

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY
CIVIL DIVISION

In re:

Laser Spine Institute, LLC,	Case No. 2019-CA-2762
CLM Aviation, LLC,	Case No. 2019-CA-2764
LSI HoldCo, LLC,	Case No. 2019-CA-2765
LSI Management Company, LLC,	Case No. 2019-CA-2766
Laser Spine Surgery Center of Arizona, LLC,	Case No. 2019-CA-2767
Laser Spine Surgery Center of Cincinnati, LLC,	Case No. 2019-CA-2768
Laser Spine Surgery Center of Cleveland, LLC,	Case No. 2019-CA-2769
Laser Spine Surgical Center, LLC,	Case No. 2019-CA-2770
Laser Spine Surgery Center of Pennsylvania, LLC,	Case No. 2019-CA-2771
Laser Spine Surgery Center of St. Louis, LLC,	Case No. 2019-CA-2772
Laser Spine Surgery Center of Warwick, LLC,	Case No. 2019-CA-2773
Medical Care Management Services, LLC,	Case No. 2019-CA-2774
Spine DME Solutions, LLC,	Case No. 2019-CA-2775
Total Spine Care, LLC,	Case No. 2019-CA-2776
Laser Spine Institute Consulting, LLC,	Case No. 2019-CA-2777
Laser Spine Surgery Center of Oklahoma, LLC,	Case No. 2019-CA-2780

Assignors,

To	Consolidated Case
Soneet Kapila,	No. 2019-CA-2762
	Division L

Assignee.

**NATIONAL FIRE & MARINE INSURANCE COMPANY'S RESPONSE
TO JONNA LEMIEUX'S MOTION FOR RELIEF FROM STAY**

National Fire & Marine Insurance Company ("NF&M"), through undersigned counsel, submits this brief response to Claimant Jonna Lemieux's Motion for Relief From Stay (the "Motion") and states as follows:

1. Claimant is seeking leave from this Court to continue litigating a professional malpractice claim pending against the Assignor Laser Spine Institute ("LSI"), *Lemieux v. Laser Spine Institute, LLC*, Case No. 16-CA-4548 (Hillsborough Cty, Fla. Cir. Ct), on the condition

that Claimant would pursue collection of any tort recovery as to LSI solely against LSI's professional liability insurance coverage and self-insurance funds (if any), and not LSI's estate. While NF&M takes no position on whether Ms. Lemieux is obligated to seek relief from this Court, NF&M wishes to clarify and to correct certain aspects of LSI's insurance coverage for the benefit of the Court, Ms. Lemieux and any other interested persons..

2. NF&M issued excess policy no. EN004806 to LSI for the policy period from March 1, 2015 to March 1, 2016 (the "15-16 Excess Policy" or "Policy").

3. The 15-16 Excess Policy includes several different coverage parts, including but not limited to excess professional liability coverage. For brevity and clarity, NF&M is attaching as Exhibit 1 a copy of all declarations, schedules, forms, terms and conditions in the Policy that are relevant to LSI's excess professional liability coverage, but has omitted from Exhibit 1 the additional excess coverages provided under the Policy (e.g., excess commercial general liability, excess automobile liability) irrelevant to Ms. Lemieux's medical negligence claim.¹

4. The 15-16 Excess Policy provides professional liability coverage to LSI and other insureds on an excess basis, subject to specified limitations and conditions

5. Under the 15-16 Excess Policy, NF&M agreed to insure LSI for "excess loss" arising from a "claim that was first reported during the policy period." LSI first reported Ms. Lemieux's claim to NF&M on or about February 2, 2016, i.e., during the policy period of the 15-16 Policy.

¹ Ms. Lemieux incorrectly attached a portion of a different (earlier) NF&M policy to her Motion. In preparing this submission, NF&M has confirmed that Exhibit 1 is the correct policy for Ms. Lemieux's claim. Counsel for Ms. Lemieux may have been mistaken as to the applicable policy period. Although her medical procedure took place in 2014, the applicable "trigger" of the professional liability coverage under the NF&M policies issued to LSI is when the claim was first reported—here in February 2016 during the policy period of the 15-16 Excess Policy. LSI's commercial general liability coverage would be inapplicable to professional negligence claims.

6. The Excess Schedule of Underlying Insurance in the 15-16 Excess Policy lists a self-insured retention (“SIR”) for professional liability in the amount of \$1 million per claim up to \$6 million in the aggregate basis for all claims reported in the Policy Period. The scheduled SIR amount is mandatory and may include both “claims expense” (defense costs) and indemnity payments (judgments and settlements).

7. The Policy defines excess loss as “civil damages ... which an Insured becomes legally obligated to pay through adjudication or settlement which exceed all applicable scheduled limits of any scheduled coverages.” Excess loss does not include “any damages which are not greater than the scheduled limit or any other applicable insurance.”

8. The “scheduled limit” of the “scheduled coverage” under the 15-16 Excess Policy is the \$1 million SIR. Accordingly, NF&M has no obligation to pay excess loss under the Policy’s insuring agreement unless and until the full SIR is satisfied with respect to any given claim.

9. Furthermore, the 15-16 Excess Policy states that the limits of insurance applicable to any SIR listed in the Schedule of Underlying Insurance may not be reduced or exhausted for any reason other than the **payment** of covered judgments or settlement and associated claims expense where, as here, claims expense reduces the SIR. Policy, General Condition “G”; *see also* Endorsement No. 11 (**if** scheduled limit has been **reduced or exhausted by the payment of claims** covered by the Policy, then the Company will pay excess loss above the remaining limits of the scheduled limit).

10. The 15-16 Excess Policy includes a General Condition “N” addressing the bankruptcy or insolvency of LSI:

Under no circumstances will such bankruptcy, insolvency or non-payment require the Company to assume, or in any way be responsible for, any scheduled

coverage, or otherwise assume any obligation owed by any Insured under this policy. Unless prohibited by law, the Company will have no duty to pay any excess loss for any claim unless the Insured, or any other entity providing scheduled coverage, pays the limits of liability of the scheduled coverage in full.

11. General Condition “N” ensures that two things remain true despite LSI’s insolvency.

12. First, “[u]nder no circumstances” will LSI’s insolvency result in NF&M dropping down to assume LSI’s obligation to maintain the scheduled SIR and to pay for both defense costs and indemnity up to \$1 million per claim.

13. Second, unless prohibited by law, NF&M has no duty to pay any excess loss unless and until LSI or another entity providing the scheduled coverage pays the SIR **in full**.

14. As such, despite LSI’s inability to pay the SIR, it remains LSI’s contractual obligation. And the SIR is a condition precedent to any obligation on NF&M’s part to defend claims or to pay any settlements or judgments.

15. To the best of NF&M’s knowledge, however, LSI has not paid the \$1 million per-claim SIR for claims expense to date associated with Ms. Lemieux’s claim; nor has LSI satisfied the SIR on an aggregate basis for the 15-16 Excess Policy.

16. Even though NF&M has no duty to defend where, as here, LSI has not satisfied the SIR, NF&M has elected to defend LSI and co-defendant, Dr. Vernon Morris, against Ms. Lemieux’s allegations pursuant to a full and complete reservation of all rights available to NF&M under the 15-16 Excess Policy and at law.

17. To be clear, NF&M is not taking a position on whether this Court should grant the relief requested in the Motion (or, indeed, whether leave of this Court is required in these circumstances). Instead, NF&M makes this submission and is attaching the relevant professional liability coverage provisions of the correct Policy to advise the Court, Ms. Lemieux and other

interested persons and their counsel regarding the express limitations of NF&M's excess coverage to the extent relevant to these proceedings.

Dated: June 25, 2019

/s/ Adam Lawton Alpert
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Adam Lawton Alpert, Esq.
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*Attorneys for non-party creditor National Fire &
Marine Insurance Company*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 25, 2019, the foregoing Response to Jonna Lemieux's Motion for Relief from Stay was electronically filed with the Clerk of Court by using the E-filing Portal and served via the Court's electronic system to all parties receiving electronic service.

/s/ Adam Lawton Alpert
ATTORNEY

Exhibit 1

National Fire & Marine Insurance Company

Omaha, Nebraska

EXCESS DECLARATIONS

NOTICE: This policy may contain claims-made coverage. Please read this policy carefully.

Policy Number: EN004806

ITEM 1	FIRST NAMED INSURED: Laser Spine Institute, LLC ADDRESS: 3031 N Rocky Point Dr W Ste 300 Tampa, FL 33607												
ITEM 2	POLICY PERIOD: From 03/01/2015 to 03/01/2016 Both days at 12:01 a.m. at the address of the First Named Insured as stated herein.												
ITEM 3	COVERAGES SELECTED: (Please refer to the applicable Schedule of Insureds for limits, deductibles, retentions, etc.) <table border="1"><thead><tr><th></th><th>Occurrence</th><th>Claims-Made</th></tr></thead><tbody><tr><td>EXCESS PROFESSIONAL LIABILITY</td><td></td><td>X</td></tr><tr><td>EXCESS COMMERCIAL GENERAL LIABILITY</td><td>X</td><td></td></tr><tr><td>EXCESS EMPLOYER'S LIABILITY</td><td>X</td><td></td></tr></tbody></table>		Occurrence	Claims-Made	EXCESS PROFESSIONAL LIABILITY		X	EXCESS COMMERCIAL GENERAL LIABILITY	X		EXCESS EMPLOYER'S LIABILITY	X	
	Occurrence	Claims-Made											
EXCESS PROFESSIONAL LIABILITY		X											
EXCESS COMMERCIAL GENERAL LIABILITY	X												
EXCESS EMPLOYER'S LIABILITY	X												
ITEM 4	COVERAGES NOT SELECTED:												
ITEM 5	TOTAL PREMIUM: \$ 1,875,585 (May reflect deposit premium, which is subject to audit. The premium does not include any surplus lines tax, which must be collected by the producer.)												
ITEM 6	PRODUCER: AB Risk Specialist Inc 931 Tullis Rd Lawrenceville, GA 30043-4732												

IN WITNESS WHEREOF, National Fire & Marine Insurance Company has caused this policy to be signed by its President (and countersigned by its duly Authorized Representative, where necessary).


President

Countersigned By: _____

Date: _____

EXCESS DECLARATIONS

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Edition Date: 1/2014

National Fire & Marine Insurance Company

Omaha, Nebraska

EXCESS POLICY GUIDE

This Policy Guide has been developed to describe how your policy is formatted. This guide does not change any of the terms and conditions contained in the policy.

Your policy consists of the following items:

The Declarations: This page designates the first named insured, the policy number, the policy period, the coverages selected, the total premium, and the producer.

Schedules of Underlying Insurance: These schedules list the liability coverage(s) over which this policy will provide excess coverage.

Schedule of Insureds: These schedules define your coverage by designating who will be insured under a particular Insuring Agreement and what limits of liability will apply. If an Insuring Agreement is attached to your policy without a corresponding Schedule of Insureds, there is no coverage under that Insuring Agreement.

Insuring Agreements: These documents define the scope of the particular coverage that is being provided and any unique provisions (Additional Definitions, Additional Conditions, etc.) that will apply to it. For example, they indicate the types of claims that are covered and who is eligible to request indemnity under the policy. However, as mentioned above, these Insuring Agreements only provide coverage when attached to a corresponding Schedule of Insureds.

Defense and Supplemental Payments: If a claim or potential claim is covered under one of the Insuring Agreements, our Company may have a duty to pay supplemental damages on the Insured's behalf. This form defines the scope of our duty to pay those damages, and what duties the Company has, if any, to defend an Insured in the event of a claim.

General Definitions: This form contains the definitions that apply to every Insuring Agreement under your policy, unless otherwise noted. Additional or alternative definitions can be found within the definitions section of the relevant Insuring Agreement. Each word or phrase listed in **bold print** has been specifically defined within the policy. If a word has not been bolded, then its commonly understood meaning will apply.

General Exclusions: This form contains exclusions that apply to every Insuring Agreement under your policy, unless otherwise noted. Additional exclusions may also be found within the *ADDITIONAL EXCLUSIONS* section of the relevant Insuring Agreement.

General Conditions: This form defines the general duties our Company and the Insureds owe to each other under the terms of this policy contract, such as the requirements for reporting claims, the duty to maintain underlying insurance, the duties of the first named insured, etc.

Endorsements: Endorsements modify the terms and conditions of all or part of the policy and become a part of your policy. If an endorsement modifies one or more parts of the policy, but less than the entire policy, the endorsement will specify which parts of the policy are modified. It is important to understand that this is also the only method by which the terms and conditions of your policy can be altered.

If you have any questions regarding a particular provision or the coverage that is being provided to you, please contact your producer. We appreciate your patronage.

EXCESS DECLARATIONS

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Edition Date: 1/2014

National Fire & Marine Insurance Company

Omaha, Nebraska

EXCESS SCHEDULE OF UNDERLYING INSURANCE

Policy Number: EN004806	First Named Insured: Laser Spine Institute, LLC
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Professional Liability:

Primary Policy Information	Limits (as defined below)	Self-Insured Retention (SIR) (as defined below)
Carrier:		Laser Spine Institute, LLC
Policy Number:		**The professional underlying SIR is a combined single limit of liability: \$1mm/6mm limit for Indemnity and Expense
Policy Period:		03/01/2015 – 03/01/2016
Retroactive Date (if any):		Refer to Schedule of Excess Professional Liability Insureds
<input type="checkbox"/> Claims-made basis <input type="checkbox"/> Occurrence basis	Per Event Limit: \$1,000,000 Aggregate Limit: \$6,000,000	<input checked="" type="checkbox"/> Claims-made basis <input type="checkbox"/> Occurrence basis <input checked="" type="checkbox"/> Defense Costs inside SIR Limits <input type="checkbox"/> Defense costs outside SIR Limits

EXCESS SCHEDULE OF UNDERLYING INSURANCE

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Edition Date: 1/2011

Commercial General Liability:

Primary Policy Information	Limits (as defined below)	Self-Insured Retention (SIR) (as defined below)
Carrier:		Laser Spine Institute, LLC
Policy Number:		**The general liability underlying SIR is a combined single limit of liability: \$25k/50k limit for Indemnity and Expense
Policy Period:		03/01/2015 – 03/01/2016
Retroactive Date (if any):		<input type="checkbox"/> Claims-made basis <input checked="" type="checkbox"/> Occurrence basis
<input type="checkbox"/> Claims-made basis	Per Event Limit: \$25,000	<input checked="" type="checkbox"/> Defense costs within SIR Limits
<input type="checkbox"/> Occurrence basis	Aggregate Limit: \$50,000	<input type="checkbox"/> Defense costs outside SIR Limits

Employers Liability:

Primary Policy Information	Limits (as defined below)	Self-Insured Retention (SIR) (as defined below)
Carrier:	Zenith Insurance Company	
Policy Number:	M1099502	
Policy Period:	01/01/2015 – 01/01/2016	
	Per Event Limit of Liability Employment-Related Accident: \$1,000,000	
	Per Employee Limit of Liability Employment-Related Disease: \$1,000,000	
	Policy Limit of Liability Employment-Related Disease: \$1,000,000	

EXCESS SCHEDULE OF UNDERLYING INSURANCE

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Edition Date: 1/2011

Commercial Automobile Liability:

Primary Policy Information	Limits (as defined below)	Self-Insured Retention (SIR) (as defined below)
Carrier:	Everest National Insurance Company	
Policy Number:	CF4CA00138131	
Policy Period:	03/01/2015 – 03/01/2016	
	Combined Single Limit: \$1,000,000	

National Fire & Marine Insurance Company

Omaha, Nebraska

SCHEDULE OF EXCESS PROFESSIONAL LIABILITY INSUREDS
EXCESS PROFESSIONAL LIABILITY
(CLAIMS-MADE)

DECLARATIONS

Policy Number: EN004806	First Named Insured: Laser Spine Institute, LLC
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LIMITS OF LIABILITY

Per Event Limit of Liability: \$ 20,000,000

Aggregate Limit of Liability: \$ 20,000,000

SCHEDULE OF INSUREDS

In consideration of the payment of the premium due, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree as follows, subject to the terms and conditions of this policy, including the applicable limits of liability:

SCHEDULED EXCESS PROFESSIONAL LIABILITY INSURED	ID NUMBER	RETROACTIVE DATE
Laser Spine Institute, LLC	241482	03/21/2005
Laser Spine Institute Consulting, LLC	626955	06/30/2011
Laser Spine Surgery Center of Arizona, LLC	254295	05/30/2008
Laser Spine Surgery Center of Cincinnati, LLC	637293	06/30/2014
Laser Spine Surgery Center of Cleveland, LLC	637292	06/30/2014
Laser Spine Surgery Center of Oklahoma, LLC	254297	03/23/2011
Laser Spine Surgery Center of Pennsylvania, LLC	254296	04/22/2009
Laser Spine Surgery Center of St Louis, LLC	637294	06/30/2014
Laser Spine Surgical Center, LLC	626953	01/03/2005
LSI HoldCo, LLC	626956	12/05/2012
LSI Houston, PA	616898	01/03/2005
LSI Management Company, LLC	626954	09/03/2009
Medical Care Management Services, LLC	626957	06/11/2013
Physician FTE 1		03/21/2005
See Schedule of Insured Physicians on File with Company	921217	
Health Care Provider FTE 1		03/21/2005
All Physician Assistants Employed or Contracted by Laser Spine Institute, LLC	626636	

EXCESS PROFESSIONAL LIABILITY

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Edition Date: 1/2011

Policy Number: EN004806	First Named Insured: Laser Spine Institute, LLC
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SCHEDULED EXCESS PROFESSIONAL LIABILITY INSURED	ID NUMBER	RETROACTIVE DATE
Health Care Provider FTE 2		03/21/2005
All Nurse Practitioners Employed or Contracted by Laser Spine Institute, LLC	626639	
Health Care Provider FTE 3		03/21/2005
See Schedule of Insured Chiropractors on File with Company	921218	

EXCESS PROFESSIONAL LIABILITY

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Edition Date: 1/2011

National Fire & Marine Insurance Company

Omaha, Nebraska

EXCESS PROFESSIONAL LIABILITY INSURING AGREEMENT (CLAIMS-MADE)

NOTICE:

**This Insuring Agreement contains claims-made coverage.
Please read this policy carefully.**

In consideration of the payment of the premium due, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree as follows, subject to the terms and conditions of this policy, including the applicable limits of liability:

I. INSURING AGREEMENT - EXCESS LOSS

- A. The **Company** will pay, on behalf of any **scheduled excess professional liability insured**, including **agents**, all **excess loss** arising from a **health care event**. However, the **health care event** must have resulted from **professional services** rendered, or which should have been rendered, while the **scheduled excess professional liability insured** was employed by, or under contract with, any **scheduled excess professional liability insured**. For coverage to exist, the **excess loss** must also arise from an **event** that took place on or after the **retroactive date**. In addition, the **excess loss** must arise from a **claim** that was **first reported** during the **policy period**.
- B. All **claims** arising out of the same **health care event** will be deemed to have been made at the time the first such **claim** is made against any **Insured**. Only the policy in effect when the first such **claim** is made and reported to the **Company** in writing will apply to all related **claims** no matter when those related **claims** are made or reported. If the first such **claim** is made prior to the effective date of this policy, this policy will not apply to that **claim** nor to any related **claim** made during this **policy period** or any **extended reporting period**.

II. WHO IS INSURED

For the purposes of this Insuring Agreement, an **Insured** is:

- A. a **scheduled excess professional liability insured**;
B. a **new excess professional liability insured**; or,
C. an **agent**
as defined below.

III. ADDITIONAL DEFINITIONS

In addition to the Excess General Definitions, the following definitions are added to this Insuring Agreement:

- A. **Scheduled excess professional liability insured** means any person or entity that is listed on the Schedule of Excess Professional Liability Insureds. A **scheduled excess professional liability insured** shares in the limits provided to the **first named insured**.
- B. **New excess professional liability insured** means an entity formed or acquired by the **scheduled excess professional liability insured** during the **policy period**, over which the **scheduled excess professional liability insured** maintains at least majority ownership.
1. A **new excess professional liability insured** is not covered:
 - a. after 60 days have elapsed from the date the entity was formed or acquired by the **scheduled excess professional liability insured**; or,
 - b. for an **excess loss** or **health care event** that occurred before the entity was formed or acquired by the **scheduled excess professional liability insured** or after the **policy period**.
 2. A **new excess professional liability insured** shares the coverage provided to the **scheduled excess**

professional liability insured, including its limits of liability.

C. Agent

1. **Agent** means a person who was acting within the scope of his or her duties as:
 - a. an **employee, administrator, committee member, or student** of the **scheduled excess professional liability insured** at the time of the **health care event**; or,
 - b. a trustee, assign, or legal representative of the **scheduled excess professional liability insured** or of a person described in C.1.a. above in the event of bankruptcy, incapacity, or death.
2. An **agent** shares the coverage provided to the **scheduled excess professional liability insured**, including its limits of liability and any applicable restrictions.
3. An **agent** is not, however, an **Insured**, when the **agent** has other valid and collectible insurance to cover the **claim**.
4. As used to define an **agent**, above:
 - a. **employee** means any person employed by, or under contract with, the **scheduled excess professional liability insured** at the time of the **health care event**. It includes any authorized volunteer worker, **administrator, committee member or student**. **Employee** does not include:
 - (1) physician or dentist, including residents; or,
 - (2) certified registered nurse anesthetist, nurse midwife, nurse practitioner, physician's assistant, podiatrist, or **surgical assistant**.
 - b. **administrator** means an owner, partner, stockholder, director, trustee, executive officer, medical director, department head, or faculty member of the **scheduled excess professional liability insured**.
 - c. **committee member** means a person serving as a member of a committee or board formed or controlled by the **scheduled excess professional liability insured**. It also includes any person executing the directives of such a committee or board.
 - d. **student** means an unlicensed person, other than a resident, enrolled in a licensed or accredited training program operated by the **scheduled excess professional liability insured** relative to the delivery of **professional services**.

IV. ADDITIONAL EXCLUSIONS

In addition to any exclusions listed in the Excess General Exclusions, this Insuring Agreement does not apply to:

- A. any **claim** that was **first reported** by, or on behalf of, any **Insured** prior to the **policy period**;
- B. any **claim** arising from, or in connection with, any **professional services** rendered, or which should have been rendered, outside of the **scheduled excess professional liability insured's** employment, or contract for services with any **Insured** listed on the Schedule of Excess Professional Liability Insured's as a **scheduled excess professional liability insured**. This exclusion shall not apply to **professional services** rendered, or which should have been rendered, by a **scheduled excess professional liability insured** at the scene of an accident without expectation of monetary compensation;
- C. any **claim** arising from, or in connection with, an **Insured's** ownership, supervision or management of any organization, partnership, joint venture, or other business enterprise that is not a **scheduled excess professional liability insured**;
- D. any **claim** arising from, or in connection with, **treatment** rendered, or which should have been rendered, by an **administrator or committee member** unless it was provided in an emergency without an expectation of compensation;
- E. any **business practices claim**;
- F. any **employment practices claim**;

- G. any **product liability claim**;
- H. any **claim** arising from, or in connection with, the rendering, or failure to render, **managed care services**;
- I. liability for the acts of another assumed by an **Insured** under any contract or agreement, except as otherwise noted in this policy; or,
- J. any liability for the acts of another assumed by the **Insured** under any contract or agreement, whether written or oral, which shall include any hold harmless or indemnification agreement entered into by the **Insured**, provided that this exclusion shall not serve to exclude coverage to any third party for any liability imposed upon such third party solely as the result of the **Insured's** rendering of, or failure to render, **professional services**.

V. *LIMITS OF LIABILITY*

PER EVENT LIMIT

The **Company's** duty to pay **excess loss** on behalf of a **scheduled excess professional liability insured** for any **health care event** covered under this Insuring Agreement shall not exceed the Per Event Limit of Liability shown for Excess Professional Liability on the Schedule of Excess Professional Liability Insureds. This limit shall apply regardless of the number of:

1. persons who sustain injury;
2. claimants;
3. **claims**;
4. policies issued by the **Company**; or,
5. **Insureds** who share the Per Event limit.

AGGREGATE LIMIT

The **Company's** duty to pay **excess loss** on behalf of all **scheduled excess professional liability insureds** for all **health care events** covered under this Insuring Agreement shall not exceed the Aggregate Limit of Liability shown for Excess Professional Liability on the Schedule of Excess Professional Liability Insureds. This limit shall apply regardless of the number of:

1. **health care events**;
2. persons who sustain injury;
3. claimants;
4. **claims**;
5. policies issued by the **Company**; or,
6. **Insureds** who share the Aggregate limit.

VI. *ADDITIONAL CONDITIONS*

In addition to the conditions contained in the Excess General Conditions, the following conditions apply to this Insuring Agreement:

A. *Settlement.*

The **Company** may pay any **excess loss** as it deems expedient, unless prohibited by statute, regulation, rule or order, after first providing written notice to the **first named insured**.

B. *Extended Reporting Period Option.*

Purchase of an **extended reporting period**:

1. If the entire policy is canceled or nonrenewed, the **Company** shall, upon written request of the **first named insured**, mail an offer for an **extended reporting period** to the **first named insured** at the last address on record with the **Company**.
 - a. Any such written request by the **first named insured** must be received by the **Company** within 30 days of the expiration of the policy.
 - b. The **Company** shall only be required to offer an **extended reporting period**, if requested, to the **first**

- named insured** for all risks covered under the policy.
- c. The **Company** shall only be required to offer an **extended reporting period** if the **first named insured** has purchased an **extended reporting period** for all **scheduled coverages** that provide coverage on a claims-made basis.
 2. If the **first named insured** accepts the offer of the **extended reporting period**, all **scheduled excess professional liability insureds** that were afforded coverage by this policy shall be included in the **extended reporting period**. However, the **Company** has no duty to offer a separate **extended reporting period** to any **scheduled excess professional liability insured** or any other **Insured**. In addition, the **Company** has no duty to inform any **scheduled excess professional liability insured** or any other **Insured** whether the **first named insured** has accepted its offer.
 3. The **first named insured** may accept the **Company's** offer of an **extended reporting period** by paying the premium due within 30 days from either the date on which the policy expires or the date on which the **Company** receives the request for an **extended reporting period**, whichever is later. Failure to pay the full premium within this 30-day period will be deemed a rejection of the offer.
 4. If purchased, the **extended reporting period** will begin at the end of the **policy period** and shall not reinstate the limits of liability of this Insuring Agreement. Thereafter, any **claim** against a **scheduled excess professional liability insured**, which is otherwise covered by the policy, may be reported for an unlimited duration. However, the **extended reporting period** shall not:
 - a. extend the **policy period**;
 - b. apply to any **claim** arising from a **health care event** that took place after the **policy period**; or,
 - c. otherwise expand the coverage provided under this policy.

National Fire & Marine Insurance Company

Omaha, Nebraska

EXCESS DEFENSE AND SUPPLEMENTAL PAYMENTS

These Excess Defense and Supplemental Payments apply to the following Insuring Agreements as selected under this policy: Excess Professional Liability and Excess Employer's Liability.

Subject to the terms and conditions of the policy, including any exclusions:

I. NO DUTY TO DEFEND

In any **claim** covered under this policy, regardless of whether the **Insured** is entitled to a defense under a **scheduled coverage**, the **Company** shall have no duty to defend the **Insured** or pay any **claims expense** under any applicable Insuring Agreement. However, the **Company** shall have the right to participate in the defense and investigation of any **claim** that may, in the **Company's** sole determination, exceed the **scheduled limit**, including the right to defend the **Insured**, if the **Company** so chooses. In addition, the **Company** has no duty to:

- A. defend an **Insured** against a **claim** after the **Insured's** applicable limit of liability is exhausted by the payment of judgments or settlements; or,
- B. appeal any judgment. However, the **Company** has the right, but not the duty, to appeal any judgment that exceeds the **scheduled limit**. If the **Company** decides to appeal any judgment, all costs directly related to the appeal shall be payable by the **Company**, and shall not reduce the applicable limit of liability.

II. SUPPLEMENTAL PAYMENTS

If the **Company** elects to appeal a judgment that exceeds the **scheduled limit**, the **Company** shall pay:

- A. **claims expense** directly related to the appeal; and,
- B. the premium on any bond required to proceed with such an appeal approved by the **Company** or to release attachments to the **Insured's** property. However, the **Company** has no duty to apply for or furnish any such bond. In addition, the **Company** shall have no duty to pay the premium on any bond which has a face value in excess of the remaining limit of liability under the policy.

The **Company** has no duty to pay any **claim** after the **Insured's** applicable limit of liability is exhausted.

National Fire & Marine Insurance Company

Omaha, Nebraska

EXCESS GENERAL DEFINITIONS

These Excess General Definitions apply to the following Insuring Agreements as selected under this policy: Excess Professional Liability and Excess Employer's Liability.

Whenever used in this policy:

- A. **Additional Insured** means any person or entity listed on a Schedule of Excess Additional Insureds.
- B. **Bodily injury** means any damage to the human body, including sickness or disease and any mental injury, emotional distress, or death arising therefrom. In addition, it includes damages claimed for the cost of any care, loss of services, or loss of consortium arising therefrom.
- C. **Business practices claim** means any **claim** arising from an **Insured's**:
1. billing practices; or,
 2. advertising activities.
- D. **Case management** means identifying patients with specific health care needs and developing a plan to ensure an efficient use of resources to achieve the best outcome.
- E. **Claim** means an express written demand upon an **Insured** for money or services as compensation for civil damages. It also includes a medical incident or potential **claim** for which coverage was granted under a **scheduled coverage**.
- F. **Claims expense** means all costs and expenses incurred in connection with the investigation, adjustment, and defense of any **claim**. Such costs and expenses shall only include:
1. attorney fees paid to the law firm selected by the **Company** to defend an **Insured**;
 2. court costs;
 3. expert fees;
 4. reporter fees;
 5. the cost of any alternative dispute resolution ordered by a court, otherwise required by law or pre-approved by the **Company**;
 6. post-judgment interest on that portion of the judgment that does not exceed the applicable limit of liability available under the policy; and,
 7. such other costs and expenses that the **Company** determines to be reasonably related to the defense of a **claim**.

However, **claims expense** does not include:

1. **excess loss**;
 2. attorney fees awarded to a claimant;
 3. the salary of any **employee** of an **Insured**; or,
 4. the forgiveness of any amounts owed for the cost of care or services rendered by an **Insured**.
- G. **Company** means the insurance company listed in the Declarations.
- H. **Counseling** means formal therapy rendered to a patient by a licensed professional approved and credentialed by the **Insured** to provide such therapy.
- I. **Employee benefits** mean any group benefits administered on behalf of an **Insured's** employees. It includes any group:

EXCESS GENERAL DEFINITIONS

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1. insurance plans or programs, such as life, health, accident, dental, or legal advice;
2. Individual Retirement Accounts (IRAs), salary reduction plans under I.R.S. Code 401(k) or any amendment thereto, savings plans, or employee stock subscription plans;
3. travel or vacation plans; or,
4. workers' compensation, occupational disease, unemployment, Social Security, or disability benefits insurance.

J. **Employment practices claim** means any **claim** brought by an employee, or applicant for employment, which alleges the **Insured**:

1. breached an actual or implied contract of employment;
2. violated an anti-discrimination statute;
3. engaged in any form of harassment;
4. engaged in libel or slander related to an employment relation;
5. retaliated for the exercise of a public right or duty;
6. engaged in intentional or negligent infliction of emotional distress arising out of an employment relationship;
7. wrongfully failed to hire, promote, or grant tenure;
8. wrongfully demoted; or,
9. wrongfully terminated employment.

K. **Event** means accident. All injuries arising from:

1. the same or related acts, errors or omissions; or,
 2. the continuous or repeated exposure to substantially the same harmful conditions,
- will be considered one **event**. For the purposes of this definition, all injuries to a mother and fetus (or fetuses) from conception through delivery shall constitute one **event**.

L. **Excess loss**

1. **Excess loss** means civil damages, including prejudgment interest, which an **Insured** becomes legally obligated to pay through adjudication or settlement which exceed:
 - a. all applicable **scheduled limits** of any **scheduled coverages**; and,
 - b. all applicable limits of any other valid and collectible insurance policies or other program of indemnity that applies the **Insured's** liability for the **event**.
2. **Excess loss** does not include:
 - a. any damages which are greater than the applicable limit of liability;
 - b. any damages which are less than the **scheduled limit** or any other applicable insurance;
 - c. any injunctive or other equitable relief;
 - d. **claims expense**;
 - e. attorney fees awarded to a claimant as a fine, penalty or sanction based upon the **Insured's** misconduct. However, attorney fees awarded as part of the claimant's damages in a covered **claim** for any other purpose will be included as **excess loss**;
 - f. the salary of any employee of an **Insured**; or,
 - g. the forgiveness of any amounts owed for the cost of care or services rendered by an **Insured**.

M. **Extended reporting period** means the period of time after the cancellation or nonrenewal of claims-made coverage during which the **Insured** may report a **claim**.

N. **First named insured** (or **FNI**) means the entity or person listed as the First Named Insured on the Declarations.

O. **First discovered** means the date on which the **Insured** first knew, or reasonably should have known, of the **claim** or **potential claim**.

P. **First reported** means the date that coverage for the **claim** was originally triggered under a **scheduled coverage** that applies to the **Insured's** liability for the **event**. All **claims** arising from the same **event** shall be considered as having been **first**

reported when coverage for the first such **claim** was triggered.

- Q. **Health care event** means any **event** in the rendering of, or failure to render, **professional services** that results in injury. All injuries arising from the same or related acts, errors or omissions in furnishing **professional services** shall be considered one **health care event**.
- R. **Health care plan** means medical benefits plan administered by a health maintenance organization (HMO), preferred provider organization (PPO), or other similar managed care organization or self-insured program.
- S. **Insured** means any person or entity entitled to coverage as specified under the *WHO IS INSURED* section of the applicable Insuring Agreement.
- T. **Managed care event** means any **event** in the rendering of, or failure to render, **managed care services** that results in injury. All injuries arising from the same or related acts, errors, or omissions in the furnishing of **managed care services** shall be considered one **managed care event**.
- U. **Managed care services** means services provided to manage and/or administer a **health care plan**. These services can include any of the following acts provided on behalf of the **health care plan**:
1. the creation, sale and marketing of a **health care plan**;
 2. the selection, credentialing and contracting of health care providers;
 3. the evaluation of the cost, quality and proper utilization of **treatment** options available or being provided to participants;
 4. the adjustment, investigation and processing of claims for benefits; or,
 5. **case management**.
- However, **managed care services** do not include **treatment** rendered, or which should have been rendered, to a patient.
- V. **Non-standard policy** means a policy issued by a market of last resort, where coverage is typically limited or restricted due to prior claims or other specific risk issues identified as part of a risk profile.
- W. **Peer review** means the evaluation of a health care provider's fitness and qualification to provide **treatment** by a professional review board or committee through formally adopted, written procedures.
- X. **Policy period** means the period of time listed on the Declarations as the Policy Period. However, if the policy is terminated before the later of the dates listed on the Declarations, **policy period** means the period between the first date listed on the Declarations and the date the policy was terminated.
- Y. **Product liability claim** means any **claim** arising from a defective good or product invented, designed, manufactured, or sold by an **Insured**. However, it does not include any **claim** arising from a good or product which was specifically used by the **Insured** to provide **treatment** to the **Insured's** own patient.
- Z. **Professional services** means **treatment** and **peer review**.
- AA. **Retroactive date** means the date prior to which an **Insured** has no coverage under the applicable Insuring Agreement. The **retroactive date** is listed on the applicable Excess Schedule of Insureds for each **Insured** to which a **retroactive date** applies.
- BB. **Scheduled coverage** means any policy of underlying insurance, or other program of indemnity, as shown on the Excess Schedule of Underlying Insurance that applies to the **Insured's** liability for an **event**. However, it does not include any policy that is specifically designed to provide coverage in excess of this policy.

- CC. **Scheduled limit** means the amount shown as the Scheduled Limit for the applicable **scheduled coverage** on the corresponding Excess Schedule of Underlying Insurance.
- DD. **Social services** means programs provided by an **Insured** to help maintain or improve the quality of life for the patient, including family counseling and educational programs. These programs do not include therapy for the direct benefit of anyone other than the patient.
- EE. **Surgical assistant** means a person directly assisting as a non-physician first assistant in surgical procedures, including a person acting as a nurse surgical assistant or a physician surgical assistant.
- FF. **Treatment** means:
1. the rendering of medical, surgical, dental, nursing services, **counseling** or **social services** to a patient. This shall include first aid rendered at the scene of an accident without expectation of monetary compensation;
 2. the provision of medical examinations, opinions, or consultations regarding a person's medical condition within the **Insured's** practice as a licensed health care provider; or,
 3. the furnishing of any of the following, but only as it relates to the rendering of medical, surgical, dental, nursing services, **counseling** or **social services** to a patient:
 - a. food and beverages; or,
 - b. medical, surgical or dental supplies, appliances or drugs.

National Fire & Marine Insurance Company

Omaha, Nebraska

EXCESS GENERAL EXCLUSIONS

These Excess General Exclusions apply to the following Insuring Agreements as selected under this policy: Excess Professional Liability and Excess Employer's Liability.

I. EXCLUSIONS

This policy does not apply to:

- A. Any **excess loss** arising from, or in connection with, any act listed in the subparagraphs below, and any **event, health care event, or managed care event** when intertwined with, or inseparable from, any such act:
1. any malicious act or intentional tort;
 2. any actual or threatened sexual act, behavior or conduct, including, but not limited to, assault, exploitation, harassment or molestation, by any person of another person while in the care, custody, or control of any **Insured**, whether under the guise of **treatment** or not; or the negligent employment, investigation, supervision, reporting to the proper authorities, or failure to so report, or retention of a person for whom any **Insured** is or ever was legally responsible and whose conduct would be excluded under this exclusion;
 3. any personal, romantic, sexual, or other non-professional relationship with a current, former, or prospective patient, whether under the guise of **treatment** or not;
 4. any willful violation of any law, statute, or regulation;
 5. any dishonest or fraudulent act;
 6. any breach of contract or guaranty regarding the efficacy of **treatment**;
 7. **professional services** rendered or which should have been rendered if it is determined that an **Insured** was in any manner, extent or degree impaired by or under the influence of alcohol, narcotics, hallucinogenic agents, drugs or intoxicants of any nature or kind; or,
 8. any fabrication, alteration or destruction, in whole or in part, of any medical record pertaining to the person whose **treatment** is the subject of the **claim**, including, but not limited to, any medical or business record pertaining to the condition, **treatment** and/or consent of such person to any **professional service**, in whole or in part, by or at the direction of an **Insured**, after the happening of the activity reflected in such document or record. However, this exclusion does not apply to bona fide corrections to records made in accordance with applicable generally accepted professional standards, but this exception only applies if such corrections are identified as such, dated and signed by the person making them.
- B. Any **claim** arising from, or in connection with, any **treatment** rendered by any individual who was not authorized to provide such services due to the suspension, revocation, surrender, or restriction of, or failure to obtain, the proper professional license.
- C. Any **claim**, suit or other matter seeking:
1. injunctive relief;
 2. any relief other than **excess loss**; or,
 3. the award of fines, penalties or sanctions.
- D. Any damages over and above actual compensatory damages. This includes punitive, exemplary, and multiple damages.
- E. Any **bodily injury** to an employee that arose out of, and in the course of, employment with an **Insured**. This exclusion includes any injury to the spouse, child, parent, relative or heir of the employee that derives therefrom. It also applies regardless of whether an **Insured** may be liable as an employer or in any other capacity. In addition, the exclusion applies to any duty to share **excess loss** with or repay a third party for **excess loss** as a result of the **bodily injury**.

EXCESS GENERAL EXCLUSIONS

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- F. Any **claim** arising from, or in connection with, any obligation or damages arising under any law related to:
1. workers' compensation;
 2. occupational disease;
 3. unemployment compensation;
 4. disability benefits; or,
 5. other similar law that provides for scheduled benefits as a result of an injury or disease.
- G. Any **claim** arising from, or in connection with, any **excess loss** covered under an **Insured's** directors' and officers' policy.
- H. Any **claim** arising from, or in connection with, any **excess loss** or **claim**, which is initiated, alleged, or caused to be brought about, by any **Insured** covered by this policy against any other **Insured** covered by this policy. This exclusion does not apply if the **claim** arises out of an **Insured** providing **professional services** to another **Insured**.
- I. Any **claim**:
1. arising from, or in connection with, any rendering of, or failure to render, **professional services** for which the **Insured** has, or is eligible for, complete immunity as a volunteer or as an employee or contractor of a federal, state, or local government; or,
 2. involving an **Insured** who has, or is eligible for, insurance, indemnity, or any other protection pursuant to any federal, state, or local laws, including but not limited to the Federal Tort Claims Act.
- J. Any default judgment or other **claim** that the **Company** was unable to timely investigate or defend due to the acts or omissions of the **Insured**.
- K. Any damages:
1. for which an **Insured** has coverage under a nuclear energy liability policy issued by the:
 1. Nuclear Energy Liability Insurance Association;
 2. Mutual Atomic Energy Liability Underwriters;
 3. Nuclear Insurance Association of Canada; or,
 4. any successor or assign of the entities set forth in the subparagraphs above.This policy also does not apply if such coverage did exist, but was terminated by the exhaustion of the **Insured's** limit of liability.
 2. resulting from the hazardous properties of nuclear material for which the **Insured**:
 1. was required to maintain financial protection under the Atomic Energy Act of 1954 or any amendment or regulation that applies thereto; or,
 2. was entitled to indemnity by the United States government or any agency thereof or would have been entitled to had this policy not been issued.
- L. Any **claim** arising from, or in connection with, an **Insured's** duty to comply with the Americans with Disabilities Act of 1990 (ADA). This also includes any amendment or regulation that applies thereto or any comparable federal, state, or local law.
- M. Any **claim** arising from, or in connection with, an **Insured's** duty as a sponsor of an employee benefit plan under the Employee Retirement Income Security Act of 1974 (ERISA), or any amendment or regulation that applies thereto. However, this exclusion is limited to:
1. an **Insured's** failure or inability to fund the plan in accordance with the plan document or any applicable law or regulation; and,
 2. liability for the payment of benefits owed to a participant or beneficiary of the plan that have been paid or may lawfully be paid from the plan's funds or those of other employee programs.

EXCESS GENERAL EXCLUSIONS

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- N. Any **claim** arising from, or in connection with, an **Insured's** violation of the Racketeer Influenced Corrupt Organizations Act (RICO) or any comparable federal, state or local laws or any amendment or regulation that applies thereto.
- O. Any **claim** arising from, or in connection with, an **Insured's** violation of any federal, state or local securities law or regulation.
- P. Any **claim** arising from, or in connection with, the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate **electronic data**. As used in this exclusion, **electronic data** means information, facts, or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices, or any other media that are used with electronically controlled equipment.
- Q. Any **claim** arising from, or in connection with, any **excess loss** or **claims expense** covered under any cyber or privacy insurance coverage, including but not limited to, any coverage for network security and privacy, regulatory fines and penalties, patient notification and credit monitoring, or data recovery cost.

II. OTHER EXCLUSIONS - MULTI-POLICY AND ANTI-STACKING

If more than one Insuring Agreement or policy applies, the following multi-policy and anti-stacking exclusions apply:

- A. If more than one policy issued by the **Company** applies to the **excess loss** liability of an **Insured**, the **Company's** duty to pay **excess loss** will be confined to the policy containing the largest applicable limit.
- B. If more than one Insuring Agreement under this policy applies to the **excess loss** liability of an **Insured**, the **Company's** duty to pay **excess loss** will be confined to the Insuring Agreement containing the largest applicable limit.

National Fire & Marine Insurance Company

Omaha, Nebraska

EXCESS GENERAL CONDITIONS

Each condition contained in this form, or in any attached form, is a separate and distinct condition precedent to coverage. Please read and review each condition carefully.

These Excess General Conditions apply to all Insuring Agreements selected under this policy.

A. Representations and Change Provision.

1. By acceptance of this policy, each **Insured** agrees, represents, and warrants that the statements and particulars made in all applications, including any statements and particulars made in any and all documents, supplemental pages or other attachments (“Attachments”) for the purposes of any application, are true and correct. It is further understood and agreed that any application, and any Attachments, are incorporated into, and shall form a part of, this policy. Therefore, this policy and any endorsements, and all applications and Attachments, embody all agreements between the **Insured** and the **Company**, or any of its authorized representatives, relating to this insurance.
2. In the event any application was executed or endorsed by the **Insured’s** agent, the **Insured** acknowledges that the agent has acted under the **Insured’s** express authority and that the **Insured** has thoroughly reviewed the information contained on any application. Therefore, it is understood and agreed that, to the extent permitted by law, the **Company** reserves the right to rescind this policy, or deny any coverage provided for a **claim**, based upon any material misrepresentation made by the **Insured**.
3. The representations made by the **Insured** in the applications, and Attachments, are the basis for the coverage provided, as well as the **Company’s** calculation of the applicable premium. As a result, the **Insured** agrees to inform the **Company** of any material change in practice. Such material changes shall include, but are not limited to:
 - a. a new procedure being performed or expansion into a new area of patient care;
 - b. the purchase of, merger with, or construction of a new practice location, facility or real property;
 - c. any addition, deletion, or change in status (including the number of working hours, if applicable) involving a person or entity listed on any Schedule of Insureds;
 - d. the revocation, suspension, or restriction of the medical license, hospital privileges, or DEA license of any **Insured** or employed health care provider;
 - e. a criminal indictment, charge or conviction of any **Insured** or employed health care provider;
 - f. a settlement or verdict in a lawsuit that was not defended by the **Company**; or,
 - g. any physical or mental condition that impairs any **Insured’s** or employed health care provider’s ability to render **professional services**;not included on the **Insured’s** most recent application.
4. In the event the **Company** is made aware of a material change in the **Insured’s** practice, it reserves the right to recalculate the applicable premium, exclude the new practice characteristics from coverage, and/or deny any coverage provided for a **claim** arising from, or in connection with, the material change.

B. Reporting Requirements.

1. An **Insured** shall immediately report any **claim** arising from an **event**:
 - a. that the **Insured** reasonably believes will result in damages that exceed the **scheduled limit**;
 - b. for which the Company providing the **scheduled limit** has set a loss reserve which exceeds \$100,000;
 - c. for which the claimant’s demand exceeds the **scheduled limit**;
 - d. that caused:
 - (1) neurological, sensory, or systemic deficits to the injured party (such as brain damage; permanent paralysis, loss of sight or hearing, etc.);
 - (2) permanent damage related to an injury during child delivery or the administration of anesthesia;

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- (3) limitations on the injured party's activities of daily living (such as a loss of a limb); or,
 - (4) death.
2. The report of any **claim** shall be in writing. The report shall include the following information:
 - a. the identity of all **Insureds** implicated;
 - b. all reasonably obtainable information with respect to the time, place and circumstances of the **event**;
 - c. the nature and extent of the injury;
 - d. the names and addresses of any injured persons; and,
 - e. the names and addresses of available witnesses.
3. All such reports and documents shall be directed to the **Company** using the contact information listed on the contact sheet attached to the top of this policy.
4. An **event** reported to the **Company** as part of risk management or loss control services shall not be considered the report of a **claim**.

C. Assistance and Cooperation.

1. After any **claim** or **potential claim**, the **Insured** shall not contract any expense, voluntarily assume any liability in any situation; nor make or contract any settlement of the **claim** or **potential claim**, except at the **Insured's** own cost and responsibility, without the written authorization of the **Company**.
2. The **Company's** duty to defend and pay **loss** for any **claim** otherwise covered under this policy is strictly conditioned upon the **Insured's** cooperation with the **Company** in the investigation, defense, and/or settlement of any matter to which this policy applies. Such cooperation shall include, but is not limited to:
 - a. attendance at any deposition, hearing, or trial, as requested by the **Company**;
 - b. assistance in securing and giving evidence;
 - c. obtaining the attendance of witnesses; and,
 - d. doing nothing to prejudice the **Company's** ability to investigate, defend, and/or manage any matter to which this policy applies;
 - e. submitting to recorded and/or sworn statements and to examinations under oath as requested by the **Company**; and,
 - f. promptly producing, at the **Company's** request, any records, documents and other information in the **Insured's** possession, custody or control.
3. If a **claim** or **potential claim** is, or might be, covered under any other policy of insurance, the **Insured** shall promptly give notice to such other insurers. The **Insured** shall also provide the **Company** with copies of the applicable policies. The **Insured** shall further act in good faith to enforce any rights held under such policies, including the right to a defense.

D. Premiums.

1. The **Company's** obligation to perform any duty under the policy is strictly conditioned upon the payment of the premium when due. Similarly, the **Company's** obligation to perform any duty pursuant to a renewal of coverage provided under the policy shall be strictly conditioned upon the payment of the renewal premium when due. Therefore, this policy shall not be deemed to have been issued, delivered, or renewed and shall not be applicable to any matter which would otherwise be covered herein, until:
 - a. the premium has been paid in full; or,
 - b. if the **Company** has agreed to finance the policy, the first installment has been paid in full.If payment is made by check, electronic transfer or money order, it shall not be considered "paid in full" until honored by the payor's bank.
2. Any premium designated as "deposit premium" is merely a deposit on the actual amount owed. At the close of the **policy period**, the **Company** will compute the earned premium for that period. The "deposit premium" will then be credited to that amount. If the "deposit premium" exceeds the earned premium, the **Company** will refund the difference to the **first named insured**. If the earned premium exceeds the "deposit premium", the **Company** will bill the **first named insured** for the difference.
3. The **first named insured** shall maintain records of the information necessary for premium computation. The **first named insured** shall send copies of these records to the **Company** at the end of the **policy period** as directed by the **Company**. Such information shall be subject to audit and verification by the **Company**.

E. Inspection and Audit.

The **Company** shall be permitted, at its own discretion and for its own benefit, to audit an **Insured's** property, operations, and any business records. The **Company** shall also have the right to obtain a copy of any current or prior insurance records. Any findings or recommendations made by the **Company** as a result of an audit shall inure solely to the **Company's** benefit. As a result, they may not be used as evidence of the **Insured's** compliance with any safety regulations or other industry standards.

F. Other Insurance.

Unless otherwise noted in an Insuring Agreement:

1. If any other valid and collectible insurance is available to any **Insured** with respect to any liability arising from a **claim** or suit which is covered by this policy, and such other insurance is afforded under a policy or **extended reporting period** issued by a past, present or future parent, subsidiary or affiliate of the **Company**:
 - a. if the **Insured** has secured coverage from the **Company** or any of its affiliates on a **non-standard policy**, then the **Company's** duty to pay **excess loss** will be confined to the **non-standard policy**;
 - b. if subsection (a) does not apply, and an **Insured** is named as a specific named insured under any other valid and collectible insurance available to that **Insured**, then any duty to pay **excess loss** is confined to the policy where the **Insured** is specifically named;
 - c. if neither subsection (a) nor (b) above apply, any duty to pay **excess loss** will be confined to the policy containing the largest applicable limit.
2. If any other valid and collectible insurance is available to any **Insured** with respect to any liability arising from a **claim** or suit which is covered by this policy, and such other insurance is not afforded under a policy or **extended reporting period** issued by a past, present or future parent, subsidiary or affiliate of the **Company**, then this insurance will be excess over such other insurance even if such other insurance is stated to be primary, excess, contingent or otherwise. The **Company** will pay only the **Company's** share of the **excess loss**, if any, that exceeds the sum of:
 - a. the total amount that all such other insurance would pay for the **excess loss** in the absence of this insurance; and,
 - b. the total of all deductible and self-insured amounts under all such other insurance.
3. If the **Insured** has such other insurance that applies on the same basis, whether excess or primary, the **Company's** liability for **excess loss** shall not exceed:
 - a. the amount that would be payable if each insurer contributed by equal shares until the lowest limit contained in any applicable policy was exhausted or the entire **excess loss** was paid, whichever occurred first. If any **excess loss** remains, the **Company** will continue to contribute by equal shares until any of the following occurs:
 - (1) the applicable limits from this policy are exhausted,
 - (2) the limits of all applicable policies have been exhausted, or
 - (3) the entire amount is paid.This method shall only apply if all other such insurance provides for contribution by equal shares; or,
 - b. the ratio between the limit of liability available to the **Insured** under this policy and the total limit of liability under all applicable policies until the applicable limits from this policy are exhausted or the entire **excess loss** is paid. This method shall only apply if any applicable policy does not provide for contribution by equal shares.
4. The **Company** will have no duty to defend the **Insured** against any suit if any other insurer has a duty to defend the **Insured** against that suit. If no other insurer defends, the **Company** will undertake to do so, but the **Company** will be entitled to all of the **Insured's** subrogation rights against all those other insurers to the extent of any payments made, or as allowed by law.
5. This condition shall not apply if such other valid insurance is written to be specifically excess of this policy.

G. Maintenance of Scheduled Coverages.

1. The **scheduled coverages** shall be maintained by the **Insured** at all times and the **Insured** shall do nothing to restrict the terms or limits provided by the **scheduled coverages**.
2. The limits of insurance applicable to the policies listed on the Schedule of Underlying Insurance may not be reduced or exhausted for any reason other than the payment of judgments or settlements which would be covered by the provisions of this policy.

3. The limits of insurance applicable to any Self Insured Retention (SIR) listed in the Schedule of Underlying Insurance may not be reduced or exhausted for any reason other than the payment of judgments or settlement which would be covered by the provisions of this policy and **claims expense** associated with those payments, if **claims expense** depletes the SIR.
4. If the **Insured** fails to maintain or meet all terms and conditions of a **scheduled coverage** or if the company, trust or other entity providing the **scheduled coverage** shall become insolvent, the **Company's** duty to pay **excess loss** will apply as if the **scheduled coverage** had been so maintained.

H. Reduction or Exhaustion of Scheduled Limits.

If the **Insured's** applicable **scheduled limit** has been reduced or exhausted by the payment of **claims** for **events** that would otherwise be eligible for coverage under this policy, the **Company** will pay **excess loss** as if the **scheduled coverage** was not exhausted, in addition to any applicable deductible.

I. Subrogation.

The **Company** shall be subrogated to the rights of any **Insured** to the extent of any payments made, or as allowed by law. The **Insured** shall do nothing to prejudice those rights. At the **Company's** request, the **Insured** shall bring suit or transfer those rights to the **Company**. The **Insured** shall also help the **Company** enforce its rights.

J. First Named Insured.

1. The **first named insured** shall act as the agent of all **Insureds** with respect to this policy, with full authority to bind all **Insureds**. This shall include, but is not limited to:
 - a. receipt of notices of cancellation or nonrenewal;
 - b. requesting or receiving endorsements issued to form a part of this policy;
 - c. payment of premiums due;
 - d. receiving return premium; and,
 - e. receiving and/or responding to an offer for an **extended reporting period** for any **Insured**.
2. The **first named insured** shall notify in writing the **Company** and all **Insureds** of any changes that might affect the insurance provided under this policy.

K. Policy Territory.

Unless otherwise noted in an Insuring Agreement, this policy shall only apply to a **claim** filed within the United States, including its territories and possessions. However, unless otherwise noted, a **claim** may be based upon **professional services** provided anywhere in the world so long as the **Insured** had prior approval to provide such services from the appropriate governmental authorities and the **Company**.

L. Cancellation, Nonrenewal and/or Termination of Coverage.

1. This policy may be canceled by the **first named insured**. The **first named insured** shall mail written notice to the **Company** requesting cancellation. The cancellation shall be effective on the date requested by the **first named insured** or the date the notice is received by the **Company**, whichever is later.
2. Any coverage contained within this policy may be terminated by the **first named insured**. The **first named insured** shall mail written notice to the **Company** requesting the coverage termination. The termination shall be effective on the date requested by the **first named insured** or the date the notice is received by the **Company**, whichever is later.
3. This policy, or any coverage contained therein, may also be canceled, terminated or nonrenewed by the **Company**. The **Company** will send notice to the **first named insured** at the last address on record with the **Company**.
4. If the **first named insured** cancels this policy, or terminates any coverage contained therein, earned premium shall be computed in accordance with the standard short rate tables and procedure. If the **Company** cancels this policy, or terminates any coverage contained therein, earned premium shall be computed pro rata. Premium adjustments shall be made within a reasonable period of time after cancellation. However, payment or tender of unearned premium shall not be a condition of cancellation.
5. If the **Company** cancels or nonrenews an **Insured's** policy for any reason other than non-payment of premium, the **Company** shall provide written notice to the **first named insured** not less than thirty (30) days prior to the effective date of such cancellation or nonrenewal. If the **Company** cancels an **Insured's** policy for nonpayment of premium, the

Company shall provide written notice to the **first named insured** not less than ten (10) days prior to the effective date of such cancellation or nonrenewal.

6. If the **Company** cancels or nonrenews an **Insured's** policy, the **Insured's** coverage under that policy shall terminate on the earlier of:
 - a. the date stated on the cancellation or nonrenewal notice; or,
 - b. the date the **Insured** procures replacement coverage.

M. Modifications.

Except as provided herein, this policy may not be modified except by written endorsement attached to and made a part of this policy by the **Company**. The **Company's** decision not to insist on the **Insured's** compliance with any provision of this policy shall not operate to waive, modify, or void the provision.

N. Bankruptcy, Insolvency or Non-Payment by an Insured.

The filing of bankruptcy by, or the insolvency of or non-payment by, an **Insured**, or by any other entity providing a **scheduled coverage**, shall not act to modify any duty owed by the **Insured** or the **Company** under the policy. Under no circumstances will such bankruptcy, insolvency or non-payment require the **Company** to assume, or in any way be responsible for, any **scheduled coverage**, or otherwise assume any obligation owed by any **Insured** under this policy. Unless prohibited by law, the **Company** will have no duty to pay any **excess loss** for any **claim** unless the **Insured**, or any other entity providing **scheduled coverage**, pays the limits of liability of the **scheduled coverage** in full.

O. Non-assignability.

No interest of an **Insured** under this policy shall be assignable without the prior written consent of the **Company**. However, if the **Insured** is a person and dies, the coverage afforded by this policy shall inure to the benefit of that **Insured's** estate.

P. Separation of Insureds.

Except for the applicable limits of liability and any duties specifically assigned to the **first named insured**, this policy applies:

1. separately to each **Insured** against whom a **claim** is made; and,
2. as if each **Insured** were the only **Insured** under this policy.

Q. Action Against the Company.

1. No action shall lie against the **Company** unless each **Insured** is in full compliance with all of the terms of this policy.
2. No person shall have the right to join the **Company** as a party to a **claim** to determine the **Insured's** liability under this policy. Further, an **Insured** shall not interplead the **Company** into a **claim**.
3. No action shall lie against the **Company** until the amount of **excess loss** has been finally determined by entry of judgment or written agreement between the **Insured**, the claimant and the **Company**. Once the amount of **excess loss** has been finally determined, the claimant shall be entitled to recover under the terms of this policy.

R. Arbitration.

The **Company** and the **Insured** agree that any dispute, **claim** or controversy arising out of, relating to, or in connection with this policy, whether brought by or on behalf of the **Insured**, **Company**, or any other party, that the **Company** may elect to submit any such dispute, **claim** or controversy to binding arbitration, in accordance with Title 9 USC Sec. 1 et seq (the Federal Arbitration Act) and shall be governed by the Commercial Arbitration Rules of the American Arbitration Association.

The arbitration shall be presided over by three arbitrators chosen from the Commercial Insurance Panel of the American Arbitration Association. The arbitrators shall be governed by the law of the state of the address of the **first named insured**, as set forth on the Declarations. The arbitration shall take place in the county that the capital of that state is located.

The arbitrators shall have the discretion to order pre-arbitration discovery, including an exchange of documents and

deposition of potential witnesses. Each party shall bear its own arbitration costs and expenses including attorneys' fees, unless otherwise provided by law.

Any arbitration award shall be in writing and shall specify the factual and legal bases of the award. Judgment on the award rendered by the arbitrator shall be final and may be entered in any court having jurisdiction thereof. Furthermore, this arbitration provision shall be a complete defense to any suit, action or proceeding in any federal, state or local court or before any administrative tribunal with respect to any dispute, **claim** or controversy arising out of, relating to or in connection with this policy.

S. Terms Conform to Statute or Regulation.

If any term of this policy, or any duty arising therefrom, would cause the **Company** to violate any federal, state or local law or regulation, the policy is amended to bring the **Company** into compliance with such statute or regulation.

T. Fraud Warning.

Any person who knowingly and with intent to injure, deceive, or defraud any insurance company or other person files an application for insurance containing any materially false information or fails to provide complete information or conceals, for the purpose of misleading information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and may be prosecuted under state law and may be guilty of a felony and subject to criminal and civil penalties, fines, denial of insurance or confinement in prison.

**NOTICE OF AVAILABLE COVERAGE UNDER THE TERRORISM RISK INSURANCE
PROGRAM REAUTHORIZATION ACT OF 2007**

**– IMPORTANT –
THIS NOTICE DISCUSSES A DECISION
YOU MUST MAKE ON COVERAGE FOR ACTS OF TERRORISM**

DATE OF ACT: **December 31, 2007**

NAMED INSURED: **Laser Spine Institute, LLC**

LINES OF COVERAGE: **Excess General Liability**

PREMIUM FOR COVERAGE FOR AN “ACT OF TERRORISM”: **\$ 150.00**

The tragic events of September 11, 2001 have impacted our country in many ways. The insurance industry responded immediately to these events, and has provided billions of dollars of payments. However, the possibility of future attacks has created what Congress describes as an “unprecedented financial risk” with a significant impact on the economy. As a result, Congress passed the Terrorism Risk Insurance Act of 2002 (The Act). The Act was extended in December of 2005 for an additional two years. Congress recently amended the Act and extended the program for an additional seven years to December 31, 2014, under the Terrorism Risk Insurance Program Reauthorization Act of 2007. This Notice informs you of your rights and obligations under the Act.

You are hereby notified that under the Act, as amended, that you have the right to purchase insurance for losses resulting from acts of terrorism, as defined in Section 102(1) of the Act.

WHAT IS AN “ACT OF TERRORISM”?

- An “act of terrorism” is defined as:

Any act that is certified by the Secretary of the Treasury in concurrence with the Secretary of State and the Attorney General of the United States pursuant to the Act:

- (1) To be an act of terrorism;
- (2) To be a violent act or an act that is dangerous to (a) human life; (b) property; or (c) infrastructure;
- (3) To have resulted in damage within the United States, or outside the United states in the case of certain aircraft or vessels, or on the premises of a US mission; and
- (4) To have been committed by an individual or individuals as part of an effort to coerce the civilian populations of the US or to influence the policy or affect the conduct of the US Government by coercion.

- No act will be certified as described above by the Secretary of Treasury as an “act of terrorism” if:

- (1) It does not meet the above criteria;

(2) The act is committed as part of the course of war declared by Congress (other than with respect to Workers' Compensation); or,

(3) Property and casualty losses resulting from the act, in the aggregate, do not exceed \$5,000,000.

As used in this Notice, the phrases "act of terrorism" or "acts of terrorism," when set out in quotation marks, are to be construed as defined above.

WHAT IS AN "INSURED LOSS"?

An "**insured loss**" is any loss (other than amounts attributable to punitive damages) that is caused by an "**act of terrorism**" (including an act of war, in the case of workers' compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if such loss:

(1) occurs within the United States,

(2) occurs to an air carrier (as defined in 49 U.S.C. § 40102), to a U.S. flag vessel (or a vessel based principally in the U.S., on which U.S. income tax is paid and whose insurance coverage is subject to regulation in the U.S.), or

(3) occurs at the premises of any U.S. mission.

As used in this Notice, the phrases "insured loss" or "insured losses," when set out in quotation marks, are to be construed as defined above.

THE FEDERAL GOVERNMENT'S SHARE OF PAYMENTS FOR "INSURED LOSS"

You should know that where coverage is provided by this policy for losses resulting from certified acts of terrorism, such losses may be reimbursed by the United States Government under a formula established by federal law. However, your policy may contain other exclusions which might affect your coverage, such as an exclusion for nuclear events. Under the formula, the United States Government generally reimburses 85% of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage. The deductible will be 20% of our direct earned premium for "insured loss". The premium charged for this coverage is provided below and does not include any charges for the portion of loss that may be covered by the federal government under the Act.

You should also know that the Act, as amended, contains a **\$100 billion cap** that limits the United States Government reimbursement as well as insurers' liability for losses resulting from certified acts of terrorism when the amount of such losses in any one calendar year exceeds the **\$100 billion cap**. If the aggregate insured losses for all insurers exceed the **\$100 billion cap**, and we have met our insurer deductible under the Terrorism Risk Insurance Act, your coverage may be reduced. We may not be liable under our policies for our portion of such losses that exceed such amount. The amounts we pay to you under your policy may be reduced as a result. In addition, we may reserve our rights when we make payments to you, and we may require an undertaking from you to return any overpayment to us.

For purposes of determining such deductibles, "direct earned premium" means only the premiums earned on the commercial lines of property and casualty insurance covered by the Act for risks inside the U.S. or vessels, aircraft and foreign missions outside the U.S. covered by the Act.

WHAT MUST YOU DO?

As required by the Act, you are hereby notified that under the Act, as amended, that you have a right to purchase insurance coverage for losses resulting from acts of terrorism as defined in Section 102(1). This Notice constitutes an offer of coverage for losses arising out of an “act of terrorism” and presents our premium charge for that coverage.

This coverage is automatically included in your policy. In order to decline to purchase this coverage, you must notify the company in writing that you have chosen NOT to purchase this coverage. If you decide to decline the terrorism coverage you must notify us of your decision at the time of binding the remainder of coverage.

The amount of premium you must pay for adding this coverage is shown above. The premium charged for this coverage does not include any charges for the portion of loss covered by the federal government under the act.

POLICY NUMBER: EN004806

THIS NOTICE IS ATTACHED TO AND MADE PART OF YOUR POLICY IN RESPONSE TO THE DISCLOSURE REQUIREMENTS OF THE TERRORISM RISK INSURANCE ACT OF 2002. THIS NOTICE DOES NOT GRANT ANY COVERAGE OR CHANGE THE POLICY TERMS AND CONDITIONS OF ANY COVERAGE UNDER THE POLICY.

**DISCLOSURE PURSUANT TO TERRORISM RISK
INSURANCE ACT OF 2002**

SCHEDULE*

Terrorism Premium (Certified Acts) \$ 150.00

Additional information, if any, concerning the terrorism premium:

Coverage for acts of terrorism is included in your policy.

* Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

A. Disclosure of Premium

In accordance with the federal Terrorism Risk Insurance Act of 2002, as extended on December 22, 2005, and amended December 31, 2007, we are required to provide you with a notice disclosing the portion of your premium, attributable to coverage for terrorist acts certified under that Act.

Coverage for acts of terrorism is included in your policy.

The portion of your premium attributable to such coverage for acts of terrorism is shown in the Schedule of this endorsement, and does not include any charges for the portion of losses covered by the United States government under the Act.

B. Disclosure of Federal Participation in Payment of Terrorism Losses

You are hereby notified that under the Act, as amended on December 31, 2007, the definition of act of terrorism has changed. As defined in Section 102(1) of the Act, an "act of terrorism" is defined as any act that is certified by the Secretary of the Treasury- in concurrence with the Secretary of State and the Attorney General of the United States pursuant to the Act- to be an act of terrorism; to be a violent act or an act that is dangerous to (a) human life; (b) property; or (c) infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain aircraft or vessels, or on the premises of a US mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian populations of the US or to influence the policy or affect the conduct of the US Government by coercion.

Under your coverage, any losses resulting from certified acts of terrorism may be partially reimbursed by the United States Government under a formula established by the Act, as amended. However, your policy

may contain other exclusions which might affect your coverage, such as an exclusion for nuclear events. Under the formula, the United States Government generally reimburses 85% of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage. The Act, as amended, contains a **\$100 billion cap** that limits the United States Government reimbursement as well as insurers' liability for losses resulting from certified acts of terrorism when the amount of such losses in any one calendar year exceeds the **\$100 billion cap**. If the aggregate insured losses for all insurers exceed the **\$100 billion cap**, and we have met our insurer deductible under the Terrorism Risk Insurance Act, your coverage may be reduced.

This constitutes notice, as required, under the Terrorism Risk Insurance Act, as extended on December 22, 2005, and amended on December 31, 2007. Any losses resulting from certified acts of terrorism under this policy coverage may be partially reimbursed by the United States government, may be subject to a \$100 billion cap that may reduce your coverage. You have been hereby notified of the portion of your premium attributable to such coverage.

National Fire & Marine Insurance Company

Omaha, Nebraska

All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.

Endorsement No. 1	Forming Part of Policy No. EN004806	First Named Insured Laser Spine Institute, LLC
Effective Date of Endorsement 03/01/2015		

SCHEDULE OF ADDITIONAL EXCESS INSUREDS ENDORSEMENT

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree the following persons or entities are added as **additional excess insureds** on the policy for the Insuring Agreement indicated. This endorsement applies only with respect to damages payable for the acts or omissions of an **Insured** otherwise covered under the applicable Insuring Agreement.

SCHEDULE OF ADDITIONAL EXCESS INSUREDS		
ADDITIONAL EXCESS INSURED	DESCRIPTION OF OPERATIONS	INSURING AGREEMENT
Landerhaven, I, LLC and Ohio Ltd Liability Co	Landlord	*Excess Commercial General Liability Insuring Agreement

EXCESS COMMON ENDORSEMENTS

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Edition Date: 1/2011

National Fire & Marine Insurance Company

Omaha, Nebraska

All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.

Endorsement No. 2	Forming Part of Policy No. EN004806	First Named Insured Laser Spine Institute, LLC
Effective Date of Endorsement 03/01/2015		

FULL TIME EQUIVALENTS (FTE) ENDORSEMENT EXCESS PROFESSIONAL LIABILITY INSURING AGREEMENT

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the Excess Professional Liability Insuring Agreement as follows:

MODIFIED COVERAGES

The following is added to *WHO IS INSURED*:
an **FTE excess professional liability insured**

The following definitions are added to *ADDITIONAL DEFINITIONS*:

FTE excess professional liability insured means any **Insured** listed as an FTE Excess Professional Liability Insured on the attached Schedule of Excess Professional Liability Insureds or on the attached Schedule of Insureds - Departed Excess Professional Liability Insureds.

FTE position means a full time equivalent position with that is filled by any number of **FTE excess professional liability insureds** during the **policy period**.

The following exclusion is added to *ADDITIONAL EXCLUSIONS*:

any **claim** arising from **professional services** rendered, or which should have been rendered, by an **FTE excess professional liability insured**, unless such **professional services** were rendered or should have been rendered in the course and scope of an **FTE excess professional liability insured's** duties while occupying an **FTE position** on behalf of a **scheduled excess professional liability insured** at the time of the **health care event**.

The following conditions are added to *ADDITIONAL CONDITIONS*:

FTE Providers.

A **scheduled excess professional liability insured** may have multiple **FTE positions** during the **policy period**. Each such **FTE position** shall be identified numerically (e.g., FTE 1; FTE 2; etc.) on the attached Schedule of Excess Professional Liability Insureds or on the attached Schedule of Insureds - Departed Excess Professional Liability Insureds.

FTE excess professional liability insureds share in the limits of liability provided to an **FTE position**.

All other terms and conditions of the policy remain unchanged.

EXCESS PROFESSIONAL LIABILITY

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Edition Date: 1/2011

National Fire & Marine Insurance Company

Omaha, Nebraska

All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.

Endorsement No. 3	Forming Part of Policy No. EN004806	First Named Insured Laser Spine Institute, LLC
Effective Date of Endorsement 03/01/2015		

DEPARTED EXCESS PROFESSIONAL LIABILITY INSURED ENDORSEMENT EXCESS PROFESSIONAL LIABILITY INSURING AGREEMENT

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the Excess Professional Liability Insuring Agreement as follows:

MODIFIED COVERAGES

The following provision is added to *INSURING AGREEMENT - EXCESS LOSS*:

The **Company** will pay, on behalf of a **departed excess professional liability insured**, including its **agents**, all **excess loss** arising from a **health care event** that took place on or after the **retroactive date** but prior to the **termination date** listed on the Schedule of Insureds - Departed Excess Professional Liability Insureds below. However, the **health care event** must have resulted from **professional services** rendered, or which should have been rendered, while the **departed excess professional liability insured** was employed by, or under contract with, any **scheduled excess professional liability insured**. For coverage to exist, the **excess loss** must also result from a **claim** that is **first made** against the **departed excess professional liability insured** during the **policy period**.

The following is added to *WHO IS INSURED*:

a **departed excess professional liability insured**

The following definitions are added to *ADDITIONAL DEFINITIONS*:

Departed excess professional liability insured means any **scheduled excess professional liability insured** who has been designated by the **Insured** as no longer providing **professional services** on behalf of the **Insured** and who is listed on the Schedule of Insureds-Departed Excess Professional Liability Insureds below.

Termination date means the date listed as the Termination Date for the **departed excess professional liability insured** on the Schedule of Insureds-Departed Excess Professional Liability Insureds below.

The following exclusion is added to *ADDITIONAL EXCLUSIONS*:

any **claim** arising from, or in connection with, **professional services** rendered, or which should have been rendered, by a **departed excess professional liability insured** prior to the **retroactive date** or after the **termination date** listed on the Schedule of Insureds - Departed Excess Professional Liability Insureds below.

EXCESS PROFESSIONAL LIABILITY

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Edition Date: 12/2011

The following provision is added to *LIMITS OF LIABILITY*:

PER EVENT LIMIT - DEPARTED EXCESS PROFESSIONAL LIABILITY INSURED

The **Company's** duty to pay **excess loss** on behalf of a **departed excess professional liability insured** for any **health care event** covered by this endorsement shall not exceed the Per Event Limit of Liability shown in the Declarations section of the Schedule of Excess Professional Liability Insureds, regardless of the number of:

1. persons who sustain injury;
2. claimants;
3. **claims**;
4. policies issued by the **Company**; or,
5. **Insureds** who share the Per Event limit.

AGGREGATE LIMIT - DEPARTED EXCESS PROFESSIONAL LIABILITY INSURED

The **Company's** duty to pay **excess loss** on behalf of a **departed excess professional liability insured** for all **health care events** covered by this endorsement shall not exceed the Aggregate Limit of Liability shown in the Declarations section of the Schedule of Excess Professional Liability Insureds. This limit shall apply regardless of the number of:

1. **health care events**;
2. persons who sustain injury;
3. claimants;
4. **claims**;
5. policies issued by the **Company**; or,
6. **Insureds** who share the Aggregate limit.

It is expressly understood that nothing herein shall operate to create multiple Limits of Liability for any **Insured**.

All remaining terms and conditions of the policy remain unchanged.

SCHEDULE OF INSUREDS - DEPARTED EXCESS PROFESSIONAL LIABILITY INSUREDS			
	ID NUMBER	RETRO-ACTIVE DATE	TERMINATION DATE
DEPARTED EXCESS PROFESSIONAL LIABILITY INSURED			
James S St Louis, DO, PC	626965	09/09/2009	12/31/2011
Laser Spine Institute of Arizona, LLC	626966	03/14/2008	12/31/2010
Laser Spine Institute of California, LLC	626960	07/31/2008	12/31/2012
Laser Spine Institute of Colorado, LLC	626968	09/03/2009	12/31/2009
Laser Spine Institute of Oklahoma, LLC	626969	09/17/2010	12/31/2010
Laser Spine Institute of Pennsylvania, LLC	626967	04/22/2009	12/31/2010
Laser Spine Medical Clinic, LLC	626958	01/03/2005	12/31/2012
Laser Spine Physical Therapy, LLC	626959	01/03/2005	12/31/2012
LSI Aspen Back and Body, LLC	626962	09/03/2009	12/31/2011
Michael William Perry, MD, PC	626961	07/25/2008	12/31/2011
Total Spine Health Products, LLC	626964	09/03/2009	12/31/2011

EXCESS PROFESSIONAL LIABILITY

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Edition Date: 12/2011

National Fire & Marine Insurance Company

Omaha, Nebraska

All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.

Endorsement No. 4	Forming Part of Policy No. EN004806	First Named Insured Laser Spine Institute, LLC
Effective Date of Endorsement 03/01/2015		

THIS ENDORSEMENT CHANGES THE POLICY - PLEASE READ IT CAREFULLY

EXCESS SERVICE OF SUIT CLAUSE ENDORSEMENT

Service of process in any lawsuit, or mandated alternative dispute resolution (ADR) proceeding instituted against the **Company** shall be made upon:

General Counsel
National Fire & Marine Insurance Company
3024 Harney Street
Omaha, Nebraska 68131-3095

The General Counsel is authorized and directed to accept service of process on behalf of the **Company** in any suit or ADR proceeding and, upon the request of the **Insured**, agrees to give a written acknowledgement to the **Insured** that the **Company** will retain counsel to enter an appearance upon the **Company's** behalf should a lawsuit or ADR proceeding be instituted.

Further, pursuant to any law of any state, the District of Columbia, territory, or protectorate of the United States which makes provision therefore, the **Company** hereby designates the Superintendent, Commissioner, Director of Insurance, deputy, or department employee specified as attorney or agent for receipt of lawful service of process or ADR proceeding, in the law, instituted by or on behalf of the **Insured** or any beneficiary within this contract, the General Counsel is hereby authorized as the **Company's** designee upon whom the service of process may be served.

Nothing contained herein shall limit or abridge the right to serve any process, notice or demand upon the **Company** in any other manner permitted or required by law.

This endorsement is effective on the inception date of this policy unless otherwise stated herein.

All other terms and conditions of this policy remain unchanged.

EXCESS SERVICE OF SUIT

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Edition Date: 1/2011

National Fire & Marine Insurance Company

Omaha, Nebraska

All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.

Endorsement No. 6	Forming Part of Policy No. EN004806	First Named Insured Laser Spine Institute, LLC
Effective Date of Endorsement 03/01/2015		

EXCESS INTENTIONAL ACTS EXCLUSION AND SUBLIMITS OF LIABILITY FOR INTENTIONAL ACTS ENDORSEMENT

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the Excess Professional Liability Insuring Agreement selected under this policy as follows:

MODIFIED COVERAGES

The total limit of the **Company's** liability for intentional acts shall not exceed the amounts set forth as the Per Event and Per Aggregate Sublimits listed below:

Intentional Acts Sublimits of Liability:

Per Event Sublimit of Liability: \$ 1,000,000
Aggregate Sublimit of Liability: \$ 1,000,000

The Intentional Acts Sublimits specified above are within and shall erode the Per Event and Aggregate Limits of Liability available to any **Insured** under the applicable Insuring Agreement.

EXCESS GENERAL EXCLUSIONS

The following exclusion in Excess General Exclusions is deleted:

Any **excess loss** arising from, or in connection with, any act listed in the subparagraphs below, and any **health care event** when intertwined with, or inseparable from, any such act:

1. any malicious act or intentional tort;
2. any actual or threatened sexual act, behavior or conduct, including, but not limited to, assault, exploitation, harassment or molestation, by any person of another person while in the care, custody, or control of any **Insured**, whether under the guise of **treatment** or not; or the negligent employment, investigation, supervision, reporting to the proper authorities, or failure to so report, or retention of a person for whom any **Insured** is or ever was legally responsible and whose conduct would be excluded under this exclusion;
3. any personal, romantic, sexual, or other non-professional relationship with a current, former, or prospective patient, whether under the guise of **treatment** or not;
4. any willful violation of any law, statute, or regulation;
5. any dishonest or fraudulent act;
6. any breach of contract or guaranty regarding the efficacy of **treatment**;
7. **professional services** rendered or which should have been rendered if it is determined that an **Insured** was in any manner, extent or degree impaired by or under the influence of alcohol, narcotics, hallucinogenic agents, drugs or intoxicants of any nature or kind; or,

EXCESS COMMON ENDORSEMENTS

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Edition Date: 1/2011

8. any fabrication, alteration or destruction, in whole or in part, of any medical record pertaining to the person whose **treatment** is the subject of the **claim**, including, but not limited to, any medical or business record pertaining to the condition, **treatment** and/or consent of such person to any **professional service**, in whole or in part, by or at the direction of an **Insured**, after the happening of the activity reflected in such document or record. However, this exclusion does not apply to bona fide corrections to records made in accordance with applicable generally accepted professional standards, but this exception only applies if such corrections are identified as such, dated and signed by the person making them.

This following exclusion is added to General Exclusions:

Any **excess loss** arising from, or in connection with, any act listed in the subparagraphs below, and any **health care event** when intertwined with, or inseparable from, any such act:

1. any malicious act or intentional tort;
2. any actual or threatened sexual act, behavior or conduct, including, but not limited to, assault, exploitation, harassment or molestation, by any person of another person while in the care, custody, or control of any **Insured**, whether under the guise of **treatment** or not; or the negligent employment, investigation, supervision, reporting to the proper authorities, or failure to so report, or retention of a person for whom any **Insured** is or ever was legally responsible and whose conduct would be excluded under this exclusion;
3. any personal, romantic, sexual, or other non-professional relationship with a current, former, or prospective patient, whether under the guise of **treatment** or not;
4. any willful violation of any law, statute, or regulation;
5. any dishonest or fraudulent act;
6. any breach of contract or guaranty regarding the efficacy of **treatment**;
7. **professional services** rendered or which should have been rendered if it is determined that an **Insured** was in any manner, extent or degree impaired by or under the influence of alcohol, narcotics, hallucinogenic agents, drugs or intoxicants of any nature or kind; or,
8. any fabrication, alteration or destruction, in whole or in part, of any medical record pertaining to the person whose **treatment** is the subject of the **claim**, including, but not limited to, any medical or business record pertaining to the condition, **treatment** and/or consent of such person to any **professional service**, in whole or in part, by or at the direction of an **Insured**, after the happening of the activity reflected in such document or record. However, this exclusion does not apply to bona fide corrections to records made in accordance with applicable generally accepted professional standards, but this exception only applies if such corrections are identified as such, dated and signed by the person making them.

This exclusion does not apply to any **claims** arising from a **health care event**, brought against any **Insured** who did not participate in, or direct another, in connection with any of the actions excluded from coverage under this provision.

All other terms and conditions of the policy remain unchanged.

National Fire & Marine Insurance Company

Omaha, Nebraska

All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.

Endorsement No.	Forming Part of Policy No.	First Named Insured
11	EN004896	Laser Spine Institute, LLC
Effective Date of Endorsement		
03/01/2015		

DROP DOWN ENDORSEMENT—DEFENSE WITHIN SCHEDULED LIMITS EXCESS PROFESSIONAL LIABILITY INSURING AGREEMENT (DEFENSE WITHIN LIMITS)

In consideration of the payment of the premium charged and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the Excess Professional Liability Insuring Agreement as follows:

MODIFIED COVERAGES

The **NO DUTY TO DEFEND** provision of the Excess Defense and Supplemental Payments is deleted and replaced with the following:

DUTY TO DEFEND

In any **claim** covered under this Insuring Agreement for which the **Insured** has exhausted its limits of liability under a **scheduled coverage** and therefore is not entitled to a defense under that **scheduled coverage**, the **Company** shall have the right and duty to defend the **Insured**.

However, the **Company** has no duty to:

- A. defend an **Insured** against a **claim** after the **Insured's** applicable limit of liability under this Insuring Agreement is exhausted by the payment of judgments or settlements;
- B. appeal any judgment. However, the **Company** has the right to appeal any judgment that exceeds the **scheduled coverage**. If the **Company** decides to appeal any judgment, all costs associated with the appeal shall be included as **claims expense**, shall be payable by the **Company**, and shall reduce the applicable limit of liability; or,
- C. pay any **claims expense** incurred by or for an attorney who was not retained, or approved by the **Company** in writing, to defend the **Insured**.

All **claims expenses** paid by the **Company** under this endorsement shall be included as **excess loss** and shall erode the applicable limit of liability under this Insuring Agreement. The **Company** shall have no duty to pay any **claims expense**, premium, or other expense incurred after the **Insured's** applicable limit of liability under this Insuring Agreement is exhausted.

All **claims expense** and supplemental payments paid by the **Company** under this endorsement shall be subject to any deductible applicable to the underlying **scheduled coverage** as if it were in effect.

EXCESS PROFESSIONAL LIABILITY

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The *Reduction or Exhaustion of Scheduled Limits* condition of the Excess General Conditions, as it applies to the Excess Professional Liability Insuring Agreement only, is deleted and replaced with the following:

Reduction or Exhaustion of Scheduled Limits.

If the **Insured's** applicable **scheduled limit** has been reduced or exhausted by the payment of **claims** for **events** that are otherwise eligible for coverage under this Insuring Agreement, the **Company** will pay **excess loss** above the remaining limits of the **scheduled limit**.

All damages paid by the **Company** under this endorsement shall be subject to any deductible applicable to the **scheduled coverage** as if it were in effect.

All other terms and conditions of the policy remain unchanged.

National Fire & Marine Insurance Company

Omaha, Nebraska

All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.

Endorsement No. 12	Forming Part of Policy No. EN004806	First Named Insured Laser Spine Institute, LLC
Effective Date of Endorsement 03/01/2015		

EXCESS FLORIDA AMENDATORY ENDORSEMENT

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the policy as follows:

EXCESS GENERAL CONDITIONS

The Cancellation, Nonrenewal and/or Termination of Coverage section in the Excess General Conditions is deleted and replaced with the following:

Cancellation, Nonrenewal and/or Termination of Coverage

1. This policy may be canceled by the **first named insured**. The **first named insured** shall mail written notice to the **Company** requesting cancellation. The cancellation shall be effective on the date requested by the **first named insured** or the date the notice is received by the **Company**, whichever is later.
2. Any coverage contained within this policy may be terminated by the **first named insured**. The **first named insured** shall mail written notice to the **Company** requesting the coverage termination. The termination shall be effective on the date requested by the **first named insured** or the date the notice is received by the **Company**, whichever is later.
3. This policy may also be canceled by the **Company**. The **Company** will send notice of the cancellation, including the specific reason for the cancellation, to the **first named insured** at its last known address.
 - a. If the policy has been in effect for less than 90 days, the **Company** may cancel by sending written notice that states when, not less than 20 days thereafter, such cancellation shall be effective.
 - b. If the policy has been in effect for at least 90 days, or is a renewal policy, the **Company** may cancel by sending written notice that states when, not less than 45 days thereafter, such cancellation shall be effective.
 - c. However, only 10 days notice will be required to cancel:
 - i. for nonpayment of premium;
 - ii. for policies cancelled for material misrepresentation; or,
 - iii. where there is a failure to comply with underwriting requirements.
4. If the **first named insured** cancels this policy, or terminates any coverage contained therein, earned premium shall be computed in accordance with the standard short rate tables and procedure. If the **Company** cancels this policy, or terminates any coverage contained therein, earned premium shall be computed pro rata. Premium adjustments shall be made within a reasonable period of time after cancellation. However, payment or tender of unearned premium shall not be a condition of cancellation.
5. This policy may be nonrenewed by the **Company** by mailing or delivering written notice of nonrenewal to the **first named insured** at its last known address at least 45 days prior to the end of the **policy period**. The notice will also contain the specific reason for the nonrenewal.
6. If the **Company** cancels or nonrenews an Insured's policy, the **Insured's** coverage under that policy shall terminate on the earlier of:

EXCESS FLORIDA AMENDATORY ENDORSEMENT

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- a. the date stated on the cancellation or nonrenewal notice; or,
- b. the date the Insured procures replacement coverage.

All other terms and conditions of the policy remain unchanged.

National Fire & Marine Insurance Company

Omaha, Nebraska

All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.

Endorsement No. 13	Forming Part of Policy No. EN004806	First Named Insured Laser Spine Institute, LLC
Effective Date of Endorsement 03/01/2015		

EXCESS MANUSCRIPT ENDORSEMENT

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the policy as follows:

The following exclusion is deleted from provision A. of *I. EXCLUSIONS* of the Excess General Exclusions:

7. **professional services** rendered or which should have been rendered if it is determined that an **Insured** was in any manner, extent or degree impaired by or under the influence of alcohol, narcotics, hallucinogenic agents, drugs or intoxicants of any nature or kind; or,

The following exclusion is deleted from *I. EXCLUSIONS* of the Excess General Exclusions:

- D. Any damages over and above actual compensatory damages. This includes punitive, exemplary, and multiple damages.

and replaced with the following exclusion:

- D. Any damages over and above actual compensatory damages. This includes punitive, exemplary, and multiple damages. However, to the extent that coverage for punitive, exemplary and multiple damages is allowed by law, this exclusion does not apply to the first \$5,000,000 of coverage provided under the Aggregate Limits of Liability of the policy.

The following provision is deleted from paragraph 1. of B. *Reporting Requirements* of the Excess General Conditions:

- b. for which the Company providing the **scheduled limit** has set a loss reserve which exceeds \$100,000;

and replaced with the following provision:

- b. for which the Company providing the **scheduled limit** has set a loss reserve which exceeds \$500,000;

The definition of **claims expense** in the Excess General Definitions is deleted and replaced with the following:

Claims expense means all costs and expenses incurred in connection with the investigation, adjustment, and defense of any **claim**. Such costs and expenses shall only include:

1. attorney fees paid to the law firm selected by the **Company** to defend an **Insured**;
2. court costs;
3. expert fees;
4. reporter fees;
5. the cost of any alternative dispute resolution ordered by a court, otherwise required by law or pre-approved by the **Company**;
6. post-judgment interest on that portion of the judgment that does not exceed the limit of liability available under the applicable Insuring Agreement; and,
7. such other costs and expenses that the **Company** determines to be reasonably related to the defense of a

EXCESS COMMON ENDORSEMENTS

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claim.

However, **claims expense** does not include:

1. **excess loss**;
2. attorney fees awarded to a claimant;
3. the salary of any **employee** of an **Insured**; however, the salary of attorneys paid by the **first named insured** who are directly handling **claims** otherwise covered under this policy will be included as **claims expense**, but only to the extent that the services provided by the attorneys are directly attributable to the defense and management of covered **claims**, and only the portion of each attorney's salary that can be reasonably allocated to the handling and management of the covered **claims** will be included as **claims expense**; or,
4. the forgiveness of any amounts owed for the cost of care or services rendered by an **Insured**.

All other terms and conditions of the policy remain unchanged.