 - i. The entity or entities identified as the "Organization"; or
 - ii. any natural person who was, is, or becomes duly elected as a director or trustee, or duly elected or appointed officer, committee member or volunteer of the "Organization", solely in his or her capacity as such; or
 - iii. The spouse or "Domestic Partner" of a director, trustee, officer, committee member, or volunteer, of the "Organization"
 - b. A coverage request made in the case of a claim or wrongful act of a deceased member or a claim against the estate, heirs or legal representatives of such a Member; OR
 - c. A coverage request made by or on behalf of a Subsidiary existing at the time of policy inception that has been designated in Item 1 of the Declarations to this policy as a Named Member; OR
 - d. A newly created or acquired Subsidiary which (OR):
 - i. qualifies as a tax-exempt organization under the provision of Internal Revenue Code section 501(c)(3) is created or acquired by a "Member" after the inception of this policy, AND
 - ii. With respect to which written notice has been given to the Company of such creation or acquisition as soon as practicable, but in no event more than 120 days following such creation or acquisition; AND
 - iii. With respect to which there has been the giving of any underwriting information and the payment of any additional premium required by the Company.
 - e. OR, A Subsidiary which does not qualify as a tax-exempt organization under the provisions of the Internal Revenue Code section 501(c)(3) and which is created or acquired by a "Member" after the inception of this policy, such "Subsidiary" shall not be included under the terms and conditions of this policy with respect to which
 - i. a "Member" has:
 1. given written notice of such creation or acquisition together with any underwriting information which may be required by us;
 2. received written approval from us; and

3. paid any additional premium required.
- f. OR by a successor in a consolidation or merger of the Organization after the inception of this policy, IF
 - i. The Company is give immediate written notice, but in no event more than 30 days following that merger, consolidation or acquisition, shall be given to us, together with such information as we may require.
 - ii. the "Organization" has paid the Company us any additional premium required by the Company as a result of that merger, consolidation or acquisition.
2. AND the Member making the request did not voluntarily make a payment, admit liability for or any "Claim" or "Claims" or incur any "Defense Costs" without the Company's prior written consent.
3. AND the request for coverage results from a wrongful act, i.e. (all linked by AND)
 - a. The was there a breach of duty, error, neglect, omission or act; and
 - b. That was committed during the policy period
 - c. That was committed solely in the course of the activities of the organization
4. AND it resulted in (all linked by an OR)
 - a. Personal injury
 - i. committed in the course of the business of the organization AND
 - ii. arising out of one or more of the following offenses, either:
 1. false arrest, wrongful detention or imprisonment, abuse of process or malicious prosecution; or
 2. libel, slander, defamation of character, or invasion of privacy; or
 3. wrongful entry, eviction or other invasion of the right of privacy; or
 4. infringement of copyright or trademark or unauthorized use of title; or
 5. plagiarism or misappropriation of ideas.
 - b. a claim or claims of harassment, sexual or otherwise, or discrimination brought by a past or present volunteer of the "Organization", solely in his or her capacity as a volunteer; OR
 - c. A claim or claims of harassment, sexual or otherwise, or discrimination, brought by a third-party business invitee of the Organization in his or her capacity as a business invitee OR
 - d. Any other claim
5. AND there has been any demand or any judicial or administrative suit or proceeding against the Member, including any appeal therefrom, which seeks monetary Damages.
6. AND the the Damages consist of monetary judgment for compensatory damages, including claimant's attorney's fees or expert witness fees awarded pursuant to a contract, a statute or law but only if the "suit" or proceeding seeks compensatory damages.
7. AND NOT The Damages include solely taxes, severance payments, amounts to reimburse an employee for expenses incurred as a result of employment, equitable or injunctive relief and/or matters uninsurable under the law pursuant to which this policy is construed.
8. AND if the request for coverage was from an entity or entities identified as the Organization covered by the policy was such entity or entities:

- a. organized chiefly to provide or fund charitable, religious, educational, scientific, health or human services;
 - b. AND an organization described in section 501(c)(3) of the Internal Revenue Code and exempt from tax under section 501(a), or any corresponding sections of any future federal tax code.
 - c. AND the Named Member was incorporated in California or qualified to do business in California,
9. AND NOT were the Claim” or “Claims based on or arising out of a “Wrongful Act” of a Member’s spouse or “Domestic Partner”.

B. AND the following matters relating to the Conditions are met

10. AND NOT the policy was canceled by the Company (NOTE cancellation methodology not spelled out here)
11. AND each Member shall have cooperated, meaning
- a. AND NOT
 - i. Have failed to promptly sending to us copies of any demands, notices, summonses and legal papers received in connection with a “Claim” or “Claims”; OR
 - ii. Have failed to authorize the Company to obtain records and other information; OR
 - iii. Have failed assisting us in the enforcement of any right against any person or organization which may be liable to the “Member” OR
 - iv. Have failed to attend hearings, trials, and depositions and securing and giving evidence or to obtain the attendance of witnesses.
 - b. AND NOT The policy was voided in the company’s discretion because the Company sustained actual and substantial prejudice as a result of that failure, the coverage under this policy
12. AND each Member shall have promptly given notice to the Company if such Member:
- a. EITHER
 - i. receives written or oral notice from any person or entity that it is the intention of such person or entity to hold any “Member” responsible for a “Wrongful Act”; OR
 - ii. becomes aware of any circumstances which may subsequently give rise to a “Claim” or “Claims” being made against a “Member” for a “Wrongful Act”;
 - b. AND The “Claim” or “Claims” results from a “Wrongful Act” that is committed during this policy’s period.
13. AND Each Member has promptly given the Company written notice of any actual or potential “Claim” or “Claims” and has given the Company such information and cooperation as it may reasonably require.
14. AND All of the representations and statements contained in the application for this policy are true
15. AND the responsibility to pay “Damages” is determined in a “suit” on the merits which is determined within the United States of America

16. AND if any Member which has rights to recover all or part of any payment or payments made by the Company under this policy from any other person or entity,
- a. those rights have been transferred to the Company AND
 - b. The Member shall have
 - i. executed all documents (if any) required to effect that transfer and shall do everything that may be necessary for the Company to secure such rights including the execution of such documents necessary to enable us to bring suit in the name of the "Member; AND
 - ii. Upon the Company's request, the Member has done all things (if any) reasonably necessary to assist the Company in enforcing those rights.

C. Matters relating to Exclusions

17. AND NOT (the exclusion list inserted here)

18. Note the need to integrate First Employee material at II. E. with employee exclusion in exclusion list

D. Matters Relating to Coverage Arithmetic (NOT FOR INCLUSION YET)

- 19. I. D
- 20. III. A. B. and C.
- 21. IV. B.
- 22. IV. N.
- 23. V. E.
- 24. V. F.

E. Matters Relating to Process (NOT FOR INCLUSION YET)

- 25. I. B.
- 26. IV. A, B, C, D, E, H. J, K, L, M. 3, N, P

F. Definitions

- 27. Integrate? Or leave as a side aspect?