

REPORT ON EXAMINATION

OF THE

UTICA MUTUAL INSURANCE COMPANY

AS OF

DECEMBER 31, 2009

DATE OF REPORT

SEPTEMBER 16, 2010

EXAMINER

FE ROSALES, CFE

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STATE OF NEW YORK  
INSURANCE DEPARTMENT  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004

September 16, 2010

Honorable James J. Wrynn  
Superintendent of Insurance  
Albany, New York 12257

Sir:

Pursuant to the requirements of the New York Insurance Law, and in compliance with the instructions contained in Appointment Number 30439 dated December 8, 2009 attached hereto, I have made an examination into the condition and affairs of Utica Mutual Insurance Company as of December 31, 2009, and submit the following report thereon.

Wherever the designations "the Company" or "UMIC" appear herein without qualification, they should be understood to indicate Utica Mutual Insurance Company.

Wherever the term "Department" appears herein without qualification, it should be understood to mean the New York Insurance Department.

The examination was conducted at the Company's home office located at 180 Genesee Street, New Hartford, NY 13413.

## **1. SCOPE OF EXAMINATION**

The Department has performed an association examination of Utica Mutual Insurance Company. The previous examination was conducted as of December 31, 2004. This examination covered the five-year period from January 1, 2005 through December 31, 2009. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

This examination was conducted in accordance with the National Association of Insurance Commissioners (“NAIC”) Financial Condition Examiners Handbook (“Handbook”), which requires that we plan and perform the examination to evaluate the financial condition and identify prospective risks of the Company by obtaining information about the Company including corporate governance, identifying and assessing inherent risks within the Company and evaluating system controls and procedures used to mitigate those risks. This examination also includes assessing the principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation, management’s compliance with Statutory Accounting Principles and annual statement instructions when applicable to domestic state regulations.

All financially significant accounts and activities of the Company were considered in accordance with the risk-focused examination process. This examination also included a review and evaluation of the Company’s own control environment assessment. The examiners also relied upon audit work performed by the Company’s independent public accountants when appropriate.

This examination report includes a summary of significant findings for the following items as called for in the Financial Condition Examiners Handbook of the NAIC:

- Significant subsequent events
- Company history
- Corporate records
- Management and control
- Territory and plan of operation
- Growth of Company
- Loss experience
- Reinsurance
- Accounts and records
- Statutory deposits
- Financial statements
- Summary of recommendations

A review was also made to ascertain what action was taken by the Company with regard to comments and recommendations contained in the prior report on examination.

This report on examination is confined to financial statements and comments on those matters that involve departures from laws, regulations or rules, or that are deemed to require explanation or description.

## **2. DESCRIPTION OF COMPANY**

Utica Mutual Insurance Company was incorporated under the laws of the State of New York on February 13, 1914 as the Utica Mutual Compensation Insurance Corporation. It became licensed on June 1, 1914 and commenced business on July 1, 1914. The present name was adopted on February 1, 1919.

In 1967, the Company entered into an agreement with Graphic Arts Mutual Insurance Company (“GAMIC”) providing for common management of the two companies. Since 1969, the Company has pooled premiums, losses and expenses with GAMIC through a reinsurance pooling agreement, which is discussed in greater detail in this report in Item 2C, “Reinsurance.”

In January 1983, the Company purchased most of the outstanding shares of Republic-Franklin Insurance Company (“RFIC”), a stock property and casualty company organized under provisions of the Ohio Insurance Law. The Company subsequently sold 6% of its interest in RFIC to GAMIC, creating a 94% and 6% ownership. In 1984, RFIC was admitted to the common management and pooling agreement between the Company and GAMIC.

In 1995, the Company acquired all the outstanding capital stock of Utica National Insurance Company of Texas (“UNIT”), which was then admitted to the aforementioned common management and pooling agreement between UMIC and GAMIC.

Also, in 1995, the Company acquired all of the common stock of Graphic Arts Insurance Company, a New York insurer. This company changed its corporate title to Utica National Assurance Company (“UNAC”) and was admitted to the common management and pooling agreement in 1997.

As of December 31, 2009, the pooling agreement resulted in sharing of premium income, losses and expenses as follows:

Utica Mutual Insurance Company	89%
Graphic Arts Mutual Insurance Company	5%
Republic-Franklin Insurance Company	3%
Utica National Assurance Company	2%
Utica National Insurance Company of Texas	1%

Under the present agreement, all transactions and items related to the insurance and/or general operations of the companies are pooled. The only major items that remain exempt are those related to investments and inter-company accounts.

A. Management

Pursuant to the Company's charter and by-laws, management of the Company is vested in a board of directors consisting of not less than thirteen nor more than thirty-one members. The board holds four regular meetings each calendar year. At December 31, 2009, the board of directors was comprised of the following sixteen members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Russell A. Acevedo, MD Fayetteville, NY	Medical Director of Intensive Care, Crouse Hospital/Community General Hospital
Clarence W. Bachman Fairport, NY	Vice President, Cohber Press
Alfred E. Calligaris Watertown, NY	President, The Stebbins Engineering and Manufacturing Company
Roy A. Cardia Yarmouth Port, MA	Retired
Paul A. Hagstrom, Ph.D. Clinton, NY	Professor of Economics, Hamilton College
Gregory M. Harden McConnellsville, NY	President and Chief Executive Officer, Harden Furniture Company
Jerry J. Hartman York, PA	Retired
Zelda J. Holcomb, Ph.D. Columbia, MD	Owner/Consultant, Holcomb Associates, LLC

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Brian P. Lytwynec Ilion, NY	President and Chief Operating Officer, Utica National Insurance Group
Nicholas O. Matt New Hartford, NY	Chairman and Chief Executive Officer, Matt Brewing Company
Anthony C. Paolozzi Whitesboro, NY	Executive Vice President and Chief Financial Officer, Utica National Insurance Group
Alan J. Pope, Sr. Atlanta, GA	President and Chief Executive Officer, Love Douglas and Pope
Timothy R. Reed Utica, NY	Vice Chairman, ECR International
J. Douglas Robinson New Hartford, NY	Chairman and Chief Executive Officer, Utica National Insurance Group
Linda E. Romano, Esq. New Hartford, NY	Attorney-at-Law, Bond, Schoeneck and King
John R. Zapisek Utica, NY	Retired

A review of the minutes of the board of directors' meetings held during the examination period indicated that the meetings were generally well attended and each board member has an acceptable record of attendance.

The review of the Company's charters and by-laws revealed the following:

Article V, Section 3 (Qualification and Bonding of Officers) of the Company's by-laws states:

All elective officers of the company shall be annually sworn and their oaths entered of record in the books of the company. The chairman of the board, the president, the secretary, the treasurer, the comptroller, their officer assistants, if any, and any other officers, employees, or agents designated by the chief executive officer or board shall furnish bonds for the faithful performance of their respective duties, in such sums as the board may require.

Upon examination, it was noted that the officers were not annually sworn. It was also noted that the requirement regarding bonding of certain officers and their assistants was also not met.

It is recommended that the Company comply with its by-laws by ensuring that all elective officers of the company shall be annually sworn and their oaths entered of record in the books of the

company and that the chairman of the board, the president, the secretary, the treasurer, the comptroller, their officer assistants, if any, and any other officers, employees, or agents designated by the chief executive officer or board shall furnish bonds for the faithful performance of their respective duties, in such sums as the board may require, as required by Article V, Section 3 of the by-laws.

Section 1209(b) of the New York Insurance Law (“NYIL”) states in part:

Such corporation shall have not less than seven directors . . . and such officers as shall be provided for in its charter or by-laws. The directors . . . shall be elected at the annual meetings of the members, and all except four of the directors of such corporation, elected after the organization of the corporation is completed and it has been licensed to issue insurance policies, must be members of the corporation or officers of member corporations. (Emphasis added.)

Examination review of the records regarding insurance policies issued by the Company to the directors and member corporations for which the directors are officers, revealed that as of the examination date, five directors are neither members of the Company nor officers of member corporations. That exceeds the allowable number of non-member directors permitted by the aforementioned section of the NYIL.

It is recommended that the Company comply with Section 1209(b) of the New York Insurance Law by reducing to no more than four, the number of directors who are neither members of the Company nor officers of member corporations.

As of December 31, 2009, the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
J. Douglas Robinson	Chairman and Chief Executive Officer
Brian P. Lytwynec	President and Chief Operating Officer
George P. Wardley, III	Secretary
Anthony C. Paolozzi	Executive Vice President and Chief Financial Officer
Cynthia L. Casale	Senior Vice President, Chief Investment Officer and Treasurer

**B. Territory and Plan of Operation**

As of December 31, 2009, the Company was licensed to write business in all fifty states and the District of Columbia and Puerto Rico. Also, the Company is reviewing its long-term strategy for Canadian operations. As of December 31, 2009, the Company was restricted to servicing existing policies and cannot write new or renewal business in any province.

As of the examination date, the Company was authorized to transact the kinds of insurance as defined in the following numbered paragraphs of Section 1113(a) of the New York Insurance Law:

<u>Paragraph</u>	<u>Line of Business</u>
3	Accident & health
4	Fire
5	Miscellaneous property
6	Water damage
7	Burglary and theft
8	Glass
9	Boiler and machinery
10	Elevator
11	Animal
12	Collision
13	Personal injury liability
14	Property damage liability
15	Workers' compensation and employers' liability
16	Fidelity and surety
17	Credit
19	Motor vehicle and aircraft physical damage
20	Marine and inland marine
21	Marine protection and indemnity
24	Credit unemployment
26	Gap
27	Prize indemnification
28	Service contract reimbursement
29	Legal services

Based on the lines of business for which the Company is licensed and pursuant to the requirements of Articles 13 and 41 of the New York Insurance Law, the Company is required to maintain a minimum surplus to policyholders in the amount of \$9,100,000.

The majority (approximately 58%) of the Company's business is written in New York, Massachusetts, Connecticut, Georgia and Pennsylvania. The three largest lines of business are other liability (31.6%), workers' compensation (18.7%) and commercial multiple peril (12.8%). Most of the business originates through independent agents and brokers. The Company maintains branch offices in Utica, NY; Columbus, OH; Richmond, VA; Wakefield, MA; Atlanta, GA; Richardson, TX; and Jericho, NY. Each office handles its own underwriting function for its specific territory except for personal lines, which are handled in the main office. Claims are handled out of nine locations.

The following schedule shows the direct premiums written by the Company both in total and in New York for the period under examination:

<u>Calendar Year</u>	<u>New York State</u>	<u>Total Premiums</u>	<u>Premiums Written in New York State as a Percentage of Total Premiums</u>
2005	\$102,681,642	\$284,554,039	36.09%
2006	\$92,140,146	\$262,222,741	35.14%
2007	\$83,325,934	\$244,530,112	34.08%
2008	\$72,161,364	\$227,233,689	31.76%
2009	\$69,387,312	\$208,147,907	33.34%

### C. Reinsurance

#### Assumed Reinsurance

Assumed reinsurance accounted for 65% of the Company's gross premiums written at December 31, 2009. The Company's assumed reinsurance program consists mainly of business obtained through a pooling agreement with its affiliates: Graphic Arts Mutual Insurance Company, Republic-Franklin Insurance Company, Utica National Assurance Company, and Utica National Insurance Company of Texas.

During the period covered by this examination, the Company's assumed reinsurance business has increased slightly since the last examination. The main reason for the increase was due to a greater amount of the Utica National Group's premium being written through the Company's subsidiaries and assumed by UMIC through the existing pooling agreement.

Additionally, the Company's participation in various mandated pools is reflected in its assumed reinsurance activity. The Company utilizes reinsurance accounting as defined in the NAIC Accounting Practices and Procedures Manual Statements of Statutory Accounting Principles ("SSAP") No. 62 for all of its assumed reinsurance business.

#### Pooling Agreement with its Affiliates

The Company participates in an inter-company pool with four other property and casualty affiliates. Under this pooling agreement, premiums, losses and expenses are shared as follows: 89% the Company, 5% GAMIC, 3% RFIC, 2% UNAC, and 1% UNIT. The business written by two other affiliates, Utica Lloyds of Texas and Utica Specialty Risk Insurance Company, is ceded 100% to the

Company and is shared with the pool members in accordance with the above-mentioned pooling percentages.

### Ceded Reinsurance

The Company has structured its ceded reinsurance program to limit its maximum exposure to any one risk as follows:

### Property

The Company's ceded reinsurance program for its property business is to limit its maximum exposure in any one risk to \$5 million. The Company maintains several excess of loss coverage for standard losses and catastrophe losses. Its standard excess of loss treaties for property consists of three layers with the following layers of coverage:

<u>Type of Treaty</u>	<u>Cession</u>
1 <sup>st</sup> Layer 82.5% Authorized (100% placed)	\$5,000,000 excess of \$5,000,000 ultimate net loss each risk, each loss occurrence, subject to a loss occurrence limit of \$10,000,000.
2 <sup>nd</sup> Layer 100% Authorized ( 100% placed)	\$10,000,000 excess of \$10,000,000 ultimate net loss each risk, each loss occurrence, subject to a loss occurrence limit of \$20,000,000 and \$30,000,000 with respect to all net losses on all risks involved in all occurrences (including terrorism) taking place during the term of the agreement.
3 <sup>rd</sup> Layer 100% Authorized (100% placed)	\$20,000,000 excess of \$20,000,000 ultimate net loss each risk, each loss occurrence, subject to a loss occurrence limit of \$40,000,000 and \$60,000,000 with respect to all net losses on all risks involved in all occurrences (including terrorism) taking place during the term of the agreement.
	There is also a \$15,000,000 combined limit of liability to the reinsurer for all net losses arising out of cyber-related losses taking place during the term of the agreement for the second and third layers.

As of December 31, 2009, the Company also maintained the following catastrophe excess of loss coverage on a per occurrence basis:

<u>Type of Treaty</u>	<u>Cession</u>
1 <sup>st</sup> Layer 100% Authorized (5% placed)	\$50,000,000 in excess of \$50,000,000 each occurrence. The Company shall retain net and unreinsured at least five percent (5%) of the premiums and losses under the contract.
2 <sup>nd</sup> Layer 66.64% Authorized (57% placed)	\$200,000,000 in excess of \$100,000,000 each occurrence. The Company shall retain net and unreinsured at least five percent (5%) of the premiums and losses under the contract.
3 <sup>rd</sup> Layer 24.79% Authorized (96% placed)	\$50,000,000 in excess of \$300,000,000 each occurrence. The Company shall retain net and unreinsured at least five percent (5%) of the premiums and losses under the contract.

It is noted that the first layer of catastrophe excess of loss coverage above was only 5% placed; which, in effect, increase the Company's net retention from \$50 million to \$97.5 million. The Company has indicated that the 5% placement is the only coverage the Company needs based on cost/benefit analysis they performed.

As of December 31, 2009, the Company has also in force the following facultative binding excess of loss reinsurance agreements for its property business:

<u>Type of Treaty</u>	<u>Cession</u>
Property Automatic Facultative-Schools 100% Authorized	\$75,000,000 excess of \$40,000,000 each risk.
Property Automatic Facultative – Non-Schools 100% Authorized	
Group I (Apartments, Banks, Offices, Printers, Retail Stores and Shopping Centers)	\$40,000,000 excess \$40,000,000 each risk.
Group II (Auto Dealers, Auto Service, Churches, Day Care Centers, Hotel/Motel and Machine Shops)	\$25,000,000 excess \$40,000,000 each risk.

Casualty

The Company's ceded reinsurance program for its casualty lines of business is to limit its maximum exposure in any one risk to \$5 million. The Company maintains four layers of excess of loss treaties consisting of the following layers of coverage:

<u>Type of Treaty</u>	<u>Cession</u>
1 <sup>st</sup> Layer - 100% Authorized (100% placed)	\$5,000,000 excess of \$5,000,000 ultimate net loss, each and every loss.
2 <sup>nd</sup> Layer - 80 % Authorized (100% placed)	\$10,000,000 excess of \$10,000,000 ultimate net loss, each and every loss.
3 <sup>rd</sup> Layer - 74.2% Authorized (100% placed)	\$20,000,000 excess of \$20,000,000 ultimate net loss, each and every loss.
4 <sup>th</sup> Layer - 93.7% Authorized (100% placed)	\$60,000,000 excess of \$40,000,000 ultimate net loss, each and every loss.

The Company also maintains the following reinsurance treaties:

<u>Type of Treaty</u>	<u>Cession</u>
<u>Insurance Agents' and Brokers' Errors &amp; Omissions</u> 100% Authorized (100% placed)	\$5,000,000 excess of \$5,000,000 each and every policy each claim.
<u>Surety</u> 100% Authorized (80% placed)	\$3,000,000 excess of \$1,000,000, any one principal, subject to a limit of \$10,000,000 any one principal.
<u>Boiler and Machinery</u> 100% Authorized (100% placed)	100% of \$100,000,000 of equipment breakdown liability; under the Company's actual loss sustained business form, the reinsurer's liability shall be the amount payable for loss or expense in accordance with the terms of the coverage provided thereunder.
<u>Personal Umbrella</u> 1 <sup>st</sup> Layer - 100% Authorized (75% placed)	75% of the first \$1,000,000 each occurrence.
2 <sup>nd</sup> layer – 100% Authorized (100% placed)	\$4,000,000 excess of \$1,000,000, each occurrence.

<u>Type of Treaty</u>	<u>Cession</u>
<u>Commercial Umbrella</u> 100% Authorized (100% placed)	\$5,000,000 excess of \$5,000,000 each incident.
<u>School Umbrella</u> 1 <sup>st</sup> layer - 100% Authorized (100% placed)	\$5,000,000 excess of \$5,000,000;
2 <sup>nd</sup> layer –100% Authorized (80% placed)	\$5,000,000 excess of \$10,000,000 per occurrence.
<u>Professional Liability Quota Share and Excess of Loss</u> 1 <sup>st</sup> layer –100% Authorized (75% placed)	\$1,000,000 of net loss each claim under each policy.
2 <sup>nd</sup> layer – 100% Authorized (100% placed)	\$4,000,000 of net loss each claim under each policy.

Since the last examination, the Company has increased its net retention from \$1,000,000 to \$5,000,000 for both property and casualty business.

It is the Company's policy to obtain the appropriate collateral for its cessions to unauthorized reinsurers. Letters of credit obtained by the Company to take credit for cessions to unauthorized reinsurers were not reviewed for compliance with Department Regulation No. 133 since the amounts held under these letters of credit were not material.

All significant ceded reinsurance agreements in effect as of the examination date were reviewed and except as noted below, found to contain the required clauses, including an insolvency clause meeting the requirements of Section 1308 of the New York Insurance Law.

The following reinsurance contracts contain a provision allowing for broad offset rights: personal umbrella, commercial umbrella, school umbrella, professional liability quota share & excess of loss, school property facultative, non-school property facultative, and property per risk - 2nd & 3rd layers. The provision contained in the contracts is as follows:

The Company or the Reinsurer may offset any balance..., due from one party to the other under this agreement or under any other agreement heretofore or hereafter entered into between the Company and the Reinsurer. (Emphasis added)

In reinsurance agreements containing such broad rights to offset, the Department requires that the following language be included:

In the event of the insolvency of either party to this agreement then offsets shall only be allowed to the extent permitted by the provision of Section 7427 of the New York Insurance Law.

It is recommended that the offset provision of the above-indicated reinsurance agreements be amended to state that in the event of the insolvency of either party to the agreement then offsets shall only be allowed to the extent permitted by the provision of Section 7427 of the New York Insurance Law.

It is further recommended that all future reinsurance agreements with an offset provision entered into by the Company include such required language.

Subsequent to the examination date, the Company amended the current reinsurance agreements where the offset provision had been inadvertently omitted.

Examination review of the Schedule F data reported by the Company in its filed annual statement was found to accurately reflect its reinsurance transactions, except as outlined below.

The NAIC Annual Statement Instructions contain specific instructions regarding the aging of all reinsurance recoverables due from reinsurers. Upon examination, it was noted that the Company had not complied with these instructions. Specifically, the Company used incorrect dates from which to begin the aging of some recoverables, which resulted in items being recorded as 30 to 90 days overdue on Schedule F, Part 4 at December 31, 2009, when these items should have been recorded as 91 to 120 days overdue. The Company also recorded items as overdue for which no bill had been sent to the reinsurer.

It is recommended that the Company comply with the NAIC Annual Statement Instructions by properly aging all reinsurance recoverables in all future filings with the Department.

Additionally, management has represented that all material ceded reinsurance agreements transfer both underwriting and timing risk as set forth in SSAP No. 62. Representations were supported by appropriate risk transfer analyses and an attestation from the Company's chief executive officer pursuant to the NAIC Annual Statement Instructions. Additionally, examination review indicated that the Company was not a party to any finite reinsurance agreements. All ceded

reinsurance agreements were accounted for utilizing reinsurance accounting as set forth in paragraphs 41 to 44 of SSAP No. 62.

During the period covered by this examination, the Company commuted a couple of ceded reinsurance agreements. The balances related to these commutations were not material.

D. Affiliated Group

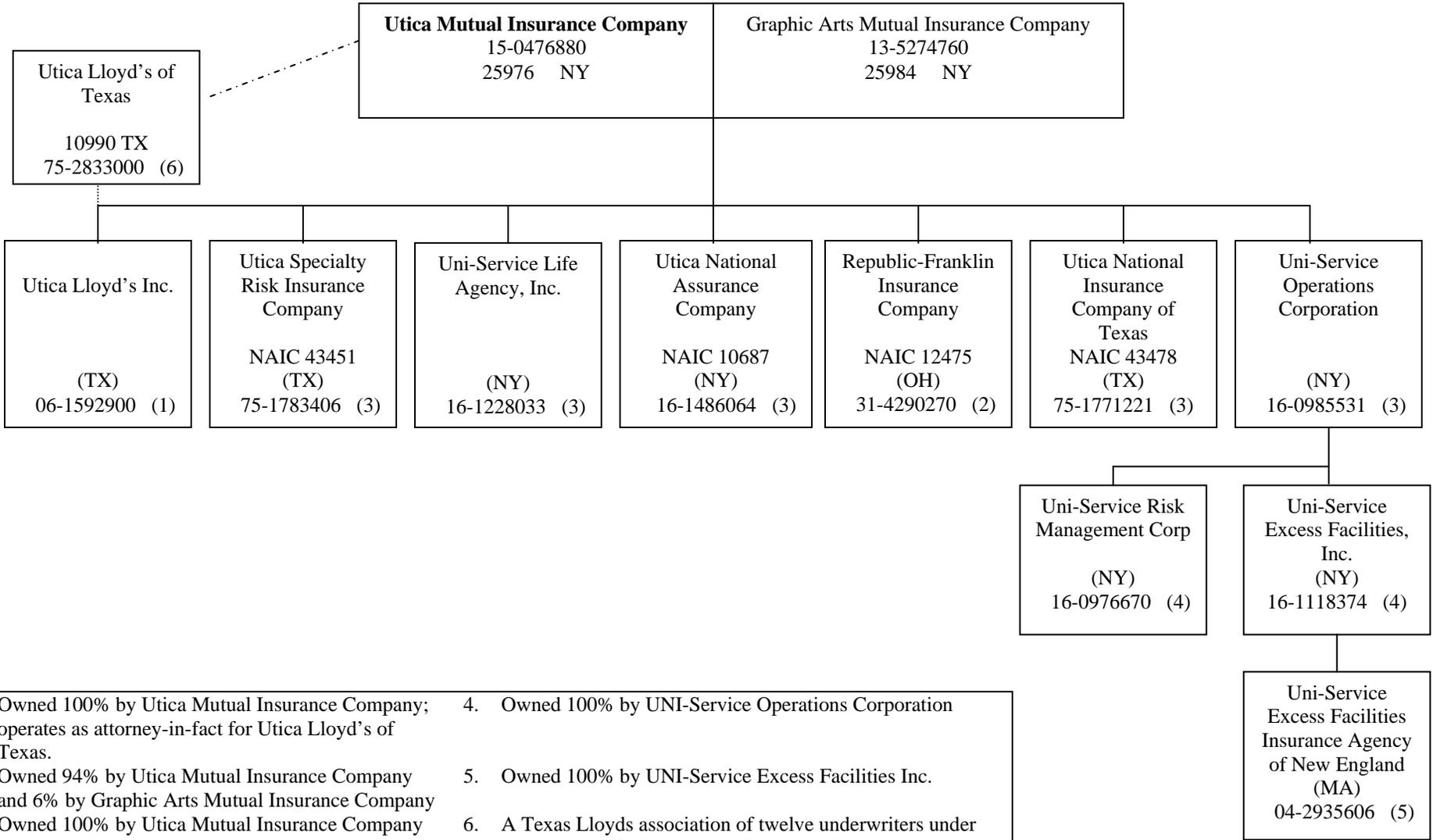
The Company is the ultimate parent of a group of companies that operate under the trade name “Utica National Insurance Group.” Prior to January 23, 2006, the Company and GAMIC owned 79% and 21%, respectively, of the common stock of Utica National Life Insurance Company (“Utica Life”). On January 23, 2006, the Company bought the shares of Utica Life owned by GAMIC. On September 27, 2006, the Company sold all of its shares of Utica Life to Wilton Reassurance Company.

Pursuant to Section 1502(a) of the New York Insurance Law (“NYIL”), the Company is exempt from the filing requirements of Article 15. However, pursuant to Department Circular Letter No. 17 (2001) and subsequently by Circular Letter No. 16 (2009), every domestic insurer that is exempt from the provisions of Article 15 of the NYIL is required to file with the Department the information contained in NAIC Form B within 120 days following the close of the ultimate holding company’s fiscal year.

It was noted that such filings were made by the Company in a timely manner during the period covered by this examination.

The following is an organizational chart outlining the relationship between members of the Group at December 31, 2009:

**Utica National Insurance Group**



At December 31, 2009, the Company was party to the following agreements with other members of its holding company system:

- Common management agreement with GAMIC.
- Inter-Company pooling reinsurance agreement with GAMIC, Republic-Franklin Insurance Company, Utica National Assurance Company and Utica National Insurance Company of Texas.
- Quota share assumption reinsurance agreement with Utica Specialty Risk Insurance Company.
- Quota share assumption reinsurance agreement with Utica Lloyd's of Texas.
- Expense allocation agreement with UNI-Service Excess Facilities and UNI-Service Excess Facilities Insurance Agency of New England.
- Tax allocation agreement with Republic-Franklin, Utica National Insurance Company of Texas, Utica National Assurance Company, Utica Specialty Risk Ins. Co., Utica Lloyd's of Texas, Utica Lloyd's, Inc., UNI-Service Operations, UNI-Service Excess Facilities, UNI-Service Excess Facilities Insurance Agency of New England, UNI-Service Risk Management, UNI-Service Life Agency.
- Services agreement to provide administrative, data processing, underwriting and claims services for Utica Specialty Risk Insurance Company.
- Services agreement to provide administrative, data processing, underwriting and claims services for Utica Lloyd's of Texas, Inc.
- Services agreement to provide administrative services for UNI-Service Excess Facilities.

On March 29, 2010, subsequent to the examination period, the Company announced that it has entered into a definitive agreement to acquire Nationwide Holdings, Inc. the holding company of Founders Insurance Company of Des Plaines, IL. On June 1, 2010, the Department provided its non-objection letter for the Article 16 application for the acquisition of Nationwide Holdings, Inc. On June 30th 2010, the Company finalized the purchase of 100% interest in Nationwide Holdings, Inc.

E. Significant Operating Ratios

The following ratios have been computed as of December 31, 2009, based upon the results of this examination:

Net premiums written to surplus as regards policyholders	72%
Liabilities to liquid assets (cash and invested assets less investments in affiliates)	83%
Premiums in course of collection to surplus as regards policyholders	19%

All of the above ratios fall within the benchmark ranges set forth in the Insurance Regulatory Information System of the National Association of Insurance Commissioners.

The underwriting ratios presented below are on an earned/incurred basis and encompass the five-year period covered by this examination:

	<u>Amounts</u>	<u>Ratios</u>
Losses and loss adjustment expenses incurred	\$1,777,915,151	64.85%
Other underwriting expenses incurred	1,010,656,549	36.87
Net underwriting loss	<u>(47,160,693)</u>	<u>(1.72)</u>
Premiums earned	<u>\$2,741,411,007</u>	<u>100.00%</u>

F. Accounts and Records

. Record Retention

Department Regulation 152 states, in part:

Except as otherwise required by law or regulation, an insurer shall maintain:

- 1) A policy record for each insurance contract or policy for six calendar years after the date the policy is no longer in force or until after the filing of the report on examination in which the record was subject to review, whichever is longer. . .
- 2) A claim file for six calendar years after all the elements of the claim are resolved and the file is closed or until after the filing of the report on examination in which the claim file was subject to review, whichever is longer.

The examiner noted that the Company's record retention policy did not require retention until after the filing of the report on examination in which the file was subject to review, if such date is

beyond six years after the file is closed. Additionally, the Company's record retention policy was incomplete, as it did not address certain types of records.

It is recommended that the Company complete its record retention policy. It is also recommended that all retention periods be modified to comply with the requirements of Department Regulation 152 and that records be kept for the required periods.

ii. Non-admitted Premium

SSAP No. 6, paragraph 7 states, in part, the following:

The due date for all premium balances addressed by this statement is determined as follows:

- a. Original and deposit premiums – governed by the effective date of the underlying insurance contract. . .
- b. Endorsement premiums – governed by the effective date of the insurance policy endorsement.

Upon examination, it was noted that the Company does not comply with this paragraph. In part, the Company used the contractual due date to calculate when premium is overdue for original and endorsement premium instead of the effective date.

SSAP No. 6, paragraph 9 states in part, "...any uncollected premium balances which are over ninety days shall be nonadmitted."

Upon examination, it was noted that the Company nonadmitted uncollected premium balances which are over three months instead of over ninety days.

It is recommended that the Company comply with SSAP No. 6, Paragraph 7 by using the effective date for the determination of non-admitted premium for original and endorsement premiums.

It is further recommended that the Company comply with SSAP No. 6, paragraph 9 by non-admitting installment premiums when they are over 90 days past due.

G. Expense Limitations for Mutual Companies

Section 4110(a) of the New York Insurance Law provides that no domestic mutual property/casualty insurance company "shall expend in any one calendar year for management

expenses a greater amount than thirty percent of its net premium income for such year.” Review of the expenses for the five-year period under examination revealed that the Company exceeded the management expense limits in three of the five years covered by this examination.

It is recommended that the Company comply with the management expense limitations set forth in Section 4110(a) of the New York Insurance Law.

### 3. FINANCIAL STATEMENTS

#### A. Balance Sheet

The following shows the assets, liabilities and surplus as regards policyholders as of December 31, 2009 as determined by this examination and as reported by the Company:

<u>Assets</u>	<u>Assets</u>	<u>Assets Not Admitted</u>	<u>Net Admitted Assets</u>
Bonds	\$1,564,143,145	\$ 0	\$1,564,143,145
Common stocks	223,015,614	0	223,015,614
Properties occupied by the company	21,427,805	0	21,427,805
Cash, cash equivalents and short-term investments	69,555,740	0	69,555,740
Other invested assets	11,911,683	0	11,911,683
Investment income due and accrued	18,243,268	0	18,243,268
Uncollected premiums and agents' balances in the course of collection	142,677,024	2,510,434	140,166,590
Deferred premiums, agents' balances and installments booked but deferred and not yet due	30,265,340	0	30,265,340
Amounts recoverable from reinsurers	61,336,024	0	61,336,024
Current federal and foreign income tax recoverable and interest thereon	34,564,087	0	34,564,087
Net deferred tax asset	70,507,643	29,530,261	40,977,382
Guaranty funds receivable or on deposit	1,658,815	0	1,658,815
Electronic data processing equipment and software	1,103,626	0	1,103,626
Furniture and equipment, including health care delivery assets	1,802,981	1,802,981	0
Aggregate write-ins for other than invested assets	<u>74,098,704</u>	<u>63,274,368</u>	<u>10,824,336</u>
Totals assets	<u>\$2,326,311,499</u>	<u>\$97,118,044</u>	<u>\$2,229,193,455</u>

Liabilities, Surplus and Other FundsLiabilitiesExamination

Loss and Loss Adjustment Expenses		\$1,113,124,975
Commissions payable, contingent commissions and other similar charges		19,818,182
Other expenses (excluding taxes, licenses and fees)		35,925,242
Taxes, licenses and fees (excluding federal and foreign income taxes)		4,065,675
Unearned premiums		262,898,280
Advance premium		2,188,406
Policyholders (dividends declared and unpaid)		10,966,609
Ceded reinsurance premiums payable (net of ceding commissions)		7,202,201
Funds held by company under reinsurance treaties		4,207,252
Amounts withheld or retained by company for account of others		11,356,462
Provision for reinsurance		22,085,235
Net adjustments in assets and liabilities due to foreign exchange rates		191,201
Payable to parent, subsidiaries and affiliates		3,090,056
Payable for securities		2,673,379
Aggregate write-ins for liabilities		<u>8,899,100</u>
Total liabilities		\$1,508,692,256

Surplus and Other Funds

## Aggregate write-ins for special surplus funds:

General Voluntary Surplus	\$1,500,000	
Insurance Department Reserves	9,000	
Reserve for Undeclared Dividends	4,559,068	
Special Contingent Surplus	1,700,000	
Unassigned funds (surplus)	<u>712,733,131</u>	
Surplus as regards policyholders		\$ <u>720,501,199</u>
Total liabilities, surplus and other funds		\$ <u>2,229,193,455</u>

**NOTE:** The Internal Revenue Service has completed its audits of the Company's consolidated Federal Income Tax returns through tax year 2005. All material adjustments, if any, made subsequent to the date of examination and arising from said audits, are reflected in the financial statements included in this report. The Internal Revenue Service has not yet begun to audit tax returns covering tax years 2006 through 2009. The examiner is unaware of any potential exposure of the Company to any tax assessment and no liability has been established herein relative to such contingency.

B. Underwriting and Investment Exhibit

Surplus as regards policyholders increased by \$210,214,450 during the five-year examination period January 1, 2005 through December 31, 2009, detailed as follows:

Underwriting Income

Premiums earned		\$2,741,411,007
Deductions:		
Losses incurred	\$1,219,249,061	
Loss adjustment expenses incurred	558,666,090	
Other underwriting expenses incurred	<u>1,010,656,549</u>	
Total underwriting deductions		<u>2,788,571,700</u>
Net underwriting gain or (loss)		\$(47,160,693)

Investment Income

Net investment income earned	\$387,883,053	
Net realized capital gain	<u>33,391</u>	
Net investment gain or (loss)		387,916,444

Other Income

Net gain or (loss) from agents' or premium balances charged off	\$(4,430,842)	
Finance and service charges not included in premiums	4,909,618	
Aggregate write-ins for miscellaneous income	<u>(4,374,821)</u>	
Total other income		<u>(3,896,045)</u>
Net income before dividends to policyholders and before federal and foreign income taxes		<u>\$336,859,706</u>
Dividends to policyholders		<u>64,420,307</u>
Net income after dividends to policyholders but before federal and foreign income taxes		\$272,439,399
Federal and foreign income taxes incurred		<u>53,674,627</u>
Net income		<u>\$218,764,772</u>

Surplus as regards policyholders per report on examination as of December 31, 2004			\$510,286,749
	<u>Gains in</u>	<u>Losses in</u>	
	<u>Surplus</u>	<u>Surplus</u>	
Net income	\$218,764,772		
Net unrealized capital gains or (losses)	24,614,167		
Change in net unrealized foreign exchange capital gain (loss)	982,672		
Change in net deferred income tax	859,213		
Change in nonadmitted assets		35,584,064	
Change in provision for reinsurance		5,830,500	
Aggregate write-ins for gains and losses in surplus	<u>6,408,190</u>	<u>0</u>	
Total gains and losses	<u>\$251,629,014</u>	<u>\$41,414,564</u>	
Net increase (decrease) in surplus			<u>210,214,450</u>
Surplus as regards policyholders per report on examination as of December 31, 2009			<u>\$720,501,199</u>

#### 4. LOSSES AND LOSS ADJUSTMENT EXPENSES

The examination liability for the captioned items of \$1,113,124,975 is the same as reported by the Company as of December 31, 2009. The examination analysis was conducted in accordance with generally accepted actuarial principles and practices and was based on statistical information contained in the Company's internal records and in its filed annual statements.

## 5. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior report on examination contained forty recommendations as follows (page numbers refer to the prior report):

<u>ITEM</u>	<u>PAGE NO.</u>
A <u>Management</u>	
i.     It was recommended that the Company comply with the Section 1209(b) of the New York Insurance Law by reducing the number of directors who are neither members of the corporation nor officers of member corporations to four.	6
	The Company has not complied with this recommendation. A similar comment is made in this report.
ii.    It was recommended that the executive committee review and ratify the minutes of the prior meeting and correct any misinterpretations of the events or actions of the committee at that meeting as reported in the minutes.	6
	The Company has complied with this recommendation.
iii.   It was recommended that the nominating and executive committees comply with the approved by-laws of the Company and appoint three members to receive and vote the proxies of the Corporation members at the annual meeting of policyholders.	6
	The Company has complied with this recommendation.
B. <u>Reinsurance</u>	
i.     It was recommended that the Company comply with the terms of its inter-company pooling agreement and pool all accounts in accordance with that agreement.	10
	The Company has complied with this recommendation.
ii.    It was recommended that the Company include the required clauses in its reinsurance agreements.	12
	The Company has complied with this recommendation.
iii.   It was recommended that the Company establish a formal procedure for the documentation of contract reviews of reinsurance agreements.	13
	The Company has complied with this recommendation.

<u>ITEM</u>		<u>PAGE NO.</u>
iv.	It was recommended that the Company comply with SSAP No. 63 financial statement disclosure requirements.  The Company has complied with this recommendation.	13
v.	It was recommended that the Company retain all documentation pertaining to its review of its reinsurance contracts prior to execution.  The Company has complied with this recommendation.	14
C.	<u>Affiliated Companies</u>	
i.	It was recommended that the Company comply with Section 1608(b) of the New York Insurance Law and its inter-company service agreements with these two affiliates by charging each affiliated Company with the appropriate amount of investment expenses for the services provided.  The Company has complied with this recommendation.	17
ii.	It was recommended that the Company comply with Department Circular Letter No. 33 (1979) and all amendments to its inter-company tax allocation agreements to the board of directors for approval and then to the Department for non-disapproval at least 30 days prior to the effective date of any changes to the agreement.  The Company has complied with this recommendation.	17
iii.	It was recommended that the Company comply with its tax allocation agreement and settle its inter-company balances within 30 days of the applicable estimated or actual consolidated federal income tax return with the Internal Revenue Services.  The Company has complied with this recommendation.	18
iv.	It was recommended that the Companies comply with Circular Letter No. 17 (2001) and report all transactions exceeding the benchmarks, on the required form, to this Department at least 30 days prior to entering into such transaction.  This recommendation was not applicable as there were no transactions during the examination period that exceeded the benchmarks that the Company needs to report to the Department.	19
v.	It was recommended that the Companies comply with the National Association of Insurance Commissioners' Annual Statement Instructions and properly report all sales and acquisitions of securities and the related investment gains and losses in all future statements filed with this Department.	19

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This recommendation was not applicable as there were no swaps made between related parties during the examination period.

D. Accounts and Records

- |      |  |    |
|------|--|----|
| i.   | It was recommended that the Company comply with SSAP No. 6 paragraph 9 when determining its nonadmitted uncollected premiums and agents' balances.   | 21 |
|      | The Company has not complied with this recommendation. A similar comment is contained in this report.  |    |
| ii.  | It was recommended that the Company comply with SSAP No. 4 by not reducing the nonadmitted portion of its premium balances due by amounts in control of others.  | 21 |
|      | The Company has complied with this recommendation.   |    |
| iii. | It was recommended that the Company comply with Department Regulation 118 by entering into future contracts with its independent auditor that contains the requisite provisions.                                       | 22 |
|      | The Company has complied with this recommendation.   |    |
| iv.  | It was recommended that the Company comply with Part 1 Section IV(J) of the NAIC Financial Condition Examiners' Handbook by revising its custodial agreements to include all of the requisite safeguards and controls. | 24 |
|      | The Company has complied with this recommendation.   |    |
| v.   | It was further recommended that the Companies respond appropriately to the general interrogatories in all future statements filed with this Department.  | 24 |
|      | The Company has complied with this recommendation.   |    |
| vi.  | It was recommended that the Company exercise more care in the preparation of its filed statements and fully comply with the NAIC Annual Statement Instructions for all future statements filed with this Department.   | 24 |
|      | The Company has complied with this recommendation.   |    |
| vii. | It was recommended that the Company institute a formal approval policy to document and control manual entries made to the Company's books and records.   | 25 |

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- The Company has complied with this recommendation.
- viii. It was recommended that the Company institute the necessary internal controls to prevent possible defalcation of the bonds. 25
- The Company has complied with this recommendation.
- ix. It was recommended that the Company strengthen its controls of draft stock. 25
- The Company has complied with this recommendation.
- x. It was recommended that the Company count the drafts held at the agencies during the agency audit process. 25
- This recommendation was no longer applicable as agencies no longer keep drafts; hence, there are no drafts to count.
- xi. It was recommended that the Company require each agency to submit a list of authorized signatories. 26
- This recommendation was no longer applicable as agencies no longer keep drafts; hence, there is no list of authorized signatories to be submitted.
- xii. It was recommended that the Company perform the necessary “due diligence” on all banks, broker/dealers, servicing agents, property managers and other with whom the insurer has established a business relationship. 26
- The Company has complied with this recommendation.
- xiii. It was recommended that the Company retain this report and any similar reports that capture the detail of the information keyed on a claim prior its deletion. 27
- The Company has complied with this recommendation.
- xiv. It was recommended that the Company comply with Section 1302(b) of the New York Insurance Law and non-admit all assets of doubtful value. 27
- The Company has complied with this recommendation.
- xv. It was recommended that the Company produce and maintain the records in the form and manner required by Department Regulation 30. 28
- The Company has complied with this recommendation.

<u>ITEM</u>		<u>PAGE NO.</u>
E.	<u>Expense Limitation</u>	
	It was recommended that the Company comply with the management expense limitations set forth in Section 4110 of the New York Insurance Law.	28
	The Company has not complied with this recommendation. A similar comment is contained in this report.	
F.	<u>Bonds</u>	
	It was recommended that the Company amortize its bond assets in accordance with the NAIC's SSAP No. 26.	33
	The Company has complied with this recommendation.	
G.	<u>Losses and Loss Adjustment Expenses</u>	
i.	It was recommended that the Company ensure that the actuarial report is prepared in accordance with the NAIC Annual Statement Instructions and include all exhibits and documentation including a narrative to clearly explain the assumption and methodology used regarding the Adjusting and other expense reserve analysis.	36
	The Company has complied with this recommendation.	
ii.	It was recommended that the Company's actuarial unit prepare and include in the actuarial report the requisite exhibits and documentation and provide the same to the examination in a timely manner.	36
	The Company has complied with this recommendation.	
iii.	It was recommended that the Company comply with the NAIC Annual Statement Instructions and report all future changes of actuaries within the timeframe and in the manner prescribed by those instructions.	36
	The Company has complied with this recommendation.	
H.	<u>Market Conduct</u>	
i.	It was recommended that the Company revise its policy system to include the requisite wording of Department Regulation 90.	39
	The Company has complied with this recommendation.	
ii.	It was recommended that the Company ensure that the current version of Department Regulation 64 is available to all persons administering claims settlement as required therein.	39

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The Company has complied with this recommendation.

- iii. It was recommended that the Company revise its complaint log to incorporate the data with the requisite column headings as required by Circular Letter No. 11 (1978). 40

The Company has complied with this recommendation.

- iv. It was recommended that the Company generate quarterly reports and forward them to the heads of the respective operating units and to the Company president. 40

The Company has complied with this recommendation.

- v. In addition, it was recommended that management either generate separate logs for each Company or include an identifier of the Company in the Utica National Insurance Group that generated the complaint. 41

The Company has complied with this recommendation.

- vi. It was recommended that the Company update the settlement authority for claims to conform to its currently approved procedures. 41

The Company has complied with this recommendation.

- vii. It was recommended that the Company either comply with their written procedures or amend the procedures to conform to its current practice. 41

The Company has complied with this recommendation.

## 6. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Management</u>	
i. It is recommended that the Company comply with its by-laws by ensuring that all elective officers of the company shall be annually sworn and their oaths entered of record in the books of the company and that the chairman of the board, the president, the secretary, the treasurer, the comptroller, their officer assistants, if any, and any other officers, employees, or agents designated by the chief executive officer or board shall furnish bonds for the faithful performance of their respective duties, in such sums as the board may require, as required by Article V, Section 3 of the by-laws.	5
ii. It is recommended that the Company comply with Section 1209(b) of the New York Insurance Law by reducing to no more than four, the number of directors who are neither members of the Company nor officers of member corporations.	6
B. <u>Reinsurance</u>	
i. It is recommended that the offset provision of certain reinsurance agreements be amended to state that in the event of the insolvency of either party to the agreement then offsets shall only be allowed to the extent permitted by the provision of Section 7427 of the New York Insurance Law.	13
It is further recommended that all future reinsurance agreements with an offset provision entered into by the Company include such required language.	13
ii. It is recommended that the Company comply with the NAIC Annual Statement Instructions by properly aging all reinsurance recoverables in all future filings with this Department.	13
C. <u>Accounts and Records</u>	
i. It is recommended that the Company complete its record retention policy. It is also recommended that all retention periods be modified to comply with the requirements of Department Regulation 152 and that records be kept for the required periods.	18
ii. It is recommended that the Company comply with SSAP No. 6, Paragraph 7 by using the effective date for the determination of non-admitted premium for original and endorsement premiums.	18

<u>ITEM</u>		<u>PAGE NO.</u>
iii.	It is further recommended that the Company comply with SSAP No. 6, paragraph 9 by non-admitting installment premiums when they are over 90 days past due.	18
D.	<u>Expense Limitations for Mutual Companies</u>	
	It is recommended that the Company comply with the management expense limitations set forth in Section 4110(a) of the New York Insurance Law.	19

Respectfully submitted,

\_\_\_\_\_/s/  
Fe Rosales, CFE  
Associate Insurance Examiner

STATE OF NEW YORK     )  
  )ss:  
COUNTY OF NEW YORK    )

FE ROSALES, being duly sworn, deposes and says that the foregoing report, subscribed by her,  
is true to the best of her knowledge and belief.

\_\_\_\_\_/s/  
Fe Rosales

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

Appointment No. 30439

STATE OF NEW YORK  
INSURANCE DEPARTMENT

I, James J. Wrynn Superintendent of Insurance of the State of New York,  
pursuant to the provisions of the Insurance Law, do hereby appoint:

**Fe Rosales**

*as proper person to examine into the affairs of the*

**UTICA MUTUAL INSURANCE COMPANY**

*and to make a report to me in writing of the condition of the said*

**Company**

*with such other information as she shall deem requisite.*

*In Witness Whereof, I have hereunto subscribed by the  
name and affixed the official Seal of this Department, at  
the City of New York,*

*this 8th day of December, 2009*



A handwritten signature in cursive script that reads "James J. Wrynn".

JAMES J. WRYNN

Superintendent of Insurance