



Endurance American Insurance Company

(Hereinafter referred to as the "Insurer")
Wilmington, Delaware

FOLLOW FORM EXCESS DIRECTORS AND OFFICERS LIABILITY INSURANCE

NOTICE: PLEASE READ CAREFULLY

This Policy shall follow all the terms and conditions of the **Followed Form** except as stated herein. Terms defined in the **Followed Form** are used herein with the meaning assigned to them in the **Followed Form** unless otherwise indicated.

DECLARATIONS

POLICY NO:

Item 1. **Named Insured:**
Address:

Item 2. **Policy Period:** From: To:
(12:01 A.M. local time at the address stated in Item 1.)

Item 3. **Limit of Liability:** \$ excess of \$
(including defense costs)

Item 4. Pending & Prior Litigation Date:
This policy follows the pending & prior litigation exclusion in the **Followed Form**, except that the applicable date in such exclusion shall be the date indicated in this Item 4.

Item 5. Premium:

Item 6. A. Discovery Period Premium: 100% of the annualized premium indicated in Item 5.
B. Discovery Period One year

Item 7. Notice to Insurer: Endurance American Insurance Company
767 Third Avenue, 5th Floor, New York, NY. 10017

Item 8. Producer's Name and Address:

Item 9. A. Underlying Policy(ies):			
	<u>Insurer</u>	<u>Policy Number</u>	<u>Limit of Liability</u>
			<u>Attachment</u>

B. Followed Form:

Item 10. Forms and Endorsements at Issuance:

Title

Form No.

This Declarations Page, together with the Application (including all information furnished by the **Insureds** in the underwriting of this Policy), the attached Policy form and any written endorsements thereto, shall constitute the contract between the **Insureds** and the Insurer ("Policy").

The Insurer hereby causes this Policy to be signed on the Declarations page by a duly authorized representative of the Insurer.

Authorized Representative

Date

SAMPLE

Policy Issuance Date:
Policy Issuance Office: 767 Third Avenue, New York, NY.
10017

Endurance American Insurance Company
EDO 0001 1108

**FOLLOW FORM
EXCESS DIRECTORS AND OFFICERS LIABILITY INSURANCE POLICY**

THIS POLICY CONTAINS CLAIMS MADE COVERAGES. READ THE ENTIRE POLICY CAREFULLY TO DETERMINE YOUR RIGHTS, DUTIES AND WHAT IS AND WHAT IS NOT COVERED.

In consideration of premium paid and in reliance on all statements made and information furnished by the **Insureds** in the Application or the underwriting of this Policy, and subject to the terms, conditions and limitations of this Policy, Endurance American Insurance Company (herein referred to as the "Insurer") agrees as follows:

I. INSURING CLAUSE

Subject to the terms and conditions of this Policy, the Insurer shall provide to the **Insureds** insurance coverage for Claims first made during the **Policy Period**, including the Discovery Period if exercised. Liability for any covered Loss on account of covered Claims shall attach to the Insurer only after (i) the insurers of the **Underlying Policy(ies)** and/or the **Insureds** shall have paid in legal currency the full amount of the **Underlying Limit**, and (ii) the **Insureds** shall have paid the uninsured retention, if any, applicable under the **Primary Policy**. The Insurer shall then be liable to pay only covered Loss in excess of such **Underlying Limit** up to its **Limit of Liability** as set forth in Item 3 of the Declarations, which shall be the maximum aggregate liability of the Insurer under this Policy with respect to all Claims first made in each **Policy Period**, including the Discovery Period if exercised, against all **Insureds** irrespective of the time of payment by the Insurer.

II. TERMS AND CONDITIONS

A. FOLLOWING FORM

This Policy, except as stated herein, is subject to all terms, conditions, representations and limitations as contained in the **Followed Form** as of inception of this Policy, and to the extent coverage is further limited or restricted thereby, in any other **Underlying Policy(ies)**. In no event shall this Policy grant broader coverage than would be provided by any of the **Underlying Policy(ies)**. In the event of any conflict between the terms, conditions, and limitations of this Policy and any **Underlying Policy**, the terms, conditions and limitations of this Policy shall control.

B. UNDERLYING POLICIES

1. In the event and only in the event of the reduction or exhaustion of the **Underlying Limit** by reason of the insurers of the **Underlying Policy(ies)** and/or the **Insureds** paying in legal currency Loss covered under the respective **Underlying Policy(ies)**, this Policy shall: (i) in the event of reduction, pay excess of the reduced **Underlying Limit**, and (ii) in the event of exhaustion, continue in force as primary insurance; provided always that in the latter event this Policy shall only pay excess of the retention, if any, applicable under the **Primary Policy**, which retention shall be applied to any subsequent Loss in the same manner as specified in the **Primary Policy**.
2. Notwithstanding any of the terms of this Policy which might be construed otherwise, this Policy shall drop down only in the event of reduction or exhaustion of the **Underlying Limit** as described above, and shall not drop down for any other reason including, but not limited to, uncollectability (in whole or in part) of any **Underlying Policy(ies)**. The risk of uncollectability of the **Underlying Policy(ies)** (in whole or in part) whether because of financial impairment or insolvency of an underlying insurer or for any other reason, is

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expressly retained by the **Insureds** and is not in any way or under any circumstances insured or assumed by the Insurer.

3. If any **Underlying Policy(ies)** contains a specific grant of coverage that is subject to a sublimit of liability, then coverage under this Policy shall not apply to any Claim which is otherwise subject to such grant of coverage. However, any Loss paid under the **Underlying Policies** on account of such Claim shall reduce or exhaust the **Underlying Limit**, as provided in Section II.B.1 above, for purposes of this Policy.
4. If any **Underlying Policy(ies)** is canceled or terminated during the **Policy Period** including the Discovery Period if exercised, the Insurer shall not be liable under this Policy to a greater extent than it would have been had such **Underlying Policy(ies)** been so maintained. To the extent the terms, conditions or limitations of any of the **Underlying Policy(ies)** are changed to limit or restrict coverage, this Policy shall become subject to such changes upon the effective date of the change in the **Underlying Policy(ies)**. To the extent the terms, conditions or limitations of any of the **Underlying Policy(ies)** are changed to expand or broaden coverage, this Policy shall become subject to such changes only if and to the extent the Insurer agrees to such changes by written endorsement to this Policy and the **Insureds** pay any additional premium reasonably required by the Insurer for such changes.

C. NOTICE

All notices under this Policy shall be in writing and properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Named Insured** at the address as shown in Item 1. of the Declarations. Notice to the Insurer of any Claim or potential Claim under this Policy shall be given to the Insurer at the following address:

Vice President and Manager – Claims
Endurance American Insurance Company
C/O Endurance Specialty Insurance Marketing Corp.
725 South Figueroa Street, Suite 2100
Los Angeles, California 90017

Telephone : (213) 270-7017 Fax: (213) 270-7800

E-Mail addressed to: Eclaims@enhinsurance.com

All other notices to the Insurer under this Policy shall be given to the Insurer at the address set forth in Item 7. of the Declarations, Attention: Underwriting Department. Any notice to the insurer of an **Underlying Policy(ies)** shall not constitute notice to the Insurer unless also given to the Insurer as provided in this Section II.C.

D. CLAIMS PROVISIONS

1. The Insurer may, at its sole discretion, participate in the investigation, defense or settlement of any Claim or potential Claim reported to the Insurer under this Policy even if the **Underlying Limit** has not been exhausted.
2. The Insurer shall maintain full and complete Claims control as respects coverage under this Policy for any Claim, and no action by any other insurer shall bind the Insurer under this Policy. Only those settlements, stipulated judgments and defense costs which have been consented to by the Insurer, which consent shall not be unreasonably withheld, shall be recoverable as Loss under this Policy.

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E. DISCOVERY PERIOD

Subject to the Discovery Period Premium and Discovery Period indicated in Item 6 of the Declarations, the **Insured** shall be entitled to a Discovery Period pursuant to the terms and conditions of the **Followed Form**. The Discovery Period shall not be available unless the **Insured** has elected the Discovery Period in all **Underlying Policies** and has provided proof thereof to the Insurer. The Insurer's maximum liability for all Claims first made during the Discovery Period shall be part of, and not in addition to, the **Limit of Liability** for the **Policy Period**. The Discovery Period is not cancelable. The additional premium for the Discovery Period shall be fully earned at inception of the Discovery Period.

F. CANCELLATION

1. The first **Named Insured** shown in the Declarations may cancel this Policy by mailing or delivering advance written notice of cancellation to the Insurer.
2. The Insurer may cancel this Policy by mailing or delivering to the first **Named Insured** written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if cancellation is for nonpayment of premium; or
 - b. 30 days before the effective date of cancellation if cancellation is for any other reason.
3. The Insurer will mail or deliver notice to the first **Named Insured's** last mailing address known to the Insurer. .
4. Notice of cancellation will state the effective date of cancellation. The **Policy Period** will end on that date.
5. If this Policy is cancelled, the Insurer will send the first **Named Insured** any premium refund due. If the Insurer cancels, the refund will be pro rata. If the first **Named Insured** cancels, the return premium will be computed at .90 of the pro rata unearned premium. The cancellation will be effective even if the Insurer has not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

G. WHEN THE INSURER DOES NOT RENEW

If the Insurer decides not to renew this Policy, the Insurer will mail or deliver to the first **Named Insured** shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

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

H. OTHER INSURANCE

If other insurance applies to a Loss or Claim that is also covered by this Policy, this Policy will apply excess of the other insurance. Nothing herein will be construed to make this Policy subject to the terms, conditions and limitations of such other insurance. However, this provision will not apply if the other insurance is specifically written to be excess of this Policy.

I. TERMS CONFORMED TO STATUTE

Notwithstanding anything in the Policy to the contrary, the terms of this Policy shall conform to the requirements of any state insurance laws or regulations applicable to this Policy.

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J. DEFINITIONS

1. Terms defined in the **Followed Form** are used herein with the meaning assigned to them in the **Followed Form** unless otherwise stated herein. Other words and phrases that appear in bold have special meaning and can be found below or in any endorsement or the specific Policy provision where they appear.
2. **Followed Form, Underlying Policy(ies)** and **Limit of Liability** have the meanings attributed to them in the Declarations.
3. **Insured(s)** means all natural persons and organizations insured by the **Followed Form**.
4. **Named Insured** means the entity named in Item 1 of the Declarations.
5. **Primary Policy** means the first listed policy in Item 9.A of the Declarations.
6. **Policy Period** means the period of time specified in Item 2. of the Declarations, subject to prior termination in accordance with the **Followed Form**.
7. **Underlying Limit** means an amount equal to the aggregate of all limits of liability, as set forth in Item 9. of the Declarations, for all **Underlying Policies**, plus the uninsured retention, if any, applicable under the **Primary Policy**.

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