

REPORT ON EXAMINATION

OF

NORTH AMERICAN INDEMNITY COMPANY

Nashville, Tennessee

as of

December 31, 2008

THE DEPARTMENT OF COMMERCE AND INSURANCE

STATE OF TENNESSEE

Nashville, Tennessee

RECEIVED

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Dept. of Commerce & Insurance
Company Examinations

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Nashville, Tennessee
June 10, 2010

Commissioner Leslie Newman
Tennessee Department of Commerce and Insurance
Davy Crockett Tower, Fifth Floor
500 James Robertson Parkway
Nashville, Tennessee 37243-0565

Commissioner:

Pursuant to your instructions and in accordance with Tennessee Insurance Laws and Regulations, and Resolutions adopted by the National Association of Insurance Commissioners (NAIC), a financial examination and market conduct review was made of the condition and affairs of:

NORTH AMERICAN INDEMNITY COMPANY
3401 West End Avenue, Suite 600
Nashville, Tennessee 37203

(hereinafter referred to as the Company) as of December 31, 2008, and a report thereon is hereby respectfully submitted.

INTRODUCTION

This examination was called by the Commissioner of Commerce and Insurance of the State of Tennessee and commenced on January 7, 2010. The examination was conducted under the association plan of the NAIC by duly authorized representatives of the Tennessee Department of Commerce and Insurance.

SCOPE OF EXAMINATION

The period covered hereunder is from December 31, 2003, the date of the last examination, to the close of business on December 31, 2008, the date of this examination. The examination of the financial condition was conducted in accordance with guidelines and procedures contained in the National Association of Insurance Commissioners (NAIC) Examiners Handbook. During the course of the examination, assets were verified and valued and liabilities were determined and estimated as of December 31, 2008. The financial condition of the Company and its amount of solvency were thereby established. Test checks were made of income and disbursement items for selected periods, and a

general review was made of the Company's operations, practices, and compliance with applicable statutes and regulations. All asset and liability items contained in the financial statement of this report were examined and verified with relative emphasis according to their amount and potential impact on capital and surplus.

An examination was also made into the following matters:

- Company History
- Charter and Bylaws
- Management and Control
- Corporate Records
- Fidelity Bonds and Other Insurance
- Territory
- Plan of Operation
- Market Conduct Activities
- Reinsurance
- Retirement Plan and Other Employee Benefits
- Loss Experience
- Accounts and Records
- Statutory Deposits
- Litigation
- Financial Statement

Previous Examination Recommendations

The previous examination of the Company was conducted as of December 31, 2003 by examiners of the Tennessee Department of Commerce and Insurance (the Department). The recommendations included in the previous report on examination, and their resolutions are as follows:

- It is recommended that all charter amendments be approved by the Tennessee Department of Commerce and Insurance as set forth by TENN. CODE ANN. § 56-2-103(6) before submitting to the Secretary of State. Under TENN. CODE ANN. § 48-15-102 a corporation may change its registered office by delivering to the secretary of state for filing a statement of such change.

No charter amendments were made during the period under examination. In addition, it appears that all prior amendments to the Company's Charter were approved by the Department. Therefore, the Company appears to be in compliance with this recommendation.

- The Company's custodial agreement with Delaware Trust Capital Management in effect as of the date of examination did not meet the requirements set forth

by TENN. CODE ANN. § 56-3-112(b) and Tenn. Comp. R. & Regs., 0780-1-46-.04. The Company, Delaware Trust Company, National Association and certain representatives of the Tennessee Department of Commerce and Insurance worked to resolve the problem prior to the completion of the examination and created an amended agreement dated November 11, 2004 that met the standards.

The amended custodial agreement with Delaware Trust Capital Management is still in effect. Therefore, the Company appears to be in compliance with this recommendation.

- TENN. CODE ANN. § 56-13-113 states that each annual statement filed by a captive insurance company shall be in such form as approved by the commissioner. The Company has elected to amortize acquisition premiums and discounts on bonds using the straight-line method. The Company understands that this is not the prescribed method for amortization but has determined that the overall difference between the two methods is immaterial. The Company plans to file its tax return using the straight-line method and is aware of the potential exposure. Considering this, the Company will note the method used in the Annual Statement notes (as in the prior year), but will not recalculate using the effective interest method for all bonds. Thus, the Company is in violation of TENN. CODE ANN. § 56-13-113 which states that each statement filed by a captive insurance company shall be in such form as approved by the Commissioner.

As of December 31, 2008, the Company did not own any bonds or other investments requiring amortization of premium or discount, therefore the amortization method is no longer an issue.

COMPANY HISTORY

The Company was incorporated on July 23, 1986, as a for-profit pure captive insurance company under the provisions of the Tennessee General Corporation Act and the Tennessee Captive Insurance Act. On July 28, 1986, the Board of Directors of the Company approved the issuance of 4,000 shares of authorized common capital stock to MATSCO, Inc., a Georgia corporation located at 1600 Kenview Drive, Marietta, Georgia. As consideration for the issuance of such common stock, the Company was provided an irrevocable letter of credit issued by Commerce Union Bank, Nashville, Tennessee, on behalf of the Company in favor of the Commissioner of Commerce and Insurance, State of Tennessee, as its designated beneficiary. Such irrevocable letter of credit was issued on August 1, 1986, and is automatically renewable in periods, each of one year, for a maximum amount of \$750,000; of which, the Board of Directors designated \$400,000 as capital paid in and \$350,000 as gross paid in and contributed surplus pursuant to the

provisions of TENN. CODE ANN. §§ 56-13-116 and 56-13-119. On August 29, 1986, the Company was issued a Certificate of Authority by the Department of Commerce and Insurance, State of Tennessee, effective August 25, 1986, to transact the business of Professional Liability, Property, Casualty, Errors and Omissions, and Comprehensive General Liability Insurance.

Effective January 2, 1990, MATSCO, Inc. transferred all outstanding shares of the Company's authorized common capital stock to Corporate Investments, Inc. (a Delaware Corporation) which is a wholly owned corporate subsidiary. On December 19, 1994, an order was signed by the Commissioner of Commerce and Insurance, State of Tennessee which allowed the transfer of all outstanding shares of the Company's authorized common capital stock to Robert E. Matthews and ordered this transfer exempt from the provisions of TENN. CODE ANN. § 56-11-103. This acquisition did not change or influence the control of the Company since Mr. Matthews was the majority shareholder of the corporate affiliate which previously owned all outstanding shares.

At December 31, 2008, the Company's authorized capital stock was 4,000 shares of \$100 par value common stock, of which 400 shares were outstanding.

Growth of Company

The following exhibit depicts certain aspects of the growth and financial history of the Company since the previous examination, according to annual statements filed with the Department of Commerce and Insurance, State of Tennessee.

<u>Date</u>	<u>Earned Premiums</u>	<u>Incurred Losses & LAE</u>	<u>Admitted Assets</u>	<u>Liabilities</u>	<u>Capital and Surplus</u>
12/31/04	\$ 460,000	\$ (48,374)	\$ 11,732,940	\$ 3,186,992	\$ 8,545,948
12/31/05	-0-	(1,972,318)	2,496,668	1,171,567	1,325,101
12/31/06	-0-	-0-	1,935,481	500,000	1,436,481
12/31/07	-0-	(500,000)	1,436,571	-0-	1,436,571
12/31/08	-0-	-0-	1,302,711	65	1,302,646

CHARTER AND BYLAWS

Charter

The Charter was filed and recorded with the Tennessee Secretary of State on July 23, 1986, and recorded with the Davidson County Clerk on July 30, 1986. The principal purposes of the Company are "To engage in the insurance business in the State of Tennessee and elsewhere as a captive insurance company; to make insurance and

reinsurance, both in the State of Tennessee and elsewhere, to protect against professional liability, property, casualty, errors and omissions and comprehensive general liability pursuant to the Tennessee Captive Insurance Company Act." The Charter authorizes a maximum number of 4,000 shares of common capital stock with a par value of \$100 per share.

Articles of Amendment to the Charter were filed with the Secretary of State's office on April 14, 1988 and the Davidson County Clerk on April 15, 1988 to change the address of the principal and home office and to add the language of the Tennessee Business Corporation Act concerning director liability for breach of fiduciary liability. The amendment was approved by the Department on April 13, 1988.

The corporation's existence is perpetual and its principal and home office is established at 3401 West End Avenue, Suite 600, Nashville, Tennessee.

There were no charter amendments during the period under examination.

Bylaws

The Bylaws of the Company in effect at December 31, 2008 were adopted by the unanimous consent of the Board on July 28, 1986 and have not been amended or changed during the period covered by this examination. The Bylaws are consistent with the Charter and contain no unusual provisions. They provide for the regulation of the business and for the conduct of the affairs of the Company, the directors and the shareholder.

The Bylaws state that the officers for the corporation shall be a President, a Secretary and such other officers as may be elected from time to time by the Board of Directors. One person may hold more than one office except the President may not hold the office of Secretary. Each officer shall serve at the pleasure of the Board of Directors for such time as the Board may set and until his successor shall have been elected and qualified, or until his death, resignation or removal.

The Bylaws may be altered, amended or repealed, and new Bylaws may be adopted only by the affirmative vote of a majority of all the issued and outstanding common stock of the corporation.

MANAGEMENT AND CONTROL

Management

The Bylaws vest the management of the business and affairs of the Company in the Board of Directors. According to the bylaws of the Company, each director shall serve for a term

not to exceed three years and until his successor shall be elected and qualified. As of December 31, 2008, the Board of Directors of the Company was composed of the following:

Quinton William Hammack, Jr.
John Hansford Ross
James Clyde Scott, Jr.

As of December 31, 2008, the following persons held office in the Company:

Quinton William Hammack, Jr., President
James Clyde Scott, Jr., Secretary/Treasurer
John Hansford Ross, Vice President
Daniel Durand Hite, Assistant Vice President

As of December 31, 2008, the Investment Committee was composed of the following:

Quinton William Hammack, Jr.
John Hansford Ross
James Clyde Scott, Jr.

Management Agreements

The Company has no employees of its own. Personnel and services are provided through service agreements with C. W. Matthews Contracting Company, Inc. (CWMCC), an affiliated corporation, and Polk & Sullivan Group, Inc., now known as First Horizon Insurance Group, Inc. (FHI).

The Service Agreement with CWMCC was entered into on January 3, 1995. Under the agreement, CWMCC provides the Company with administrative services, including complete and timely financial and managerial accounting reports, data processing services, strategic planning and management, preparation and filing of all tax returns, licensing and registration services, and any additional services that the parties may agree upon. The agreement was approved by the Tennessee Department of Commerce and Insurance on February 1, 2001.

The Management Agreement with FHI was made effective as of March 31, 2002 and is renewable annually. Under the agreement, FHI provides the Company with management-related professional and administrative services, including mailing premium notices, receiving premium payments, advising the Company on reinsurance agreements, and any other administrative or clerical function mutually agreed upon by the parties.

Pecuniary Interest

A check for compliance with TENN. CODE ANN. § 56-3-103 found that no director or officer of the Company had a pecuniary interest in the investment or disposition of Company funds.

Conflict of Interest Policy

The Company has established a conflict of interest policy for its directors and officers, however, annual disclosures are not required.

Control

The Company is wholly-owned by Robert E. Matthews, a Georgia resident. Mr. Matthews is also the majority stockholder of C. W. Matthews Contracting Company, Inc., a large highway and bridge construction firm located in Marietta, Georgia.

Dividends

At December 31, 2008, 100% of the outstanding shares of the Company were owned by Robert E. Matthews, the Company's parent. The following dividends were paid by the Company during the examination period:

Date	Paid To	Amount
3/16/05	Robert E. Matthews	\$ 854,595.25
5/13/05	Robert E. Matthews	\$5,457,180.04
5/25/05	Robert E. Matthews	\$ 733,751.00
11/04/05	Robert E. Matthews	\$1,744,501.30
12/19/05	Robert E. Matthews	\$1,332,561.35

The dividend paid on March 16, 2005 was an ordinary dividend, and as such, did not require the Department's approval. The dividends paid on May 13 and May 25, 2005, were approved by the Department. Approval for the November 4 and December 19, 2005 dividends was not requested prior to their being paid. The Company requested retroactive approval of these extraordinary dividends on April 5, 2006. Such approval was not granted, however, the Department allowed the dividends to stand without taking any additional action.

CORPORATE RECORDS

Minutes of the meetings of the shareholders of the Company were reviewed for the period under examination. In general, such minutes appear to be in proper order and accurately report the proceedings of each respective meeting.

FIDELITY BOND AND OTHER INSURANCE

As of December 31, 2008, and the date of this examination report, the Company is not a named insured under the fidelity bond and other insurance issued to CWMCC. Minimum fidelity coverage suggested in the National Association of Insurance Commissioners' Examiners Handbook for a company of its size and premium volume is not less than \$25,000.

TERRITORY

As of December 31, 2008, and as of the date of this examination report, the Company was licensed to transact business only in the State of Tennessee. The Certificate of Authority for that jurisdiction was reviewed.

SCHEDULE T - EXHIBIT OF PREMIUMS WRITTEN

The Company had \$0 in premiums written in 2008.

PLAN OF OPERATION

The Company is a pure captive insurance company with one policyholder, C. W. Matthews Contracting Company, Inc. Ending on March 31, 2004, the Company annually issued an excess liability policy of \$1,000,000 above CWMCC's initial self insured layer of \$1,000,000. MATSCO, Incorporated and Kenview Corporation were also named insureds under the policy. The coverage provided was for personal injury liability and property damage liability. The last policy written expired on March 31, 2005.

MARKET CONDUCT ACTIVITIES

In accordance with the policy of the Department of Commerce and Insurance, State of Tennessee, a market conduct review was made of the Company as of December 31, 2008 in conjunction with this examination. The following items were addressed:

Policy Forms, Rating and Underwriting

Under Section 56-13-125, Tennessee Code Annotated, rates are filed with the Department only if the Commissioner deems necessary. The policy written to C. W. Matthews Contracting Company, Inc. was reviewed.

Advertising

The Company does no advertising.

Claims Review

The Company did not have any claims during the period under review.

Policyholder Complaints

During the period under examination there appeared to be no unusual practices or items warranting criticism of the Company.

Privacy

The Company is not subject to Tenn. Comp. R. & Regs. §0780-1-72 since it does not insure or transact business with any individuals.

Anti-Fraud Plans

The Company is exempt from TENN. CODE ANN. § 56-53-111 because it does not have direct written premiums exceeding \$10,000,000.

REINSURANCE

For the entire period under review and as of the date of this examination, the Company has not reinsured any of its risks.

RETIREMENT PLAN AND OTHER EMPLOYEE BENEFITS

As of December 31, 2008, the Company had no employees.

LOSS EXPERIENCE

<u>Year</u>	<u>Losses Incurred</u>	<u>LAE Incurred</u>	<u>Premiums Earned</u>	<u>Loss Ratio</u>
2004	\$ (48,374)	\$-0-	\$ 460,000	(10.52)%
2005	(1,972,318)	-0-	-0-	0%
2006	-0-	-0-	-0-	0%
2007	(500,000)	-0-	-0-	0%
2008	-0-	-0-	-0-	0%

ACCOUNTS AND RECORDS

During the course of examination, such tests and audit procedures were made as were considered necessary, including substantial verification of postings, extensions and footings and reconciliation of subsidiary ledgers to control accounts where necessary. General ledger trial balances were reconciled with copies of annual statements for the years 2004, 2005, 2006, 2007, and 2008. Accounting records conform to generally accepted insurance accounting practices and appear to properly reflect the operations during the period under examination and the status of the Company at the date of examination.

The Company does not have a data processing system as all work is done by their corporate affiliate, C. W. Matthews Contracting Company, Inc.

The Company's Risk Based Capital Report was reviewed and found to be in compliance with requirements.

The Company retains the independent accounting services of Faulkner, Mackie & Cochran for financial statement reporting purposes. This firm has been performing such services for over ten years. The Company qualified for the small company audited financial statement exemption from filing for each year under examination.

As stated in the Property and Casualty Annual Statement Instructions, an insurer that has less than \$1,000,000 total direct plus assumed written premiums during a calendar year, and less than \$1,000,000 total direct plus assumed loss and loss adjustment expense reserves at year-end, in lieu of the Actuarial Opinion required for the calendar year, may submit an affidavit under oath of an officer of the insurer that specifies the amounts of direct plus assumed written premiums and direct plus assumed loss and loss adjustment reserves. An exemption request was made by the Company and approved by the Tennessee Department of Commerce and Insurance for each year under examination.

Thus, there appears to be no violation as respect to Tenn. Comp. R. & Regs. §0780-01-65.03.

STATUTORY DEPOSITS

In compliance with statutory requirements, the Company maintained the following deposits at December 31, 2008:

<u>Where Deposited and Description</u>	<u>Par Value</u>	<u>Statement Value</u>	<u>Market Value</u>
Tennessee			
Letter of Credit	\$750,000	\$750,000	\$750,000
Total special deposits held for the benefit of all policyholders of the Company	<u>750,000</u>	<u>750,000</u>	<u>750,000</u>
Total	<u>\$750,000</u>	<u>\$750,000</u>	<u>\$750,000</u>

LITIGATION

As of December 31, 2008, the Company had no pending litigation, other than that arising out of the normal course of business, which would adversely affect the financial condition of the Company.

FINANCIAL STATEMENT

There follows a statement of assets, liabilities and statement of income at December 31, 2008, together with a reconciliation of capital and surplus for the period under review, as established by this examination:

ASSETS

	<u>Ledger</u> <u>Assets</u>	<u>Assets Not</u> <u>Admitted</u>	<u>Net</u> <u>Admitted</u> <u>Assets</u>
Cash and short-term investments	\$ 460,511	\$ -	\$ 460,511
Investment income due and accrued	678		678
Current federal income tax recoverable	2,654	-	2,654
Aggregate write-ins for other than invested assets:			
Irrevocable letter of credit	750,000	-	750,000
Commission income receivable	88,868	-	88,868
Totals	<u>\$ 1,302,711</u>	<u>\$ -</u>	<u>\$ 1,302,711</u>

LIABILITIES, SURPLUS, AND OTHER FUNDS

Taxes, licenses and fees		<u>\$ 65</u>
Total Liabilities		65
Common capital stock	\$ 400,000	
Gross paid in and contributed surplus	660,828	
Unassigned funds (surplus)	<u>241,818</u>	
Total capital and surplus		<u>1,302,646</u>
Totals		<u>\$ 1,302,711</u>

STATEMENT OF INCOME

UNDERWRITING INCOME

Premiums earned		\$ -
Deductions		
Other underwriting expenses incurred	<u>134,503</u>	
Total underwriting deductions		<u>\$ 134,503</u>
Net underwriting gain		\$ (134,503)

INVESTMENT INCOME

Net investment income earned	<u>13,260</u>	
Net investment gain or (loss)		\$ 13,260

OTHER INCOME

Aggregate write-ins for miscellaneous income	<u>88,868</u>	
Total other income		\$ 88,868
Net income before federal and foreign income taxes		(32,375)
Federal and foreign income taxes incurred		<u>1,550</u>
Net income		<u>\$ (33,925)</u>

CAPITAL AND SURPLUS ACCOUNT

GAINS AND LOSSES IN SURPLUS

Surplus as regards policyholders, December 31 previous year		\$1,436,571
Net income	(33,925)	
Aggregate write-ins for gains and losses in surplus	<u>(100,000)</u>	
Net change in surplus for the year		<u>(133,925)</u>
Surplus as regards policyholders, December 31 current year		<u>\$1,302,646</u>

RECONCILIATION OF CAPITAL AND SURPLUS
FOR THE PERIOD UNDER EXAMINATION

	2004	2005	2006	2007	2008
Surplus as regards policyholders, December 31 previous year	\$7,435,287	\$8,545,948	\$1,325,101	\$1,435,481	\$1,436,571
Net income	746,516	3,531,673	111,080	639,576	(33,925)
Change in net unrealized capital gains	364,476	(1,383,810)	-	-	-
Change in net deferred income tax	(344)	1,802	-	-	-
Change in non-admitted assets	13	2,077	(700)	11,514	-
Capital changes: paid-in	-	750,000	-	-	-
Dividends to stockholders	-	(10,122,589)	-	-	-
Aggregate write-ins for gains and losses in surplus	-	-	-	(650,000)	(100,000)
Net change for the year	<u>1,110,661</u>	<u>(7,220,847)</u>	<u>110,380</u>	<u>1,090</u>	<u>(133,925)</u>
Surplus as regards policyholders, December 31 current year	<u>\$8,545,948</u>	<u>\$1,325,101</u>	<u>\$1,435,481</u>	<u>\$1,436,571</u>	<u>\$1,302,646</u>

**ANALYSIS OF CHANGES IN FINANCIAL STATEMENT
AND COMMENTS RESULTING FROM EXAMINATION**

Differences in various items were noted during the course of examination; however, none were considered to produce a material effect on surplus funds as regards policyholders, either singly or in the aggregate.

**SUMMARY SCHEDULE FOR "ANALYSIS OF CHANGES
IN FINANCIAL STATEMENT AND COMMENTS RESULTING FROM EXAMINATION"
AS THEY AFFECT SURPLUS**

No schedule or comment is applicable. All noted differences were below the threshold established for examination purposes.

COMMENTS AND RECOMMENDATIONS

The following list presents a summary of comments and recommendations noted in this report:

Comments

- The Company has no Fidelity Bond of its own and is not a named insured on the policy issued to its affiliates. A minimum of \$25,000 of fidelity coverage is suggested by the NAIC Financial Condition Examiners' Handbook for a Company of its size.
- The Company has been recording commissions receivable as an asset in its Annual Statement. This amount represents the commissions on business issued to C.W. Matthews Contracting Company by the Little & Smith, Inc. agency. The agency splits commissions on these jobs with C.W. Matthews, who uses the insurance company's books to process the transactions. The total commission amount for 2007 was \$133,350, and the total commission amount for 2008 was \$88,868.

CONCLUSION

The customary examination practices and procedures, as promulgated by the National Association of Insurance Commissioners, have been followed in connection with the verification and valuation of assets and the determination of liabilities of North American Indemnity Company of Nashville, Tennessee.

In such manner, it was determined that, as of December 31, 2008, the Company had admitted assets of \$1,302,711 and liabilities, exclusive of capital, of \$65. Thus, there existed for the additional protection of the policyholders, the amount of \$1,302,646 in the form of paid-up capital, gross paid-in and contributed surplus and unassigned funds (surplus).

The courteous cooperation of the officers and employees of the Company extended during the course of the examination is hereby acknowledged.

Respectfully submitted,



Rhonda Bowling-Black, CFE
Examiner-in-Charge
State of Tennessee
Southeastern Zone, NAIC



Mike Bacon
Insurance Examiner
State of Tennessee
Southeastern Zone, NAIC

AFFIDAVIT

The undersigned deposes and says that she has duly executed the attached examination report of North American Indemnity Company dated June 10, 2010, and made as of December 31, 2008, on behalf of the Tennessee Department of Commerce and Insurance. Deponent further says she is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of her knowledge, information and belief.

Rhonda Bowling-Black

Rhonda Bowling-Black, CFE
Examiner-in-Charge
State of Tennessee
Southeastern Zone, NAIC

Subscribed and sworn to before me

this 10th day of
June, 2010

Notary *Helen W. Dorsey*

County *Davidson*

State *Tennessee*

Commission Expires *03/03/2014*



ORGANIZATIONAL CHART

