

**MARKET CONDUCT EXAMINATION**

**OF**

**ENDURANCE AMERICA SPECIALTY  
INSURANCE COMPANY**

**AS OF**

**OCTOBER 8, 2007**

I, Matthew Denn, Insurance Commissioner of the State of Delaware, do hereby certify that the attached REPORT ON MARKET CONDUCT EXAMINATION, made as of OCTOBER 8, 2007 of the

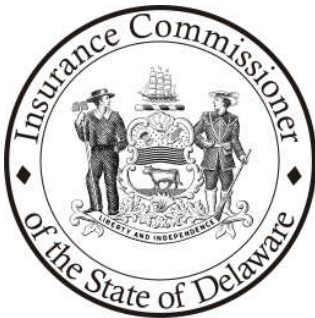
**ENDURANCE AMERICA SPECIALTY INSURANCE COMPANY**

is a true and correct copy of the document filed with this Department.

ATTEST BY:

*Annette Handy*

DATE: 23 APRIL 2008



*In Witness Whereof,* I HAVE HEREUNTO SET MY HAND AND AFFIXED THE OFFICIAL SEAL OF THIS DEPARTMENT AT THE CITY OF DOVER, THIS 23RD DAY OF APRIL 2008.

*Matthew Denn*

*Insurance Commissioner*

**REPORT ON MARKET CONDUCT EXAMINATION**  
OF THE  
**ENDURANCE AMERICA SPECIALTY INSURANCE COMPANY**  
AS OF  
**October 8, 2007**

The above captioned Report was completed by examiners of the Delaware Insurance Department.

Consideration has duly been given to the comments, conclusions, and recommendations of the examiners regarding the status of the Company as reflected in the Report.

This Report is hereby accepted, adopted, and filed as an official record of this Department.

A handwritten signature in black ink, appearing to read "Matt Denn", written over a horizontal line.

MATTHEW DENN  
INSURANCE COMMISSIONER

DATED this 23rd day of APRIL, 2007.

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## **SALUTATION**

November 16, 2007

Honorable Matthew Denn  
Insurance Commissioner  
State of Delaware  
841 Silver Lake Boulevard  
Dover, Delaware 19904

Dear Commissioner Denn:

In compliance with the instructions contained in Certificate of Examination Authority Number 07-706, and pursuant to statutory provisions including 18 Del. C. §318-322, a market conduct examination has been conducted of the affairs and practices of:

### **Endurance American Specialty Insurance Company**

The examination was performed as of October 08, 2007. Endurance American Specialty Insurance Company, hereinafter referred to as the "Company" or as "EASIC," is incorporated under the laws of the State of Delaware. The examination consisted of two phases, an on-site phase and an off-site phase. The on-site phase of the examination was conducted at the following Company location:

767 Third Avenue, 5<sup>th</sup> Floor, New York, NY 10017

The off-site examination phase was performed at the offices of the Delaware Department of Insurance, hereinafter referred to as the "Department" or "DDOI," or other suitable locations.

The report of examination herein is respectfully submitted.

## **EXECUTIVE SUMMARY**

**Endurance America Specialty Insurance Company** (“EASIC” or “Company”) is a wholly-owned subsidiary of, Endurance American Insurance Company (“EAIC”) and is domiciled in Delaware. EASIC was organized on September 9, 1982 as a Delaware corporation. Its home office and principal executive offices are located at 767 Third Avenue, 5<sup>th</sup> Floor, New York, NY 10017.

EASIC is an excess and surplus lines specialty carrier, writing small to medium-sized property and casualty business on a non-admitted basis. The Company currently operates in forty-seven (47) states, the District of Columbia and Puerto Rico, and has an application pending in the U.S. Virgin Islands. The Company intends to pursue surplus lines eligibility in all non-domiciliary U.S. jurisdictions.

The examination was a market conduct examination of the following business areas: Company Operations/Management; Complaint Handling; Marketing/Sales; Producer Licensing, Policyholder Service; Underwriting and Claims Handling. This is a Delaware Baseline Examination in which the processes, procedures and controls utilized by the Company are reviewed and evaluated.

The following recommendations have been made as a result of this examination

In Procedure 22, Prevention of Use of Persons with Felony Conviction, it is recommended that the Company implement an annual review process to verify and maintain assurance that employees are not in conflict with 18 U.S.C.A. §1033.

In Procedure 48, Catastrophe Claim Handling, it is recommended that the Company establish a process to periodically review and evaluate the adequacy of its plan for servicing policyholders and claimants after a catastrophic event occurs.

The basis for the above recommendations are discussed under each of the related procedures.

## **SCOPE OF EXAMINATION**

The basic business areas that are subject to a Delaware Market Conduct Examination vary depending on the type on insurer. For all insurers these areas include:

- Company Operations/Management
- Complaint Handling
- Marketing and Sales
- Producer Licensing
- Policyholder Service
- Underwriting and Rating
- Claims

This examination is a Delaware Baseline Market Conduct Examination. It is comprised of two components. The first is a review of the Company’s countrywide complaint patterns. This is not

## **Endurance America Specialty Insurance Company**

a pass/fail test. It is aimed at determining if there is a detectable pattern to the complaints the Company receives from all sources.

The second component is an analysis of the management of the various business areas subject to a Market Conduct examination through a review of the written procedures and operating processes of the Company. This includes an analysis of how the Company communicates its instructions and intentions to its operational echelons, how it measures and monitors the results of those communications, and how it reacts to and modifies its communications based on the resulting findings of the measurement and monitoring activities. The examiners also determine whether this process is dynamic and results in enhanced compliance activities. Because of the predictive value of this form of analysis, focus is then made on those areas where review indicators suggest that the process used by management does not appear to be achieving appropriate levels of statutory and regulatory compliance.

All business areas noted above are addressed to some extent by one or more of the procedures reviewed, thus providing a comprehensive view of the Company and its component operations.

This examination report is a report by exception rather than a report by test. This means that only those areas where recommendations for improvement were noted are detailed in this report.

## **HISTORY AND PROFILE**

Endurance American Specialty Insurance Company (“EASIC”) changed its name from Traders & Pacific Insurance Company (“TPIC”) on June 8, 2006. As of September 30, 2006, all of the issued and outstanding shares of EASIC were contributed by its then-current parent company, Endurance Reinsurance Corporation of America (“ERCA”), to Endurance American Insurance Company (“EAIC”), who became the 100% shareholder of EASIC. The Delaware Commissioner of Insurance and the New York Superintendent of Insurance both approved this transfer of shares. Prior to ownership by Endurance, EASIC was owned by OneBeacon Insurance Company. EASIC became ERCA’s wholly-owned subsidiary on August 1, 2005, following receipt of approval for the transaction by both the Delaware Commissioner of Insurance and the New York Superintendent of Insurance.

EASIC is currently admitted in Delaware and surplus lines eligible in forty-nine (49) jurisdictions (47 states, District of Columbia, and Puerto Rico) and has an application pending in the U.S. Virgin Islands. The Company intends to pursue surplus lines eligibility in all non-domiciliary U.S. jurisdictions.

EASIC was originally incorporated in Delaware as a stock property & casualty insurance company on September 9, 1982. Its original Certificate of Authority was issued on September 20, 1983 and it authorized the Company to transact the business of property, marine and transportation, and casualty insurance. EASIC was a member of the Houston General Insurance Group and a wholly owned subsidiary of Houston General Insurance Company. Tokio Marine and Fire Insurance Company, Limited, of Tokyo, Japan owns Houston General and its subsidiaries.

## **Endurance America Specialty Insurance Company**

Effective January 1, 1998, Houston General and its subsidiaries including EASIC were acquired by Commercial Union plc, a United Kingdom corporation. Immediately after closing, Commercial Union contributed the stock of Houston General to Commercial Union Assurance Company plc, which in turn contributed the Houston General stock to Commercial Union Corporation, a U.S. holding company. On June 1, 2001, White Mountains Insurance Group, Ltd. acquired Commercial Union, including Houston General and its subsidiaries.

In January of 2002, the stock of Houston General was sold to OneBeacon Insurance Company, a White Mountains subsidiary, to facilitate reactivating the company, which had been in run-off since its acquisition by Commercial Union in 1998.

EASIC is a 100% direct subsidiary of Endurance American Insurance Company, a Delaware corporation, and is ultimately owned by Endurance Specialty Holdings Ltd. ("Endurance Holdings"), a Bermuda exempted limited-liability Company. The shares of Endurance Holdings are publicly traded on the New York Stock Exchange under the symbol "ENH." Endurance Holdings, through its operating subsidiaries, is a global provider of property and casualty insurance and reinsurance. The Endurance group launched operations at the end of 2001 after raising approximately \$1.2 billion. As of December 31, 2007, Endurance Holdings' shareholders' equity was approximately \$2.5 billion. Endurance's operating entities carry group ratings of "A" ("Excellent") by A.M. Best Company and "A" ("Strong") from Standard & Poor's.

## **METHODOLOGY**

This examination is based on the Standards and Tests for a Market Conduct Examination of a Property & Casualty Insurer found in Chapter VIII of the Delaware Market Conduct Examiners' Handbook. This chapter is derived from applicable Delaware Statutes, Rules and Regulations as referenced herein and the *NAIC's Market Conduct Examiners' Handbook* (2004 edition).

The types of review used in this examination fall into three general categories: generic, sample, and electronic.

A "generic" review indicates that a standard was tested through an analysis of general data gathered by the examiner, or provided by the examinee in response to queries by the examiner.

A "sample" review indicates that a standard was tested through direct review of a random sample of files using a sampling methodology described in the Delaware Market Conduct Examiners' Handbook and the *NAIC's Market Conduct Examiners' Handbook*. Samples of complaint files, underwriting files and claim files were reviewed to determine that the processes described by the Company are actually used by the Company.

An "electronic" review indicates that a standard was tested through the use of a computer program or routine applied to a download of computer records of the examinee. This type of review typically reviews one hundred percent (100%) of the records of a particular type.

In this examination only two standards were directly tested. Standards and procedures were tested through a combination of "generic" review and direct observation of the processes used.



**Endurance America Specialty Insurance Company**

Each Standard contains a brief description of the purpose or reason for the Standard. The Procedure review does not include this feature. The examiners' "Observations" are noted following each Standard or Procedure tested. While each Standard is summarized and "Observations" are noted here, only those Procedures where exceptions were noted will be highlighted.

**A. COMPANY OPERATIONS/MANAGEMENT**

This examination report is not designed to be a pass/fail report with the exception of the following two standards dealing with appropriate licensure and cooperation with the examination process.

**Standard A 08**

<p><i>NAIC's Market Conduct Examiners' Handbook - Chapter VIII, §A, Standard 8</i> <b>The Company is licensed for the lines of business that are being written.</b> 18 Del. C. §318(a), §505(b), §508(b)</p>
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The review methodology for this standard is "generic." This standard has a direct insurance statutory requirement. This standard is intended to ensure that the Company's operations are in conformance with the Company's Certificate of Authority.

*Results:* **Pass**

*Observations:* The Company is licensed for the lines of business being written based upon a review of premium schedules and the Company's Delaware Certificate of Authority.

*Recommendations:* None

**Standard A 09**

<p><i>NAIC's Market Conduct Examiners' Handbook - Chapter VIII, §A, Standard 9</i> <b>The Company cooperates on a timely basis with the examiners performing the examination.</b> 18 Del. C. §318(a), §320(c), §508(b), §520(b) 3</p>
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The review methodology for this standard is "generic." This standard has a direct insurance statutory requirement. This standard is intended to ensure that the Company is cooperating with the state in the completion of an open and cogent review of the Company's operations. Cooperation with the examiners in the conduct of an examination is not only required by statute, it is conducive to completing the examination in a timely manner thereby minimizing cost.

*Results:* **Pass**

*Observations:* The Company cooperated with the examiners in the conduct of the examination. Access to persons pertinent to the completion of the examination was provided and persons interviewed were open and informative. The majority of the information requested was received

## **Endurance America Specialty Insurance Company**

in a timely manner and the Company personnel made frequent visits to confirm information and receive status updates.

*Recommendations:* None

### **B. COMPLAINTS**

The evaluation of the Standards in this business area is based on the Company's response to various information requests (IRs) and complaint files at the Company. Delaware statute 18 Del. C. §2304(17) requires the Company to "...maintain a complete record of all complaints received." The statute also requires that "this record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints and the time it took to process each complaint." Delaware's definition of a complaint is: "...any written communication primarily expressing a grievance."

*Observations:* The Company did not have any complaints during the period of examination. The NAIC's listing of complaints for the same period also reflected no complaints from all states.

### **REVIEW OF PROCEDURES**

The management of well-run companies generally has some processes that are similar in structure. These processes usually take the form of written procedures. While these procedures vary in effectiveness from company to company, the absence or ineffective application of written procedures is often reflected in the failure of the various Standards that follow this section of the report. The processes usually include:

- a planning function where direction, policy, objectives and goals are formulated;
- an execution or implementation of the planning function elements;
- a measurement function that considers the results of the planning and execution; and
- a reaction function that utilizes the results of measurement to take corrective action or to modify the process to develop more efficient and effective management of its operations.

If there is an absence of written operating procedures providing direction for company staff, the application of the procedures and the end results tends to be inconsistent. The same is generally true of the absence of a means to measure the results of the application of procedures and a means to determine that the process is performing as intended.

The reviews in this section are not pass/fail measurements. Rather, they are intended to reflect those management strengths and weaknesses that have a bearing on regulatory compliance issues.

The following areas were reviewed but no concerns or recommendations were noted.

**No Recommendations or Concerns:**

Procedure 01 – Audit (Internal and External)  
Procedure 02 – Assertions of Privilege  
Procedure 05 – Anti-Fraud  
Procedure 07 – Managing General Agent (MGA) Oversight and Control  
Procedure 08 – Vendor Oversight and Control  
Procedure 09 – Customer and Consumer Privacy Protection  
Procedure 10 – Insurance Information Management  
Procedure 11 – Complaint Handling  
Procedure 13 – Advertising, Sales and Marketing  
Procedure 14 – Agent Produced Advertising  
Procedure 20 – Producer Selection, Appointment and Termination  
Procedure 21 – Producer Defalcation  
Procedure 24 – Premium Billing  
Procedure 26 – Policy Issuance  
Procedure 28 – Requesting Claim History  
Procedure 30 – Premium Determination and Quotation  
Procedure 32 – Underwriting and Selection  
Procedure 34 – Termination  
Procedure 35 – Underwriting File Documentation  
Procedure 40 – Staff Training  
Procedure 43 – Claim Handling  
Procedure 44 – Internal Claim Audit  
Procedure 45 – Claim File Documentation

**Procedures Reviewed with Recommendations:**

**Procedure 22 – Prevention of the Use of Persons with a Felony Conviction**

*Observations:* The Company does not have a formal written procedure but does have a process that is being used to prevent the hiring of employees or producers with felony convictions. The Human Resources Department (HR) performs criminal background checks on new employees and producers utilizing the Company's on-line services, Owens On-Line. The prospective employee authorizes the background check in writing after being apprised of their rights under the Fair Credit Reporting Act (FCRA). The Company states that "The Owens On-Line system conducts the background check and prepares a written report addressing the following relevant areas: criminal (county and federal level), motor vehicle report, terrorist and sex offender search, credit status, prior employment and education. In addition, the Endurance Employment Application asks the applicant whether they have ever been convicted of a criminal offense (felony or serious misdemeanor) and, if so, the applicant must state the nature of the crime(s), when and where they were convicted and the disposition of the case."

The Human Resources Department also utilizes a checklist that identifies all of the requirements that need to be met prior to employment. However, following this initial review, the Company does not confirm compliance with 18 U.S.C.A. §1033. Follow-up audits are not conducted to determine whether post employment felony convictions have occurred.

## **Endurance America Specialty Insurance Company**

*Recommendations:* It is recommended that the Company implement an annual review process to verify and maintain assurance that all employees are not in conflict with 18 U.S.C.A. §1033.

### **Procedure 48 – Catastrophic Claim Handling**

*Observations:* The Company has a written catastrophic claim handling procedure. This procedure has been in effect since the acquisition of the Company; however, it was not formally documented until April 2007.

The Company's plan anticipates the need to provide additional support during catastrophes based on their risk exposure in various areas and lines of business and the anticipated size of catastrophe scenarios. In all instances, additional internal staff would be made available to assist in receiving reports and handling claims. If additional resources are needed the Company would first rely on using local independent adjusters from the affected areas for any field adjustment work that may be needed. If more resources were needed the Company plans to utilize out of area independent adjusters as needed.

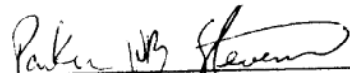
The Company states, "any adjusters that are retained to handle catastrophe claims would need to provide proof that they are licensed in the respective state that the loss occurred. The primary contact for the Company maintains adjuster licenses in the following states: California, Florida, Texas, Connecticut, Oklahoma, Kentucky, South Carolina, Delaware, New Mexico, and North Carolina. The primary contact within the Company would ensure that any staff or independent adjusters are trained in emergency procedures and state-specific insurance coverages. Any communications with policyholders would be on a direct basis through the Company or its authorized representatives. For those policyholders who may be difficult to reach, communication would be made through the broker or agent."

After reviewing the information provided it was noted that the Company had not established a process to periodically review its plan for servicing policyholders and claimants after a catastrophic event occurs.

*Recommendations:* It is recommended that the Company establish a process to periodically review and evaluate the adequacy of its plan for servicing policyholders and claimants after a catastrophic event occurs.

**CONCLUSION**

The examination was conducted by Parker W.B. Stevens, Steve E. Misenheimer, and Candace R. Pickens and is respectfully submitted.

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Parker Stevens, FLMI, AIRC, CCP, CIE  
Market Conduct Examiner-in-Charge  
Insurance Department  
State of Delaware