

**ENDURANCE AMERICAN INSURANCE COMPANY**

**EXCESS DIRECTORS AND OFFICERS DIFFERENCE IN CONDITIONS LIABILITY  
INSURANCE POLICY APPLICATION**

**NOTICE: EXCEPT AS OTHERWISE PROVIDED IN THE POLICY, THE POLICY SHALL ONLY APPLY TO CLAIMS FIRST MADE AGAINST INSURED PERSONS DURING THE POLICY PERIOD AND REPORTED IN WRITING TO THE INSURER IN ACCORDANCE WITH THE PROVISIONS OF THE POLICY. THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED AND MAY BE TOTALLY EXHAUSTED BY AMOUNTS INCURRED AS DEFENSE COSTS. PLEASE READ THIS APPLICATION AND THE POLICY CAREFULLY.**

**Instructions for Completing This Application**

Please read carefully. Fully answer all questions and submit all requested information. This Application consists of the information contained herein, all materials submitted herewith and any other information or materials included within the definition of Application in the Policy. All such materials shall be held in confidence.

**GENERAL INFORMATION**

1. The Applicant Company, which is to be the entity named in Item 1. of the Declarations Page (the "Applicant"):

\_\_\_\_\_

Principal Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

2. Officer designated to receive correspondence and notices from the Insurer:

\_\_\_\_\_ (Name of Officer) \_\_\_\_\_ (Title)

**ANNOUNCED CHANGES**

1. Has the Applicant or any Subsidiary publicly revealed in the past 24 months, or does it presently contemplate that within the next 12 months it will be involved in, any:
- a. acquisition, consolidation or merger with any other entity?  Yes  No
  - b. tender offer, acquisition or disposition of any securities, assets or interest in any other corporation, partnership, or joint venture?  Yes  No
  - c. sale, distribution or divestiture of any assets or securities other than in the ordinary course of business?  Yes  No
  - d. bankruptcy proceeding or legal or financial reorganization or arrangement with creditors under federal or state law?  Yes  No

If "Yes" to any question in (a) through (d) above, please attach details.

2. Has the Applicant or any Subsidiary filed in the past 24 months, or contemplated filing within the next 12 months, any registration statement or similar document with any government authority for a public offering or private placement of securities?  Yes  No (If "Yes", please provide applicable prospectus or offering memorandum, if available, and if unavailable please provide complete details).

3. Is the Applicant or any Subsidiary currently or has it at any time over the last year been in material breach of any of its debt covenants, loan agreements, contractual obligations, or does it anticipate any such breach occurring in the next 12 months?  Yes  No (If "Yes", please attach details).
4. During the last 3 years, has the Applicant:
  - a. changed independent auditors?  Yes  No
  - b. restated its financial statements?  Yes  No
5. Does the President, Chief Executive Officer, Chief Financial Officer or any Executive Vice President have knowledge of any matter which may cause the Applicant or any Subsidiary to restate its financial statements in the next 12 months?  Yes  No

#### **LOSS/CLAIMS HISTORY**

1. Has any insurer cancelled or refused to renew any directors and officers liability insurance maintained by the Applicant, whether primary or excess, within the past 3 years?  Yes  No (If "Yes", please attach complete details).
2. Are there any pending Claims against any proposed Insured Persons which may fall within the scope of coverage afforded by any policy presently or previously in effect which provides coverage similar to insurance under the proposed Policy?  Yes  No (If "Yes", please attach a summary description of each Claim and any loss payments by any insurers).
3. Has any proposed Insured Person given notice under the provisions of any other previous or current similar primary or excess insurance policy of any facts or circumstances which may give rise to a Claim?  Yes  No (If "Yes", please attach complete details).

IT IS UNDERSTOOD AND AGREED THAT WITH RESPECT TO QUESTIONS 2 AND 3 ABOVE, IF SUCH CLAIMS OR NOTICE OF FACTS OR CIRCUMSTANCES EXIST, THEN THOSE CLAIMS AND ANY OTHER CLAIMS ARISING FROM SUCH CLAIMS OR NOTICED FACTS OR CIRCUMSTANCES ARE EXCLUDED FROM THE PROPOSED INSURANCE.

#### **PRIOR KNOWLEDGE**

Does any proposed Insured Person have any knowledge or information of any actual or alleged act, error, omission, fact or circumstance which may give rise to a Claim?  Yes  No (If "Yes", please attach complete details).

IT IS UNDERSTOOD AND AGREED THAT IF A PROPOSED INSURED PERSON HAS SUCH KNOWLEDGE OR INFORMATION, THEN ANY CLAIM AGAINST SUCH INSURED PERSON ARISING THEREFROM IS EXCLUDED FROM THE PROPOSED INSURANCE. THE KNOWLEDGE OF ONE INSURED PERSON SHALL NOT BE IMPUTED TO ANOTHER INSURED PERSON FOR PURPOSES OF THIS EXCLUSION.

#### **MATERIALS REQUESTED**

As part of this Application, please submit the following documents or identify a public website which contains the following documents (any such documents submitted to the Insurer or contained on an identified website are deemed attached to and incorporated into this Application):

1. Any registration statements of the Applicant filed within the last year with the Securities and Exchange Commission and any private placement memoranda used within the last 12 months.
2. Copies of the Applicant's by-laws and articles of incorporation relating to indemnification of the proposed Insured Persons.
3. The prospectus for any securities offering planned or expected within the next year (if available).

4. Most recent auditors' letter to management on internal controls and management's response.

**INDEMNIFICATION**

By execution of this application by the President or Chairman of the Board of the Applicant, the Applicant and all Subsidiaries agree to indemnify all proposed Insured Persons and advance defense costs and expenses to the fullest extent required or permitted by their charters or other similar formative documents, by-laws, and any indemnification agreements.

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The persons signing this Application declare that to the best of their knowledge the statements set forth herein and the information in the materials submitted herewith are true and correct and that reasonable efforts have been made to obtain sufficient information from all proposed Insured Persons to facilitate the proper and accurate completion of this Application for the proposed Policy. Signing of this Application does not bind the undersigned to purchase the insurance, but it is agreed that this Application shall be the basis of the contract should a Policy be issued.

It is agreed by all concerned that the particulars and statements contained in this Application and the information in the materials submitted in connection with or incorporated into this Application are true and shall be deemed material to the decision of the Insurer to issue the insurance.

The undersigned agree that if after the date of this Application and prior to the effective date of any Policy based on this Application, any occurrence, event or other circumstance should render any of the information contained in this Application or the information in the materials submitted in connection with or incorporated into the Application inaccurate or incomplete, then the undersigned shall notify the Insurer of such occurrence, event or circumstance and shall provide the Insurer with information that would complete, update or correct such information. Any outstanding quotations may be modified or withdrawn at the sole discretion of the Insurer.

This Application and any material submitted herewith shall be maintained on file by the Insurer, shall be deemed attached as if physically attached to the proposed Policy and shall be considered as incorporated into and constituting a part of the proposed Policy.

The information requested in this Application is for underwriting purposes only and does not constitute notice to the Insurer under any policy of a Claim or potential Claim. All such notices must be submitted to the Insurer pursuant to the terms of the Policy, if and when issued.

The Applicant agrees that any insurance premium paid by the Applicant to the Insurer is free and clear of and does not include directly or indirectly any tax, duty, levy or similar assessment imposed on a policy issued by the Insurer. The Applicant further agrees to indemnify and hold harmless the Insurer in respect of any such tax or any penalty or other loss incurred by the Insurer related thereto.

This Application must be signed by the Chair of the Board and the President of the Applicant. If the Chair of the Board and President are the same individual, the Application must also be signed by the Chief Financial Officer, Chief Operating Officer or General Counsel of the Applicant.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Title: \_\_\_\_\_

A POLICY CANNOT BE ISSUED UNLESS THE APPLICATION IS PROPERLY SIGNED AND DATED.

**FRAUD NOTIFICATION**

**Arkansas** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

<b>Colorado</b>	It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claiming with regard to a settlement or award payable for insurance proceeds shall be reported to the Colorado Division of Insurance within Department of Regulatory Agencies.
<b>District of Columbia</b>	WARNING: It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.
<b>Florida</b>	Any person who knowingly and with intent to injure, defraud, or deceive any insurance company files a statement of claim containing any false, incomplete, or misleading information is guilty of a felony of the third degree.
<b>Hawaii</b>	For your protection, Hawaii law requires you to be informed that presenting a fraudulent claim for payment of a loss or benefit is a crime punishable by fines or imprisonment, or both.
<b>Idaho</b>	Any person who knowingly, and with intent to defraud or deceive any insurance company, files a statement containing any false, incomplete or misleading information is guilty of a felony.
<b>Indiana</b>	A person who knowingly and with intent to defraud an insurer files a statement of claim containing any false, incomplete, or misleading information commits a felony.
<b>Kentucky</b>	Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime.
<b>Louisiana</b>	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
<b>Maine</b>	It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties may include imprisonment, fines, or denial of insurance benefits.
<b>Maryland</b>	Any person who knowingly and willfully presents a false or fraudulent claim for payment of a loss or benefit or who knowingly and willfully presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
<b>Minnesota</b>	A person who files a claim with intent to defraud or helps commit a fraud against an insurer is guilty of a crime.
<b>New Jersey</b>	Any person who includes any false or misleading information on an application for an insurance policy is subject to criminal and civil penalties.
<b>New York</b>	Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.

- Ohio** Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.
- Oklahoma** WARNING: Any person who knowingly, and with intent to injure, defraud or deceive any insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony.
- Pennsylvania** Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.
- Rhode Island** The insurance application form shall indicate the existence of a criminal penalty for failure to disclose a conviction of arson.
- Tennessee** It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.
- Virginia** It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.
- Washington** It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.
- West Virginia** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison."