

REPORT ON EXAMINATION
OF THE
HANYS MEMBER HOSPITALS SELF-INSURANCE TRUST
AS OF
DECEMBER 31, 1994

DATE OF REPORT

NOVEMBER 27, 1997

EXAMINER

ELSAID ELBIALLY, AFE

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November 27, 1997

Honorable Neil D. Levin
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 20605 dated January 6, 1994, attached hereto, I have made an examination into the condition and affairs of Hanys Member Hospitals Self-Insurance Trust of December 31, 1994 and submit the following report thereon.

The examination was conducted at the office of Hospital Insurance Management Company, Inc. (HIMCO), located at 217 Great Oaks Boulevard, Albany, New York 12203. HIMCO is providing assistance to the trustee, Hanys Services, Inc. in managing the trust.

Wherever the "the Trust" appear in this report, it refer to Hanys Member Hospitals Self-Insurance Trust.

1. SCOPE OF EXAMINATION

This is the second exam of the Trust, which, as described hereinafter, provided insurance coverage during the period from July 1, 1985 through July 31, 1987. The examination was conducted as of December 31, 1994.

Where deemed appropriate, transactions subsequent to the current examination period were reviewed.

The examination comprised of a complete verification of assets and liabilities as of December 31, 1994, a review of income and disbursements deemed necessary for such verification, and utilized to the extent considered appropriate, work performed by the Trust's independent certified public accountants.

A review or audit was made of the following items:

- History of the Trust
- Management and control
- Trust records
- Fidelity bonds and other insurance
- Territory and plan of operation
- Accounts and records
- Loss experience
- Reinsurance
- Treatment of policyholders and claimants

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

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

2. DESCRIPTION OF THE TRUST

The Hanys Member Hospitals Self-Insurance Trust (the Trust) was created by a trust agreement between Hanys Services, Inc. (HSI), a for profit, wholly-owned subsidiary of the Hospital Association of New York State (Hanys), as trustee, and a group of Hanys member health care facilities, as Grantors of the Trust. The Trust agreement was approved by the Insurance Department on November 15, 1985.

The Trust was formed in response to the mandate of the Medical Malpractice Reform Act of 1985 (the Act). The Act requires every general hospital which maintains facilities for providing emergency medical care, to purchase a policy for excess medical malpractice insurance in the amounts of \$1 million per occurrence, \$3 million per policy period, or to provide equivalent excess coverage in a form approved by the Superintendent of Insurance.

Originally the coverage applied to medical or dental malpractice occurrences between July 1, 1985 and June 30, 1986, affecting physicians or dentists who requested such coverage and who were primarily affiliated with each respective hospital. However, such requesting physicians or dentists must have had, in force, individual policies issued by an insurer, licensed in New York State, providing primary medical malpractice insurance coverage in the amounts of no less than \$1 million for each claimant and \$3 million for all claimants, all occurrences.

The purpose of the Trust was to provide equivalent excess coverage to those facilities which had determined that it was preferable to use the Trust in lieu of obtaining commercial insurance coverage in satisfaction of the obligations imposed upon them under the Act.

Section 4 of Chapter 208 of the Laws of 1987, enacted effective July 1, 1987, extended the provisions of the Laws of 1985, allowing health care facilities to purchase such “equivalent excess coverage” for periods after June 30, 1986. As a result, the Trust agreement was amended on August 1, 1987, effective as of July 1, 1986, to provide equivalent excess coverage through the Trust, for the periods from July 1, 1986 through June 30, 1987, and July 1, 1987 through July 31, 1987.

All assets of a particular policy period, and any income applicable to such assets, are restricted for use in satisfying the obligations of the Trust, with respect to coverage during that particular policy period only. The cash and investments for each policy period are currently held, by the Trustee, in separate accounts.

Therefore, the assets applicable to a particular policy period are unavailable for payment of eligible malpractice losses and Trust expenses applicable to another policy period. The financial statements have been presented in Section 3 of this report, on a separate policy period basis. The total columns are for information purposes only.

As of August 1, 1987, upon the creation of Hanys Insurance Company, the Trust discontinued writing any new business. Hanys Insurance Company policies were issued to cover the Trust’s insureds for the remaining eleven months of the July 1, 1987 through June 30, 1988 policy year and thereafter.

On October 22, 1991, the Internal Revenue Service (IRS) granted the tax exempt status to the trusts, effective as of January 1, 1988, provided that direct or net written premiums do not exceed \$350,000 per tax year.

The Trust is not a licensed insurance company. However, the Trust is subject to regulation by the New York State Insurance Department.

A. Management

In September 1987, the Trust's members hospitals designated a Committee of Grantors as the decision making body for the Trust. As of December 31, 1994, the Committee consisted of the following eight members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
George Adams West Hempstead, NY	President, Lutheran Medical Center
Jeffrey Frerichs Yonkers, NY	President, Cabrini Medical Center
Thomas J. Hayes Chappaqua, NY	Chairman of the Board, Hanys Insurance Co.; Senior Vice President, Beth Israel Medical Center
James Maher Skaneateles, NY	Chief Executive Officer, Crouse-Irving Memorial Hospital
Murray Marsh Jamestown, NY	Vice Chairman, Women's Christian Association Hospital
A. Gordon McAleer Warwick, NY	President, Arden Hill Hospital
Edward Murphy, MD Troy, NY	President, Seton Health System of Troy
Bertram J. Oppenheimer, MD Eastchester, NY	Secretary, Hanys Insurance Company; Administrator, Yonkers General Hospital

A review of the minutes of the Committee of Grantors and various sub-committees revealed the following:

1. The Committee met twenty times during the period under examination. All meetings of the Committee of Grantors were well attended, with the exception of Mr. Jeffrey Frerichs, whose attendance was poor. Mr. Frerichs attended only two of the twenty meetings (10%) during the five years under examination.

Members of the Committee of Grantors have a fiduciary responsibility, and must evince an ongoing interest in the affairs of the Trust. It is essential that committee members attend meetings consistently, and set forth their views on relevant matters so that appropriate policy decisions may be reached by the Committee. Individuals who fail to attend at least one-half of the committee meetings do not fulfill such criteria.

It is recommended that the committee members who are unable or unwilling to consistently attend meetings should resign or be replaced.

2. The Committee of Grantors or its finance sub-committee failed to approve the investment transactions as required by the Insurance Law.

Pursuant to Section 1411(a) of the New York Insurance Law:

“No domestic insurer shall make any loan or investment...unless authorized or approved by its board of directors or a committee thereof responsible for supervising or making such investment or loan...”

It is recommended that all future investment transactions be approved by the Committee of Grantors or the Finance Sub-Committee. If approved by the Finance Sub-Committee, Section 1411(a) requires that, “...the sub-committee’s minutes shall be recorded and a report submitted to the “Committee of Grantors” at its next meeting.”

B. The Trust’s Administrative Fees

The Committee of Grantors in its meeting on March 18, 1988, resolved, “...that Hany Services, Inc. (HSI), as a Trustee, shall receive a fee for its services at 1.75% of all premiums received by the Trust, such

fee to be paid in installments over a period of four years, and thereafter to be reviewed and equitably adjusted in recognition of the scope of continuing services required by Hanys Services, Inc.”

The administrative fees due to HSI at 1.75% of premiums, were \$1,193,969, of which \$1,055,666, was paid to HSI as of December 31, 1989.

The Committee of Grantors, at its meetings on May 24, 1990 and September 27, 1990, approved the amount of \$175,836, to be payable each year, commencing on January 1, 1990, for HSI administrative services.

The projected run-off periods were seven, eight, and nine years for the 1985-1986 Trust, 1986-1987 Trust, and the July 1987 Trust, respectively. Therefore, the additional total administrative fees were \$1,342,335, of which \$879,180 was paid to HSI for the five years from 1990 to 1994. The remaining \$463,155, was reported as part of the accrued expense liability as of December 31, 1994.

It should be noted, that on November 1, 1989, the Trustee entered into an agreement with the Hospital Insurance Management Company, Inc. (HIMCO), to assist in the management of the Trust for a yearly fee of \$100,000.

C. Territory and Plan of Operation

The Trust was authorized, pursuant to the approved “Trust Agreement,” to provide excess medical malpractice insurance only in the State of New York.

All policies were written on an occurrence basis, were non-assignable, and if terminated for any reason, paid no return premium.

The Trust has not been used to insure any occurrences after July 31, 1987, and is currently in run-off status.

The only written premium for the period under examination was a retroactive policy issued in year 1992 with a premium of \$6,309, as follows:

Policy year July 1, 1986 to June 30, 1987	\$5,772
Policy month of July 1987	\$ 537

D. Return Premiums

Chapter 266 of the Laws of 1991, amending Chapter 266 of the Laws of 1986, required, in substance, that if the Superintendent determines that rates of policies of excess medical malpractice coverage, as established by the Superintendent, are projected to produce amounts greater than required to satisfy the standard that premiums shall be fixed at the lowest possible rates consistent with the maintenance of solvency and reasonable reserves and surplus therefore, then the Superintendent may direct the Trust to return to the New York State Hospital Excess Liability Pool (the Pool) all or a portion of such premium that is projected to be greater than required. The Pool is an administrative organization established by statute to act as a conduit for the flow of funds from the payers to the insurance carriers which provide excess medical malpractice insurance coverage.

Pursuant to Chapter 266 of the Laws of 1991, and based upon the actuarial calculation, the Superintendent directed the Trust to pay \$13 million to the New York State Hospital Excess Liability Pool.

Return premiums of \$6,518,499 and \$6,481,501 were paid by the Trust to the Pool on February 14, 1992 and February 18, 1992, respectively.

E. Reinsurance

The Trust did not cede nor assume any reinsurance during the period under examination.

F. Holding Company System

The Trust is not a part of any holding company system.

G. Internal Control

A review of the internal control of the Trust's cash and investment accounts revealed the following:

1. The protocol for the check writing/investment accounts, which was adopted by the Committee of Grantors in its March 18, 1988 meeting, appeared outdated.

2. The required approval of the Trusts' outside counsel, Mr. Joel Glass, before checks for amounts over \$50,000 are issued, appeared to be imprudent. It seems to represent an unnecessary transfer of the Trustee's authority, granted by the trust agreement, to the outside legal counsel.

When brought to the Trustee's attention, the protocol was updated and a member of the Committee of Grantors was appointed to authorize issuance of checks with amounts over \$50,000.

H. Custodian Agreements

Hanys Services, Inc., as a trustee of the Trust, entered into two custodian agreements with Norstar Trust Company, naming Norstar as a custodian of the Trust's funds for the policy years July 1, 1985 to June

30, 1986, and July 1, 1987 to July 31, 1987. These agreements lacked certain necessary safeguards, control and protective covenants, deemed consistent with prudent business practices. When brought to the trustee's attention, the agreements were revised to meet such standards.

I. Investments

The Trust's compliance with Article 14 of the New York State Insurance Law is based on Section 5(a) of the Trust agreement which states in part:

“The Trustee, acting through a Custodian and/or Investment Manager, shall invest and reinvest the Trust Estate...pursuant to Article 14 of the Insurance Law of the State of New York as applicable to property and casualty insurers.”

As of December 31, 1994, the Trust's total investment in the Galaxy Fund was \$16,096,190, while the Trust's admitted assets were \$30,708,078. This investment exceeded the 10% limitation on investing in any one institution, as per Section 1409 of the New York Insurance Law, which states in part:

“...no domestic insurer shall have more than ten percent of its admitted assets as shown by its last statement on file...invested in...the securities...of any one institution.”

The 10% limitation is applicable to each individual mutual fund (considered to be one institution), even if more than one mutual fund is held with the same investment manager, (i.e. Morgan Stanley, Salomon Brothers, etc., have many different mutual funds).

The Trust, acting in accordance with Section 1412(a) of the New York State Insurance Law, disposed of the excess investment in January and March of 1995. Since the investment was in violation of Section 1409 of the Insurance Law as of December 31, 1994, the excess investment of \$13,025,382 is treated as a non-admitted asset for this examination, per Section 1412(b) of the Insurance Law.

It is recommended that the Trustee, when making future investment decisions, be mindful of statutory limitations imposed on investments, and exercise due diligence in avoiding recurrence of the above described situation.

J. Legal Expenses

Beginning with the organization of the Trust, the law firm of Ackerman, Salwen and Glass (“the Law Firm”) has provided various legal services. Several employees of the Law Firm, including the Senior Partner, Joel Glass (“the Senior Partner”) were among the original officers of Hanys Insurance Company. The legal services provided included formation of the Trust, assistance in obtaining licenses from this Department, filing of policy forms, rates and corporate agreements with the State, and acting as assistant secretaries of the Trust. Members of the Law Firm also attended all meetings of the Committee of Grantors, (including sub-committees thereof). In addition, the Law Firm was given the authority to manage, defend and settle all claims on behalf of the Trust. Management represented that there was no formal written agreement between the Trust and the Law Firm that granted such broad claims settlement authority to the Law Firm.

During the previous examination, it was discovered that payments were made to the same law firm without detailed supporting vouchers. This was a violation of Section 1217 of the New York Insurance Law which states in part that:

“No domestic Insurance Company (Trust) shall make any disbursement of one hundred dollars or more unless evidenced by a voucher...If such disbursement be for services and disbursements, such vouchers shall set forth the services rendered and itemize the disbursements...”

At the examiner’s request the Trust provided the detailed vouchers. Examination review indicated instances of duplicate billings by the law firm as well as duplicate payments by the Trust. This matter was

brought to the Trust's attention and all payments made to the Law Firm were reviewed, corrected and adjusted by the Trust. Additionally, the Trust represented that it had instituted a series of internal controls to avoid a recurrence of this situation.

During the examination period, all claim notices and inquiries were sent by the Trust to the Law Firm. Upon receipt, the Law Firm established either an asserted or unasserted case file on a per physician, per incident basis. Asserted claims are those claims where the Trust has received a formal indication that an occurrence of malpractice has been alleged against an insured physician. Unasserted claims involve inquiries or occurrences reported to the Trust for which there is no formal indication that a claim will be presented to the Trust, or allegation of malpractice against an insured physician. Separate claim numbers were assigned to each case file in those instances where the physician was insured by the Trust for multiple years and an occurrence date could not be determined.

It appears that there was a verbal agreement between the Law Firm and the Trust authorizing the law firm to bill the Trust for two hours time, at a rate of \$125 or \$150 per hour, depending on the attorney assigned, to establish each newly reported case. This applied to both asserted and unasserted cases. Information provided to the examiners indicates that this agreement was based on representations from the Law Firm regarding the time involved in opening a newly reported case file. While certain fees were charged the Trust by the law firm on a per case basis, other charges were predicated on the number of claim files opened.

Examination review revealed thirty-one instances in 1994 where Law Firm attorneys opened more than twelve case files in a given day, thereby permitting the firm to charge in excess of twenty-four hours for those days, solely for claims related matters. This is a clear indication that the two hours billed for opening

case files was excessive. Based on this, it would appear that the Trust management contributed to the increased legal costs by agreeing to such an arrangement.

In addition to the two hour charge noted above, a review of billings submitted by the Law Firm revealed that during 1990, a Senior Partner of the Law Firm, routinely charged the Trust for 0.3 hours for reviewing each newly reported case. At that time, a senior partner's services were billed at a rate of \$250 per hour. In 1991, and thereafter his/her hourly time charge per case increased to either 0.6 or 0.8 hours. At the same time, his/her hourly billed rate increased to \$300 per hour and thereafter increased to \$350 per hour. According to the Trust management, there was no agreement between the Law Firm and the Trust authorizing these routine charges. According to information provided to the examiners, the Law Firm's office manager was instructed by the Senior Partner to record these routine charges when each new case file was established. A review of a sample of unasserted claim files by the examiners did not indicate any work product evidencing such reviews.

In addition to the two hour case set up charge and the routine loading of the Senior Partner's reviewing charge, the Law Firm billed the Trust for either 0.6 hours or 1.0 hour for paralegal services at a rate of \$50 per hour. The paralegal's charges were based on the total number of claim files established as opposed to number of case files established.

The costs associated with opening and reviewing a case file appears to be excessive in that it involved the services of a senior partner, a staff attorney, and a paralegal. For asserted cases, initial notification to an insurer usually consists of a subpoena or letter from a claimant's attorney. For unasserted claims, the notification usually consists of an inquiry. Based on the limited information that is usually provided at the initial notification stage, the Law Firm's frequent practice of billing for the services of a senior partner and a

paralegal in addition to the two hours charged for attorneys represented excessive legal fees that should have been questioned by Trust management.

In addition to the charges set forth above, it was noted that once an unasserted claim file was established, a paralegal would be assigned the duty of preparing a report of all claims at a set interval, at which time the Trust was billed either .6 hours or 1.0 hours for his/her services per claim file at a rate of \$50 per hour. Examination review indicated that this practice constituted the law firm's normal billing procedures relative to claim files and was not questioned by Trust management.

The examination revealed that the number of hours charged by the senior partner and a staff attorney to the Trust increased significantly from 1992 through 1994, as set forth below:

<u>Year</u>	<u>Hours Billed for Loss Adjustment Services</u>		<u>Total Claims Adjustment Hours Billed</u>	<u>% Increase Over Previous Year</u>	<u>Number of Outstanding Claims</u>	<u>% Decrease From Previous Year</u>
	<u>Senior Partner</u>	<u>Staff Attorney</u>				
1992	147.1	190.1	337.2		672	
1993	219.1	202.1	421.2	25%	610	10%
1994	396.4	323.6	720.0	71%	395	35%

Information provided to the examiners indicated that the reason for the increase in hours charged by the staff attorney was due to the fact that he/she was assigned complete responsibility for the Trust.

However, the increase in the senior partner's charges was not explained. (i.e The senior partner was under a cap arrangement with Hanys Insurance Company from 1992 to 1995).

In late 1995, Trust management initiated an audit of billings from the law firm in 1994 and 1995. At a Committee of Grantors meeting held March 15, 1996, management concluded that the billings were appropriate in the sense that the work billed by the Law Firm was actually performed and was supported by work product. They further concluded that the professional nature of the work performed was adequate. However, they also concluded that since claims related legal expenses represent a significant expense to the Trust, controls should be implemented to better manage and reduce expenses. On October 16, 1995, the Trust awarded a retainer contract to the Senior Partner, whereby he would be paid \$100,000 for all legal services provided to the Trust during calendar year 1996. Effective February 1, 1996, claims adjusting functions were split between the Trust and the Law Firm whereby each party's duties and responsibilities were defined.

As noted previously, the Law Firm also provided general legal services to the Trust. A review of the minutes of the Committee of Grantors meetings indicated that at least three attorneys from the Law Firm attended all meetings of the Committee of Grantors as well as sub-committees thereof. The Trust was billed by the Law Firm for attendance at these meetings. The minutes did not always reflect the participation of the lawyers in discussions at the meetings, thereby calling into question the need for their attendance at such meetings.

It should be noted that the management of the Trust did not adequately oversee the activities and billings of the Law Firm, as required by item ii of subsection one, of Section 2 of the rules for administration of the Trust.

Members of the board of directors have a fiduciary responsibility to oversee the activities of the Trust. Management of the Trust failed to develop effective review procedures which resulted in continued overpayment of legal fees to the Law Firm and the Senior Partner. In turn, board members failed to insure that proper procedures were developed. It is recommended that any board members unwilling or unable to fulfill their fiduciary responsibilities to the Trust be replaced.

3. FINANCIAL STATEMENT

A. Balance Sheet

The following shows the assets, liabilities and surplus as determined by this examination as of December 31, 1994 and as reported by the Trust:

Examination As of December 31, 1994 <u>For the Policies Covering the Periods</u>						
<u>Admitted Assets</u>	<u>7/1/85- 6/30/86</u>	<u>7/1/86- 6/30/87</u>	<u>7/1/87- 7/31/87</u>	<u>Total</u>	<u>Trust</u>	<u>Surplus Increase (Decrease)</u>
Bonds	\$27,125,812	\$44,841,576	\$3,633,727	\$75,601,115	\$75,601,115	\$
Cash on hand and on deposit	(1,730)	(1,778)	112	(3,396)	(3,396)	
Short-term investments	3,070,808	4,064,760	389,139	7,524,707	20,550,089	(13,025,382)
Interest, dividends due and accrued	<u>498,183</u>	<u>580,144</u>	<u>80,803</u>	<u>1,159,130</u>	<u>1,159,130</u>	<u> </u>
Total admitted assets	<u>\$30,693,073</u>	<u>\$49,484,702</u>	<u>\$4,103,781</u>	<u>\$84,281,556</u>	<u>\$97,306,938</u>	<u>\$(13,025,382)</u>
 <u>Liabilities</u>						
Losses	\$5,502,000	\$7,689,000	\$755,000	\$13,946,000	\$33,076,000	\$19,130,000
Loss adjustment expenses	565,000	790,000	77,000	1,432,000	4,302,000	2,870,000
Other expenses	181,011	310,126	59,999	551,136	551,136	
Miscellaneous liabilities	<u> </u>	<u>1,996,563</u>	<u> </u>	<u>1,996,563</u>	<u>1,996,563</u>	<u> </u>
Total Liabilities	<u>\$6,248,011</u>	<u>\$10,785,689</u>	<u>\$891,999</u>	<u>\$17,925,699</u>	<u>\$39,925,699</u>	<u>\$22,000,000</u>
 <u>Surplus as regards policyholders</u>						
Unassigned funds	<u>\$24,445,062</u>	<u>\$38,699,013</u>	<u>\$3,211,782</u>	<u>\$66,355,857</u>	<u>\$57,381,239</u>	<u>\$8,974,618</u>
Total liabilities and policyholders' equity	<u>\$30,693,073</u>	<u>\$49,484,702</u>	<u>\$4,103,781</u>	<u>\$84,281,556</u>	<u>\$97,306,938</u>	

B. Underwriting and Investment Exhibit

Surplus as regards policyholders increased \$25,331,835 during the five year examination period from January 1, 1990 through December 31, 1994, detailed as follows:

Statement of Income
For the Policies Covering the Periods

<u>Underwriting Income</u>	<u>7/1/85- 6/30/86</u>	<u>7/1/86- 6/30/87</u>	<u>7/1/87- 7/31/87</u>	<u>Total</u>
Premiums earned	\$	\$ (573,478)	\$ 537	\$(572,941)
Premiums returned to the State of New York	<u>(5,771,695)</u>	<u>(6,481,501)</u>	<u>(746,804)</u>	<u>(13,000,000)</u>
Total underwriting income	(5,771,695)	(7,054,979)	(746,267)	(13,572,941)
<u>Deductions:</u>				
Losses incurred	\$(9,496,000)	\$(10,751,000)	\$(680,000)	\$(20,927,000)
Loss adjustment expenses incurred	(1,861,276)	(2,320,027)	(98,344)	(4,279,647)
Other underwriting expenses	<u>(272,119)</u>	<u>145,487</u>	<u>81,539</u>	<u>(45,093)</u>
Total underwriting deductions	<u>\$(11,629,395)</u>	<u>\$(12,925,540)</u>	<u>\$(696,805)</u>	<u>\$(25,251,740)</u>
Net underwriting gain or (loss)	<u>\$5,857,700</u>	<u>\$5,870,561</u>	<u>\$(49,462)</u>	<u>\$11,678,799</u>
<u>Investment Income</u>				
Net investment income earned	\$15,359,017	\$15,740,605	\$1,520,655	\$32,620,277
Net realized capital gains	<u>739,787</u>	<u>2,447,499</u>	<u>164,595</u>	<u>3,351,881</u>
Net investment gain	<u>\$16,098,804</u>	<u>\$18,188,104</u>	<u>\$1,685,250</u>	<u>\$35,972,158</u>
Net income	<u>\$21,956,504</u>	<u>\$24,058,665</u>	<u>\$1,635,788</u>	<u>\$47,650,957</u>

Capital and Surplus Account

For the Policies Covering the Periods

	<u>7/1/85- 6/30/86</u>	<u>7/1/86- 6/30/87</u>	<u>7/1/87- 7/31/87</u>	<u>Total</u>
Surplus as regards policyholders as of December 31, 1989, per report on examination	<u>\$15,547,680</u>	<u>\$14,640,348</u>	<u>\$1,575,994</u>	<u>\$31,764,022</u>
Net income	\$21,956,504	\$24,058,665	\$1,635,788	\$47,650,957
Change in non-admitted assets	<u>13,059,122</u>	_____	_____	<u>13,059,122</u>
Change in Surplus as regards policyholders for the examination period	<u>\$8,897,382</u>	<u>\$24,058,665</u>	<u>\$1,635,788</u>	<u>\$34,591,835</u>
Surplus as regards policyholders, per report on examination as of December 31, 1994	<u>\$24,445,062</u>	<u>\$38,699,013</u>	<u>\$3,211,782</u>	<u>\$66,355,857</u>

Note: The Trusts are in a tax exempt status since January 1, 1988. Therefore, they are not subject to Federal or State income taxes.

4. SHORT-TERM INVESTMENTS

The examination asset of \$7,524,707 is \$13,025,382 less than the \$20,550,089 reported by the Trust in its December 31, 1994, Annual Statement.

The examination decrease is due to not admitting the excess investment by the 1985-1986 Trust, in the "Galaxy Government Fund". This decrease is in accordance with Section 1412(b) of the New York Insurance Law.

5. **LOSSES AND LOSS ADJUSTMENT EXPENSES**

The examination liability of \$15,378,000 is \$22,000,000 less than the \$37,378,000 reported by the Trust as of the examination date.

This change is summarized as follows:

	<u>Examination</u>	<u>Trust</u>	<u>Decrease in reserves</u>
Losses	\$13,946,000	\$33,076,000	\$19,130,000
Loss adjustment expenses	<u>1,432,000</u>	<u>4,302,000</u>	<u>2,870,000</u>
Totals	<u>\$15,378,000</u>	<u>\$37,378,000</u>	<u>\$22,000,000</u>

The examination reserves were calculated in accordance with generally accepted actuarial principles, and were based upon actuarial assumptions considered appropriate, relative to the coverages afforded by the Trusts.

The examination, and the Trust, reserves are reflected net of anticipated future investment income on medical malpractice reserves. However, the calculation of the present value of such reported reserves was based upon interest rates of 7% and 6.5%, per year, for this examination and the Trust, respectively.

This discount has been allowed due to the protracted period involved in the settlement of medical malpractice claims, during which, period earnings will be derived from investments corresponding to the reserves for such claims, and related reserves for the expenses of settlement.

6. TREATMENT OF POLICYHOLDERS AND CLAIMANTS

In the course of this examination, a review was made of the manner in which the Trust conducts its business practices and fulfills its contractual obligations to policyholders and claimants.

The review was general in nature, and is not to be construed to encompass the generally more precise scope of a market conduct investigation, which is the responsibility of the Property and Casualty Insurance Bureau of this Department.

The Trusts are in run-off status and have no premiums written. Therefore, the general review was directed at the practices of the Trusts in the handling of claims. No improper practices were encountered.

7. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior report contained twelve comments and recommendations detailed as follows: (Page numbers refer to prior report)

<u>ITEM NO.</u>		<u>PAGE NO.</u>
1.	The Trustee failed to submit an amendment of the trust agreement to the Department in a timely manner for its approval, as required by Article 9 of the trust agreement.	4
	The Trustee has complied with this recommendation, and submitted the amendment of the Trust Agreement to the Department on July 16, 1990.	
2.	The Trust's By-laws should govern its activities as required by the designation form of the Committee of Grantors. It is recommended that the Trustee notify all hospital members and secure the approval of the Superintendent for the established By-laws.	5-6

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The Trustee has complied with the recommendation to notify all hospital members of the Trust's by-laws, and secured the Superintendent's approval of the by-laws on October 11, 1991.

3. Various copies of the Trust agreement were inconsistent with each other. This situation was remedied on August 8, 1990. 6

4. The Trust discontinued writing any new business as of July 31, 1987 and it is currently on run-off status. 7

The Trusts remained on run-off status during the five years under this examination.

5. It is recommended that the Trust's custodian agreement with Norstar Trust Company, for the policy years June 1, 1985 to June 30, 1986 and July 1987, be revised in order to adequately safeguard the Trust's securities. 8-9

The trustee has complied with this recommendation.

6. It is recommended that the Trust's custodian agreement with CITIBANK, N.A., be revised to delete Article 7 therefrom. 10

The Trustee has complied with this recommendation.

7. The Trust failed to adhere to the requirements of Department Regulation 30, in reporting allocated and unallocated loss adjustment expenses in Schedule P in its filed annual statements for the years 1985 through 1988. This was remedied with the filing of the 1989 Annual Statement. 10-11

The Trust continued with its remedied practice for the period under examination.

8. The Trustee (HSI) failed to provide fidelity bond coverage to the Trust as required by the trust agreement. The coverage was provided as of October 23, 1990. 11

9. It is recommended, that in addition to the single annual statement, the Trustee file reports effecting the 3 Trust policy periods: July 1, 1985 to June 30, 1986; July 1, 1986 to June 30, 1987; July 1, 1987 to July 31, 1987, respectively, regarding the segregated accounts required by Section 70.8(h) of Regulation 101. 12

The trustee has complied with this recommendation.

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10.	It is recommended that the Trustee instruct its investment manager to report promptly, to the National Association of Insurance Commissioners (NAIC) Subcommittee on Valuation of Securities, all acquisitions of securities unlisted in the NAIC Valuation Manual. The trustee has complied with this recommendation.	12
11.	The Trust failed to follow the instructions to Schedule D when preparing its 1987, 1988 and 1989, annual statements. The Trust has complied with the instructions in its filed 1990 annual statement. The Trust continues to comply with the instructions.	12-13
12.	It is recommended that the Trust report its loss and loss adjustment expense reserves on page 3 of its filed annual statement, gross of discounting, with a separate write-in contra liability, to reflect any anticipated future income. Changes in annual statement instructions render this point moot.	17

8. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>		<u>PAGE NO.</u>
A.	It is recommended that the Committee of Grantors' member, who is unable or unwilling to consistently attend meetings, either resign or be replaced.	6
B.	It is recommended that all future investment transactions be approved by the Committee of Grantors or the finance sub-committee. If approved by the finance sub-committee, it must be reported to the Committee of Grantors.	6
C.	The protocol for check/investing accounts was outdated. The approval of outside legal counsel was required for amounts over \$50,000. However, the Trustee has updated the protocol, and a member of the Committee of Grantors was appointed to authorize issuance of checks with amounts over \$50,000.	9

<u>ITEM NO.</u>		<u>PAGE NO.</u>
D.	The Trustee entered into several custodian agreements which lacked certain clauses deemed consistent with prudent business practices. However, the trustee has revised these custodian agreements, which now contain the necessary safeguards, control and protective covenants.	9-10
E.	It is recommended that the Trustee, when making future investment decisions, be mindful of statutory limitations imposed on investments and exercise due diligence in avoiding recurrence of excess investments.	11
F.	Members of the board of directors have a fiduciary responsibility to oversee the activities of the Trust. Management of the Trust failed to develop effective review procedures which resulted in continued overpayment of legal fees to the Law Firm and the Senior Partner. In turn, board members failed to insure that proper procedures were developed. It is recommended that any board members unwilling or unable to fulfill their fiduciary responsibilities to the Trust be replaced.	16

Respectfully submitted,

_____/S/_____
Elsaid Elbially, AFE
Associate Insurance Examiner

STATE OF NEW YORK)
)SS.
)
COUNTY OF RENSSELAER)

ELSAID ELBIALLY being duly sworn, deposes and says that the foregoing report submitted by him is true to the best of his knowledge and belief.

_____/S/_____
Elsaid Elbially

Subscribed and sworn to before me

this _____ day of _____ 1997.

APPOINTMENTS NO. 20605

STATE OF NEW YORK
INSURANCE DEPARTMENT

I, SALVATORE R. CURIALE, Superintendent of Insurance of the

State of New York, pursuant to the provisions of the Insurance Law, do hereby appoint:

ELSAID ELBIALLY

as proper person to examine into the affairs of the
HANY'S MEMBER HOSPITAL SELF INSURANCE TRUST

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

TRUST

with such other information as he/ she shall deem requisite.

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

this 6th day of January 1994

SALVATORE R. CURIALE

Superintendent of Insurance

Miriam A. Boggs
(by) Deputy Superintendent

