

COMMONWEALTH OF MASSACHUSETTS

Office of Consumer Affairs and Business Regulation DIVISION OF INSURANCE

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		AFFAIRS AND BUSINESS
		REGULATION
		Y •
		Joseph G. Murphy
		Commissioner of Insurance

June 16, 2010

The Honorable Alfred N. Gross
Chairman, NAIC Financial Condition (E) Committee
Commissioner, Bureau of Insurance
Commonwealth of Virginia
P.O.Box 1157
1300 East Main Street
Richmond, VA 23219

The Honorable Joseph G. Murphy
Commissioner of Insurance
The Commonwealth of Massachusetts
Office of Consumer Affairs and Business Regulation
Division of Insurance
1000 Washington Street, Suite 810
Boston, MA 02118

Honorable Commissioners:

Pursuant to your specific instructions and in accordance with Section 4 of Chapter 175 of Massachusetts General Laws ("MGL"), an examination has been made of the financial condition and affairs of:

PROSELECT INSURANCE COMPANY

at its statutory home office located at 101 Arch Street, Boston, Massachusetts 02110. The following report thereon is respectfully submitted.

SCOPE OF EXAMINATION

ProSelect Insurance Company, hereinafter referred to as "ProSelect" or the "Company" was last examined as of December 31, 2003, in accordance with the Association Plan of the National Association of Insurance Commissioners ("NAIC") by the Massachusetts Division of Insurance ("Division"). The current Association examination has been performed by the Commonwealth of Massachusetts, Division of Insurance under the authority of Section 4, Chapter 175 of the Massachusetts General Laws, and covers the transactions of the Company in the five-year period from January 1, 2004 to December 31, 2008, plus any material transactions or events occurring subsequent to the examination date.

The current examination was conducted at the direction of, and under the overall management and control of the examination staff of the Massachusetts Division of Insurance. Representatives from Deloitte & Touche LLP, Deloitte Consulting LLP, and Deloitte Tax LLP (collectively called "Deloitte") were engaged by the Division to assist in the examination by performing certain examination procedures including an information systems review, and an actuarial review of the Company's actuarially determined items.

This risk-focused examination was conducted in accordance with standards and procedures established by the NAIC Financial Condition (E) Committee and prescribed by the current NAIC Financial Condition Examiners Handbook.

As part of the risk-focused surveillance process, the examination included a review of the Company's business policies and practices, corporate records, reinsurance treaties, conflict of interest disclosure statements, fidelity bonds and other insurance, as well as employees' pension and benefit plans, disaster recovery plan, treatment of policyholders, and other pertinent matters to provide reasonable assurance that the Company is in compliance with applicable NAIC and Massachusetts laws, rules, and regulations and minimum requirements. In planning and conducting the examination, consideration was given to the assessment of the materiality of risks identified and examination efforts were directed accordingly.

ProSelect was audited annually by the independent certified public accounting firm of PricewaterhouseCoopers LLP ("PwC") for all of the years under examination. The firm expressed unqualified opinions on the Company's financial statements for the years ending December 31, 2004 through 2008. The Division reviewed PwC's 2008 audit workpapers and relied, when considered appropriate, on PWC's IT controls review, internal control valuations and account balance testing as part of its statutory compliance examination.

The examiner also relied, when considered appropriate, on the Company's internal auditors, Ernst & Young LLP's ("E&Y") IT general controls review, internal control evaluations and account balance testing as part of our statutory compliance examination.

This examination was performed in conjunction with and concurrent with the examination of its ultimate parent, Medical Professional Mutual Insurance Company ("ProMutal"), also a Massachusetts domestic insurance company.

This examination included a review to verify the current status of any exception conditions noted in the prior Report of Examination.

HISTORY

General: The Company was originally organized, and incorporated on May 30, 1856, under the laws of the Commonwealth of Massachusetts, as a mutual company named "Abington Mutual Insurance Company". Thereafter, on January 1, 1996, ProMutual Group, Inc. purchased the former Abington Mutual Insurance Company as a clean shell (subsequent to conversion to a stock company) for \$2,500,000 (100,000 shares at \$25.00, par value per share) and changed the name to ProSelect Insurance Company (the Company primarily issued homeowners and auto policies in the New England area prior to entering into receivership and its subsequent sale to ProMutual Group, Inc.).

As of December 31, 2008, the Company is a corporation in the stock form of organization that operates as a property and casualty insurance company. The Company is licensed in 9 states (Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont), to write various lines of insurance, primarily medical professional liability coverage for physicians, hospitals, dentists, and new healthcare entities. Coverage is offered on both a claims made and occurrence basis. To date the Company has not written premiums in New York.

The Company is authorized to write under Massachusetts General Laws Chapter 175 Section 47 the following types of coverage: (1) Fire, (2B) Inland Marine Only, (12) Burglary, Robbery, Theft, (6E) Workers' Compensation, (6F) Liability Other than Auto, (6G) Auto Liability, (7) Glass, (8) Water damage and Sprinkler Leakage, (54E) Dwellings, (54F) Commercial Property.

<u>Capital Stock:</u> From the Company's incorporation as a stock Company, and pursuant to its amended Articles of Organization, the company was authorized to issue 1,000,000 shares, at \$25.00 per share, of common capital stock of which there are 100,000 shares issued and outstanding. All of the stock at December 31, 2008 was held exclusively by ProMutual Group, Inc. There has been no change to this ownership during the period of this examination.

<u>Dividends To Stockholders:</u> There were no declared but unpaid dividends or dividends paid throughout the period of January 1, 2004 to December 31, 2008.

Growth Of The Company: The growth of the Company throughout the examination period is indicated in the following schedule which was prepared from information in the Company's Annual Statements:

DEC. 31,	ADMITTED ASSETS	LIABILITIES	CAPITAL AND SURPLUS	PREMIUMS EARNED	LOSSES AND LAE INCURRED	NET INCOME
2008 2007 2006	\$ 76,135,093	\$ 54,770,573	\$ 21,364,520	\$ 0	\$ 0	\$ 1,030,744
	80,210,981	59,866,008	20,344,973	0	0	1,211,751
	79,726,802	61,373,254	18,353,548	0	0	1,141,407
2005 2004 2003	90,826,664	73,879,724	16,946,669	0	0	1,555,889
	101,223,392	83,436,527	17,786,865	13,462,205	14,383,009	(1,447,926)
	79,334,618	61,107,169	18,227,449	7,481,065	11,510,809	(4,983,121)

MANAGEMENT

Annual Meetings of Stockholders: According to the Company's By-laws, the annual meeting of stockholders shall be held on the first Wednesday in June of each year at the principal offices of the Corporation or at such time and place as is determined by the Board of Directors, and stated in the notice. If not held on such date the annual meeting shall be held on a date to be determined by the Board of Directors within six months after the end of each fiscal year. At any meeting of the stockholders, the holders of a majority in interest of all stock issued, outstanding and entitled to vote at a meeting shall constitute a quorum. Minutes document that a quorum was obtained at each annual meeting held during the examination period. Special meetings of stockholders may be called by the Board of Directors, and shall be called by the Secretary upon written application of one or more stockholders who hold at least one-tenth part interest of the capital stock entitled to vote at the meeting.

<u>Board of Directors:</u> According to the Company's By-laws, the business of the Company shall be managed under the direction of the Board of Directors who may exercise all of the powers of the Company except such powers as are reserved for the stockholders by law, by the Company's Articles of Organization, or by the By-laws.

The Board of Directors shall be elected by a plurality of the votes cast at the annual meetings of the stockholders. At the annual meeting, the Board of Directors shall be divided into three classes (as nearly equal in numbers as possible) with the term of office of one class expiring each consecutive year. The successors of the class of Directors whose term expires at that meeting shall be elected by the stockholders for a three-year term. Each class of Director so elected shall hold office until the next annual meeting of stockholders and thereafter until a successor is duly elected and qualified or until they sooner resign, die, are removed or become disqualified. Any Director may resign at any time upon notice to the Chairman of the Board, if any, the President, the Secretary, or the Board of Directors. The By-laws specify that the Chairman of the Board shall be elected by and from the Board of Directors.

At December 31, 2008, the Company's Board of Directors was composed of fourteen members, which are in compliance with the Company's By-laws, and the General Laws of the Commonwealth of Massachusetts.

The members of the Board, with their business or professional affiliations and their residential addresses, are as follows:

Name of Director

Bruce Solomon Auerbach, MD

Senior Manager
Sturdy Memorial Hospital

Maryanne Clasby Bombaugh, MD

Atlantic Women's Health

Richard William Brewer President & CEO of Company

ProMutual

John MacArthur Crowe, MD Retired

Dwight Emmanuel Golann, Esq. Professor of Law

Suffolk University Law School

Kenneth Avery Heisler, MD Falmouth Hospital

Richard Joseph Matteis Retired

Phillip Edward McCarthy, MD Caritas Norwood Hospital

Robert Paul Powers • President

Robert P. Powers Ins. Agency

Brenda Eliza Richardson, MD Partner

Harmony First, LLC

Deanna P. Ricker, MD Deanna P. Ricker, M.D., P. C.

Peter Thomson Robertson, Esq Attorney

Paul Ashein Schnitman, DDS Wellesley Hills

Medical Center

Erwin August Stuebner, Jr., MD Williamstown

Medical Associates

The Directors of the Company also serve simultaneously in similar capacities as Directors and Officers of ProMutual, the ultimate parent.

The Company By-laws specify that the Board of Directors that shall meet a minimum of four times per year at regularly scheduled quarterly meetings.

At any meeting of the Board of Directors, a majority, but not less than five Directors, shall constitute a quorum for the transaction of business. The minutes indicated that a quorum was obtained for all meetings of the Board of Directors held during the examination period.

COMMITTEES OF THE BOARD OF DIRECTORS: According to the Company's By-laws, the Board of Directors may, by the affirmative vote of a majority of the Directors then constituting a full Board, (provided that a quorum is present for such vote) elect from its membership an Executive Committee (to be chaired by the Chairman of the board). The Board of Directors may establish such other committees as it may determine, comprised of such numbers of its members as it may from time to time determine, (but not less than three) and delegate to such committee some or all of its powers, except those which by law, the Articles of Organization or the By-laws, are prohibited from being delegated. The Board of Directors shall have the power at any time to fill vacancies in, change the membership of, or discharge any such committee.

OFFICERS:

The officers of the Corporation shall be the President, the Treasurer, the Secretary and such other officers as the Board of Directors may determine, including, but not limited to, a Chairman of the Board of Directors, a Vice-Chairman, a Chief Executive Officer, who may be the President, a Chief Financial Officer, who may be the Treasurer, a Chief Operating Officer, one or more Vice-Presidents, one or more Assistant Treasurers, one or more Assistant Secretaries, and a Secretary. The officers of the Company at December 31, 2008, were as follows:

Name of Officer: Title: Kenneth Avery Heisler, MD Chairman Brenda Eliza Richardson, MD Vice Chairwoman President and Chief Executive Officer Richard William Brewer *John Joseph Donehue Senior Vice President, Chief Financial Officer and Treasurer Senior Vice President Gregg Lee Hanson Erwin August Stuebner Jr., MD Secretary Janice Wilson Allegretto, Esq. **Assistant Secretary**

^{*} Effective March 1, 2010 John J. Donehue retired and Richard G. Hayes, Controller was appointed Vice President, CFO and Treasurer.

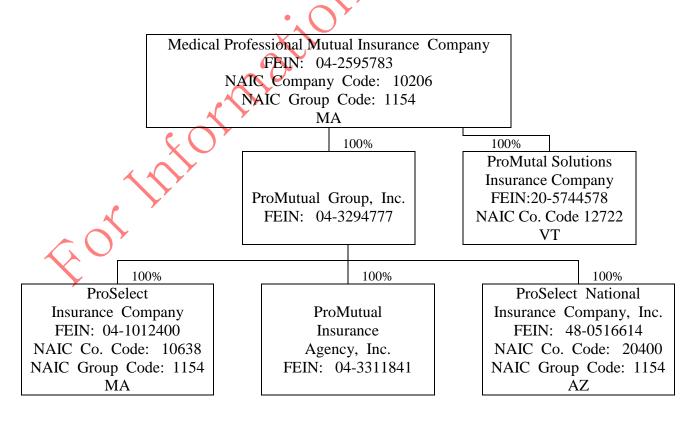
<u>CONFLICT OF INTEREST PROCEDURE:</u> The Company has a written Conflict of Interest policy with an established procedure for disclosure to the Board of Directors of any material interest or affiliation of any officer or director which is likely to conflict with his or her official duties. Annually, officers and directors of the Company sign a Conflict of Interest Disclosure Statement wherein each attests that he or she does not have such a conflict, except as expressly noted. No exceptions were noted in the review of the certification forms supporting the Company's responses to the General Interrogatories in its Annual Statements.

<u>CORPORATE RECORDS:</u> The Company's corporate records were reviewed for the period covered by this examination. They were assessed for accuracy and compliance with the Company's By-laws, Articles of Incorporation, as well as for compliance with Massachusetts General Laws (MGL), and the Commonwealth of Massachusetts Regulations (211 CMR).

AFFILIATED COMPANIES

HOLDING COMPANY FILINGS: The Company is a member of an insurance holding company system as defined in Section 206 of Massachusetts General Laws Chapter 175 and is subject to the registration requirements thereof. During the examination period, the Company filed Form B with the Division pursuant to Regulation 211 CMR 7.00 and Section 206C of Massachusetts General Laws Chapter 175. Ultimate control of the holding company system is held by Medical Professional Mutual Insurance Company d/b/a ProMutual, a Massachusetts corporation.

<u>CHART OF ORGANIZATION:</u> The ownership interests and hierarchy of companies in this corporate organization at December 31, 2008, are represented as follows



On August 31, 2009, ProMutual purchased 100% of FinCor Holdings, Inc. ("FinCor"), which included five wholly owned subsidiaries, MHA Insurance Company, Washington Casualty Company, FinCor Solutions, Inc., The Risk Management and Patient Safety Institute and Capital Risk Solutions.

INTERCOMPANY AGREEMENTS

MANAGEMENT SERVICES: The predominant management service agreement involving the Company is a management services agreement amended January 1, 2007 between ProSelect and Medical Professional Mutual Insurance Company ("the Manager"). ProSelect will be transacting insurance business in the Commonwealth of Massachusetts and in various other states in which ProSelect is or may become licensed, and desires to have the Manager conduct the operations of such insurance business. The Manager agrees to provide, and ProSelect agrees to accept from the Manager, the following services in connection with the underwriting and management of ProSelect: Underwriting, policy issuance, billing and premium collection, claims handling, policy administration, actuarial, risk management, investment advisory and all general administrative services relating to the business of the Company. Also providing maintenance for ProSelect records, accounting, preparation and rendering of reports to any regulatory agency requiring any such reports with respect to ProSelect, payment of taxes, provision of necessary office accommodations and payment of all operating expenses of ProSelect (collectively the "Services"). The Manager shall be the sole and exclusive provider of Services and ProSelect shall not accept application for insurance except through the Manager.

REINSURANCE: The Company has a 100% quota share agreement with ProMutual. Under this agreement, the Company cedes 100% of its current liabilities under insurance business written. In turn, ProSelect pays ProMutual 100% of the premiums received on all direct insurance business written by ProSelect after deducting return premiums payable, reinsurance and 100% of the net underwriting and claims expense.

TAX ALLOCATION AGREEMENT: ProSelect has a written tax allocation agreement dated January 1, 2005. ProSelect files its Federal Income Tax Return on a consolidated basis with ProMutual and its other subsidiaries. The consolidated tax liability is allocated to the affiliated companies in accordance with Internal Revenue Code Section 1.1502-33 (d) (2) (ii) in conjunction with the method provided by Section 1.1552-1 (a) (2) whereby the tax is computed on "as if separate return" basis.

FIDELITY BONDS AND OTHER INSURANCE

The Company maintains fidelity coverage with an authorized insurer, consistent with Massachusetts General Laws Chapter 175 Section 60. The aggregate limit of the liability exceeds the National Association of Insurance Commissioners ("NAIC") minimum requirements.

The Company has further protected its interest and property with insurance covering other insurable risks. Coverage is provided by insurers licensed in the Commonwealth of Massachusetts and were in force at December 31, 2008.

STATUTORY DEPOSITS

The Company conducts business in eight states, and is presently licensed in 9 states. The statutory deposits of the Company are held in the following states at December 31, 2008:

<u>Jurisdiction</u>	StatementValue	Market Value
Massachusetts	\$ 563,602	\$ 580,915
New Hampshire	10,930,191	11,090,174
New York	50,015	55,668
Rhode Island	5,029,026	5,157,134

INSURANCE PRODUCTS AND RELATED PRACTICES

TERRITORY AND PLAN OF OPERATION: A review of the Certificate of Authority indicated that the Company is a corporation duly organized under the laws of the Commonwealth of Massachusetts. The Company is authorized to write the following lines of insurance coverages: fire, inland marine, boiler, workers compensation, liability and automobile liability, glass, water damage and sprinkler leakage, burglary, robbery, theft, dwellings and commercial property.

The Company has limited its writings primarily to Medical Malpractice – Occurrence, Medical Malpractice – Claims-Made, Other Liability – Occurrence, and Other Liability – Claims-Made.

<u>POLICY FORMS AND UNDERWRITING PRACTICE:</u> The Company offers primarily medical malpractice coverage utilizing policy forms, riders and endorsements that are subject to the approval of the individual state insurance departments.

REINSURANCE

As of December 31, 2008, the Company does not assume reinsurance from non-affiliated companies other than its participation in the Massachusetts Medical Malpractice Reinsurance Plan. The Company cedes risks through its intercompany quota share Agreement, and through reinsurance treaties with its non-affiliates for medical malpractice excess of loss reinsurance.

The Company has a 100% quota share agreement with ProMutual. Under this agreement, the Company cedes 100% of the ProSelect's current liability under insurance business written. In turn, ProSelect pays the ProMutual 100% of the premiums received on all direct insurance business written by ProSelect after deducting return premiums payable, reinsurance and 100% of the net underwriting and claims expense.

ACCOUNTS AND RECORDS

The Company maintains its records, ledgers, and accounts on a computerized accounting system. In accordance with 211 C.M.R. 23.00, the books and records of the Company are audited

annually by a firm of independent certified public accountants. For the five year examination period ended December 31, 2008, the Company was audited by PricewaterhouseCoopers LLP.

<u>Information Systems Questionnaire:</u> The NAIC Information System Planning Questionnaire and the Information Systems Questionnaire were completed by the Company. The Division engaged the services of Deloitte to review the Company's management responses to the NAIC questionnaires. Deloitte interviewed responsible key management personnel in the Company's Information Systems Department and also reviewed various internal audit reports and PwC audit workpapers as needed.

Thereafter, it was concluded that the Company has internal control procedures in place to protect its data processing and information and it has comprehensive disaster recovery and business continuity plans in place.

FINANCIAL STATEMENTS

The following financial statements are presented on the basis prescribed by the Statements of Statutory Accounting Practices and Procedures Manual promulgated by the National Association of Insurance Commissioners and in compliance with laws of the Commonwealth of Massachusetts Division of Insurance:

- Statements of Assets, Liabilities, Surplus and Other Funds as of December 31, 2008;
- Statement of Income for the Year Ended December 31, 2008;

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- Statement of Capital and Surplus for the Year Ended December 31, 2008;
- Reconciliation of Capital and Surplus, for the Five Year Period Ended December 31, 2008.

ProSelect Insurance Company Statement of Assets, Liabilities, Surplus and Other Funds As of December 31, 2008

s Reported by	Examination	Per Statutory
ne Company	Changes	Examination
23,289,163		\$ 23,289,163
8,785,295		8,785,295
91,400		91,400
32,165,858		32,165,858
406,170		406,170
	5	
2,491,280		2,491,280
31,308,652		31,308,652
7,693,499		7,693,499
364,080		364,080
109,572		109,572
1,595,982		1,595,982
76,135,093	\$ 0	\$ 74,539,111

ProSelect Insurance Company Statement of Assets, Liabilities, Surplus and Other Funds (Continued) As of December 31, 2008

	As Reported by	Examination	Per Statutory	
Liabilities	the Company	Changes	Examination	
Reinsurance payable on paid losses	\$ 39,270		\$ 39,270	
Commissions payable	3,129,558		3,129,558	
Other expenses	93,023		93,023	
Taxes, licenses, and fees	144,761		144,761	
Advance premiums	4,964,243		4,964,243	
Ceded reinsurance premiums payable	43,821,810	5	43,821,810	
Funds held by company under reinsurance treaties	12,104		12,104	
Amounts withheld or retained by				
company for account of others	113,463	•	113,463	
Provision for reinsurance	2,505		2,505	
Payable to parent, subsidiaries, and affiliates	1,966,846		1,966,846	
Aggregate write-ins for liabilities	482,990		482,990	
<u> </u>				
Total Liabilities • •	54,770,573		54,770,573	
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Common capital stock	2,500,000		2,500,000	
Gross paid in and contributed surplus	22,500,000		22,500,000	
Unassigned funds (surplus)	(3,635,480)		(3,635,480)	
Surplus as regards policyholders	21,364,520		21,364,520	
Total Liabilities, Capital and Surplus	\$ 76,135,093	\$ 0	\$ 76,135,093	
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ProSelect Insurance Company Statement of Income for the Year Ended December 31, 2008

	As Reported by the Company	Examination Changes	Per Statutory Examination
Net investment income earned Net realized capital gains or (losses)	1,043,827 10,459		1,043,827 10,459
Net investment gain or (loss)	1,054,286		1,054,286
Net gain or (loss) from agents' premium balances charged off	-	65	-
Finance and service charges not included in premiums			-
Aggregate write-ins for miscellaneous income	(2,083)	<u>) </u>	(2,083)
Total other income	(2,083)		(2,083)
Net income before dividends to policyholders and before federal and foreign income taxes	1,052,203		1,052,203
Net income, after dividends to policyholders but before federal and foreign income taxes	1,052,203		1,052,203
Federal and foreign income taxes incurred	21,459		21,459
Net Income	\$ 1,030,744	\$ 0	\$ 1,030,744
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ProSelect Insurance Company Statement of Capital and Surplus for the Year Ended December 31, 2008

		Reported by ne Company		camination Changes	er Statutory examination
Surplus as regards policyholders, December 31, 2007	\$	20,344,973	\$	0	\$ 20,344,973
Net income		1,030,744			1,030,744
Change in net deferred income tax		(434,929)			(434,929)
Change in nonadmitted assets		405,088		2	405,088
Change in provision for reinsurance		18,644	2		18,644
Change in surplus as regards policyholders for the year	<u> </u>	1,019,547)		1,000,903
Surplus as regards policyholders, December 31, 2008	\$	21,364,520	\$	0	\$ 21,345,876
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ProSelect Insurance Company Reconciliation of Capital and Surplus for the Five Year Period Ended December 31, 2008

	2008 *	2007	2006	2005	2004
Surplus as regards policyholders,					
December 31 prior year	\$ 20,344,973	\$ 18,353,548	\$ 16,946,669	\$ 17,786,865	\$ 18,227,449
Net income	1,030,744	1,211,751	1,141,407	1,555,889	(1,447,926)
Change in net unrealized capital gains or (losses) Change in net deferred income tax	(434,929)	(760,966)	(166,926)	(541,174)	467,103
Change in nonadmitted assets	405,088	1,561,394	(652,941)	(769,177)	540,173
Change in provision of reinsurance	18,644	(20,754)	1,085,339	(1,085,734)	
Net change in capital and surplus for the year	1,019,547	1,991,425	1,406,879	(840,196)	(440,584)
Surplus as regards policyholders,				7,~	
December 31 current year	\$ 21,364,520	\$ 20,344,973	\$ 18,353,548	\$ 16,946,669	\$ 17,786,865
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ACKNOWLEDGEMENT

This is to certify that the undersigned is a duly qualified Certified Financial Examiner ("CFE"), and that pursuant to a proposal submitted by Deloitte & Touche LLP to the Division, certain examination procedures have been applied to the accounting and corporate records of the ProSelect Insurance Company for the purpose of assisting the Division regarding this statutory examination.

The undersigned's participation in this examination as the Examiner-in-Charge encompassed responsibility for the coordination and direction of the statutory examination performed which was in accordance with, and substantially complied with the standards established by the Financial Condition (E) Committee of the NAIC and the *NAIC Financial Condition Examiners Handbook*. This participation consisted of involvement in the planning and administration of the examination, review of work papers prepared as documentary evidence of examination procedures performed, and of the statutory examination report.

The cooperation and assistance of the officers and employees of the Company extended to all examiners during the course of the examination is hereby acknowledged.

Respectfully submitted,

Kenneth R. Brenner, CPA, CFE

Supervising Examiner and Examiner-in-Charge Commonwealth of Massachusetts

Division of Insurance