

REPORT ON EXAMINATION
OF THE
MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION
AS OF
DECEMBER 31, 1999

DATE OF REPORT

JUNE 18, 2001

EXAMINER

VERONICA DUNCAN-BLACK

TABLE OF CONTENTS

<u>ITEM NO.</u>		<u>PAGE NO.</u>
1.	Scope of examination	2
2.	Description of Corporation	3
	A. Management	4
	B. Territory and plan of operation	7
	C. Significant operating ratios	7
	D. Abandoned Property Law	8
	E. Custodian agreement	8
	F. Accounts and records	9
	G. Internal Controls	10
3.	Financial statements	13
	A. Balance sheet	13
	B. Underwriting and investment exhibit	14
4.	Losses and loss adjustment expenses	16
5.	Market conduct activities	16
6.	Compliance with prior report on examination	18
7.	Summary of comments and recommendations	19



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

June 18, 2001

Honorable Gregory V. Serio
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 21664 dated December 27, 2000, attached hereto, I have made an examination into the condition and affairs of the Motor Vehicle Accident Indemnification Corporation as of December 31, 1999 and respectively submit the following report thereon.

The examination was conducted at the Company's home office located at 110 William Street, New York, New York 10038.

Wherever the designations "MVAIC" or "the Corporation " appear herein without qualification, they should be understood to indicate the Motor Vehicle Accident Indemnification Corporation.

Whenever the term "Department" appears without qualification, it should be understood to indicate the New York Insurance Department.

1. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 1994. This examination covers the five year period from January 1, 1995 through December 31, 1999 and was limited in its scope to a review or audit of only those balance sheet items considered by this Department to require analysis, verification or description, including: invested assets, inter-company balances, loss and loss adjustment expense reserves and the provision for reinsurance. The examination included a review of income, disbursements and the Corporation's records deemed necessary to accomplish such analysis or verification and utilized, to the extent considered appropriate, work performed by the Corporation's independent certified public accountants. A review or audit was also made of the following items as called for in the Examiners Handbook of the National Association of Insurance Commissioners:

- History of Corporation
- Management and control
- Corporate records
- Fidelity bond and other insurance
- Territory and plan of operation
- Market conduct activities
- Growth of Corporation
- Accounts and records
- Financial statements

A review was made to ascertain what action was taken by the Corporation 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 which involve departure from laws, regulation or rules, or which are deemed to require explanation or description.

2. DESCRIPTION OF CORPORATION

MVAIC is a non-profit corporation consisting of all insurers authorized in New York State that write motor vehicle liability insurance. It was created by enactment of Article 17-A (now Article 52) of the New York Insurance Law, entitled, "Motor Vehicle Accident Indemnification Corporation Act". The purpose of the Corporation, as set forth in Section 5201(b) of the New York Insurance Law, is to provide compensation for injury or death to persons who are involved, through no fault of their own, in accidents occurring in New York State on or after January 1, 1959, caused by any one of the following classes of motor vehicles:

- A. Uninsured out of state motor vehicles;
- B. Unidentified motor vehicles which leave the scene of the accident;
- C. Uninsured motor vehicles registered in New York State;
- D. Stolen motor vehicles;
- E. Motor vehicles operated without the permission of the owner;
- F. Insured motor vehicles where the insurer disclaims liability or denies coverages;
- G. Unregistered motor vehicles.

From January 1, 1959 through July 1, 1965, anyone involved in an accident caused by any of the aforementioned was entitled to proceed with his claim against MVAIC.

Effective July 1, 1965, Section 167 [now Section 3420(f)(1)] of the New York Insurance Law required an individual's automobile insurance policy to include an uninsured motorist endorsement. Thus, claims of insured individuals which were previously the responsibility of MVAIC, now rest with the individual's own insurer. Effective July 16, 1995, the New York State Legislature amended Section 3420(f)(1) of the New York Insurance Law to increase the New York financial responsibility limits from

\$10,000 per person and \$20,000 per accident to \$25,000 per person and \$50,000 per accident, respectively. These limits are equally applicable to uninsured claims submitted to MVAIC. This law was effective for accidents occurring after January 1, 1996.

Pursuant to the 1977 Automobile Insurance Reform Act (Chapter 892 of the Laws of 1977), MVAIC was required to provide no-fault benefits to qualified persons who are victims of uninsured motor vehicle accidents in New York State on or after December 1, 1977. Protection was also extended to pedestrians injured by insured motorcycles. Beginning July 23, 1982, such pedestrians who are insured individuals receive no-fault benefits from their own insurer and not MVAIC. Effective July 22, 1989, the New York State Legislature amended Section 5208(a)(1) of the New York Insurance Law to extend the time in which a claimant must file an affidavit of “intention to make claim” with the Corporation for accidents wherein the defendant is identifiable.

A. Management

Every insurer authorized to write motor vehicle liability insurance in the State of New York, as a condition precedent thereto, is required to be a member of the Corporation. Section 5204 of the New York Insurance Law required the board of directors to be composed of nine persons: seven representing motor vehicle liability insurers and two representing segments of the public. The industry directors are elected from the member corporations and the public members are appointed by the Superintendent of Insurance with one of such director being an insurance broker or agent and the other director having no affiliation with insurers or insurance producers.

As of December 31, 1999, the Corporation's board of directors was comprised of eight members. One of the two positions on the board to be filled by a public member appointed by the Superintendent remains vacant.

The following lists the eight directors of the Corporation as of December 31, 1999, indicating their residence and principal business affiliation:

<u>Name and Residence</u>	<u>Principle Business Affiliation</u>
Thomas P. Bonaros Utica, New York	Vice President and General Counsel, Utica National Insurance Group
Gerard M. Curran, Woodbury, NY	Assistant Vice President, GEICO Insurance Company
Anthony Gargano, Brooklyn, NY	Section Manager, State Farm Insurance Company
Cathy G. Lazaroff, Chicago, Illinois	Assistant Vice President, Allstate Insurance Company
Elizabeth J. McLaughlin, Charlotte, NC	Vice President, Royal Insurance Company
Jill J. Prosky, New York, NY	Agent/Broker, Public Member
John D. Reiersen, Bethpage, NY	President, Eagle Insurance Company
V. Daniel Robinson, II, Edmeston, NY	President and Chief Operating Officer, New York Central Mutual Fire Insurance Company

The minutes of all of the meetings of the board of directors held during the examination period were reviewed. The review indicated that the board held twenty-seven regular meetings during the period, January 1, 1995 through December 31, 1999, and that such meetings were well attended by the members.

The principal officers of the Corporation as of December 31, 1999 were as follows:

<u>Name</u>	<u>Title</u>
Jeffrey A. Rubinton	President and Secretary
Victor A. Fetaya	Sr. Vice President and Treasurer

Conflict of Interest

The Corporation adopted a policy statement pertaining to conflict of interest for its directors, management and key employees. It was, however, noted for the period under examination that the Corporation did not have proper documentation to show that conflict of interest statements were properly executed by its directors and officers for calendar years 1995, 1996 and 1998. The Corporation stated in a memorandum that conflict of interest statements for calendar years 1995, 1996 and 1998 were indeed completed by its directors and officers. However, such statements were misplaced by the former president's secretary. It was also noted that only four of the eight elected directors signed conflict of interest statements for calendar year 1997.

It is recommended that the Corporation require all of its directors and officers to complete conflict of interest statements on an annual basis and retain such statements for record purposes.

B. Territory and Plan of Operation

MVAIC provides uninsured motorist liability and no-fault basic economic loss benefits to New York residents who are victims of uninsured motor vehicle accidents occurring in New York State. The Corporation will provide similar benefits to residents of other states or countries if those localities provide comparable coverage to New York residents injured in their jurisdiction. Currently, MVAIC has signed reciprocity agreements with the following jurisdictions:

Maryland	Ontario, Canada
Michigan	Quebec, Canada
New Jersey	

Informal understandings have been reached with Pennsylvania and British Columbia, Canada.

C. Significant Operating Ratios

The following ratios have been computed as of December 31, 1999, based upon the results of this examination:

Assessments to Surplus as regards policyholders	11.32:1
Liabilities to liquid assets (cash and invested assets less investment in affiliates)	82%
Assessments receivable to Surplus as regards policyholders	**

** The ratio of "Assessments receivable to surplus" was not computed due to its non-admissibility.

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	\$136,764,466	117%
Net underwriting gain (loss)	<u>(20,178,207)</u>	<u>(17)</u>
Assessments earned	<u>\$116,586,259</u>	<u>100%</u>

D. Abandoned Property Law

MVAIC was created by an act of the legislature to operate on a non-profit basis for the purpose of protecting innocent accident victims of financially irresponsible motorists. Acting under this mandate, the Corporation functions as a quasi-state organization and as such is not required to escheat abandoned funds to the Office of the State Comptroller. As a result, MVAIC annually takes back into income any checks of claimants, health providers and other payees that remain uncashed for more than six years.

E. Custodian Agreement

As of the examination date, the Corporation's securities were held with a bank pursuant to a custodian agreement. This Department maintains that a custodian agreement must contain certain provisions in order to ensure that a company's assets are properly safeguarded. A review of the Corporation's custodian agreement shows that the agreement was lacking several protective covenants that are necessary for the safeguard of the Corporation's assets, as follows:

1. The bank shall have in force, for its own protection, Bankers' Blanket Bond Insurance of the broadest form available for commercial banks and will continue to maintain such insurance. The bank will give the insurer 60 days written notice of any material change in the form or amount of such insurance prior to termination of this coverage.
2. Access shall be during your regular banking hours and specifying those persons who shall be entitled to examine on your premises securities held by you on your premises and your records regarding securities held, but only upon furnishing you with written instructions to the effect from any specified authorized officer.

3. There should be a provision in the agreement that would give the insurer the opportunity to secure the most recent report on the review of the custodial system of internal controls, pertaining to custodian record keeping, issued by internal or independent auditors.

It is recommended that the Corporation amend its custodian agreement to include the above provisions deemed by this Department to be representative of good business practices for the contents of such agreements.

F. Accounts and Records

Section 307(a)(1) of the New York Insurance Law states that, “Every insurer....which is authorized to do an insurance business in this state,...and every...state fund which is required by any law of this state, to report to the superintendent or is subject to his examination, shall file in the office of the superintendent, annually on or before the first day of March, a statement, to be known as its annual statement... Such statement shall be in such form and shall contain such matters as the superintendent shall prescribe.” Section 5222 of the New York Insurance Law subjects the corporation to be examined by the Superintendent.

The Insurance Department’s Office of General Counsel has opined that MVAIC is required to file a fully completed annual statement with the superintendent. Based upon the unique business structure of MVAIC, the Department has deemed that the Corporation’s Annual Report, which is a comprehensive document put together by the Corporation, be submitted by March 1st of each year. Also, it will be necessary for the Corporation to add a jurat page and a Schedule D – Part 1,2,3,4 and 5 and Schedule DA to the MVAIC’s Annual Report.

As such, it is recommended that MVAIC submit an Annual Report to the superintendent by March 1st of each year, amended to include a jurat page and a Schedule D and Schedule DA, in order to comply with Section 307(a) of the Insurance Law.

G. Internal Controls

At the request of the Corporation's board of directors, in March 1999, MVAIC's certified public accountants (CPA) performed a general internal control review of the Corporation's infrastructure, including existing policies and procedures. A report was issued to the board regarding the review. The CPA cited several major weakness in the Corporation's policies and procedures, automated detection controls and information technology system. In October 2000, the CPA performed another internal control review at the request of the Corporation's board of directors to provide the board members with an independent assessment of the status of the previous control recommendations. The board of directors also requested a review of any new business processes/applications as they relate to the effectiveness of the internal controls in key areas.

i. Loss and Benefit Cycle

In reviewing the Corporation's loss and benefit cycle, this examination noted that the Corporation had not implemented certain internal control mechanisms based upon the CPA's findings. The CPA recommended that the Corporation focus on resolving any outstanding data conversion issues stemming from the implementation of the Corporation's new computer system. In reviewing the Corporation's 1999 loss information data (loss reserves and payments) via the computer system, it was noted that the reserve and payment amounts per the computer system did not agree with the Corporation's statistical and accounting records. It was stated in the CPA report that the reconciling issues were primarily clerical and associated with the manual entry of data from claim files into the Corporation's computer claims data

screen. It is recommended that the Corporation continue to correct or reconcile existing data conversion problems.

In reviewing the Corporation's loss and benefits cycle in regard to reserve adequacy, it was also noted that for the no-fault claim files, the Corporation's examiners were not establishing adequate initial reserves and not adjusting the reserves according to loss information received. The CPA recommended that the Corporation establish formal policies and procedures to ensure a consistent level of claim review by both the tort and no-fault examiners. The Corporation establish a "Liability Best Practices" and "No-Fault Best Practices" for its tort and no-fault examiners, respectively. Upon reviewing the manuals it was determined that they lacked specific reserving criteria; that is guidelines for establishing adequate reserves. The tort manual required that the examiner finalize a reserve total within a 60-day period. The no-fault manual required the examiner to determine whether or not the reserve was adequate. It is recommended that the Corporation amend its "Tort and No-Fault Best Practices" manuals and include more precise reserving methods.

ii. Investment Cycle

In reviewing the Corporation's investment cycle in regard to cash on hand and on deposit internal controls, certain internal control weaknesses were noted. For checks issued subsequent to July 2000, three incidents were noted where the Corporation's banking institution cleared unsigned checks that were issued for amounts above \$2,500. In October 1999, MVAIC's board of directors issued a resolution requiring that, "any check in the amount of \$2,500 or above requires double signature to be made by the President, Sr. Vice President & Treasurer, Mr. Frank Marzullo and Mr. Michael Rappaport". In July 2000, the President of the Corporation issued a memorandum that reiterated the aforementioned board of directors'

directives. It is recommended the Corporation adhere to its check signing procedures in order to maintain proper safeguards and control of its cash account.

iii. Disaster Recovery

The Corporation does not have a formal disaster plan in place. The Corporation, however, does have a verbal agreement in place with its hardware/software vendor to provide any necessary equipment to restore operations should there be a disaster. The Corporation responded, upon examination inquiry, that its contingency planning controls were still under development. It is recommended that the Corporation establish a formal written agreement with its hardware/software vendor to ensure that such entity will provide services and resources to the Corporation in the event of a disaster.

3. FINANCIAL STATEMENTS

A. Balance Sheet

The following shows the assets, liabilities and surplus as reported by the Corporation on its

December 31, 1999 annual statement:

<u>Assets</u>	<u>Ledger Assets</u>	<u>Non-ledger Assets</u>	<u>Not-Admitted Assets</u>	<u>Admitted Assets</u>
Bonds	\$47,732,143	\$	\$	\$47,732,143
Cash & Short-term investments	10,340,406			10,340,406
Other invested assets	11,445			11,445
Assessment receivable	694,260		694,260	
Interest, dividends and real estate income due and accrued		640,096		640,096
Prepaid expenses		41,540	41,500	
Total assets	<u>\$58,778,254</u>	<u>\$681,636</u>	<u>\$735,800</u>	<u>\$58,724,090</u>
 <u>Liabilities</u>				
Losses and loss adjustment expenses				\$46,158,710
Other expenses				47,500
Assessment income deferred				439,957
Uncashed checks				728,242
Other Liability - garnishment				(371)
Liability for post-retirement benefits under FASB 106				<u>1,060,000</u>
Total liabilities				<u>\$48,434,038</u>
 <u>Surplus</u>				
Unassigned funds (surplus)			<u>10,290,052</u>	
Surplus as regards policyholders				<u>\$10,290,052</u>
Total liabilities and surplus				<u>\$58,724,090</u>

NOTE: The Corporation is exempt from federal, state and local income taxes.

B. Underwriting and Investment Exhibit

Surplus as regards policyholders decreased \$419,260 during the five-year examination period, January 1, 1995 through December 31, 1999.

Statement of Income

Underwriting Income

Assessment earned		\$116,586,259
Deductions:		
Losses and loss adjustment expenses incurred	<u>\$(136,764,466)</u>	
Total underwriting deductions		<u>(136,764,446)</u>
Net underwriting gain		\$(20,178,207)

Investment Income

Net investment income earned	\$18,031,922	
Net realized capital gains	<u>930,920</u>	
Net investment gain		18,962,842

Other Income

Other income		<u>932,520</u>
Net losses		<u>\$(282,845)</u>

Capital and Surplus Account

Surplus as regard policyholders, December 31, 1994 per prior report on examination		\$10,709,312
	Losses in <u>Surplus</u>	
Net losses	\$ 282,845	
Change in not-admitted assets	<u>136,415</u>	
Total gains	<u>\$419,260</u>	
Net loss in surplus		<u>(419,260)</u>
Surplus as regard policyholders, per report on examination as of December 31, 1999		<u>\$10,290,052</u>

4. LOSSES AND LOSS ADJUSTMENT EXPENSES

The examination liability for losses and loss adjustment expenses in the amount of \$46,158,710 was reported by the Company as of the examination date. 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, as verified by the examiner.

5. MARKET CONDUCT ACTIVITIES

In course of this examination, a review was made of the manner in which the Corporation conducts its business practices and fulfills its obligations to its claimants. The review was general in nature and was not intended to encompass the generally more precise scope of a market conduct investigation, which is the responsibility of the Market Conduct Unit of the Property Bureau.

The general review was directed at the Corporation's claims and business practices, with particular attention being given to its compliance with the provisions of the Comprehensive Automobile Insurance Reparations Act (Article 51), the Motor Vehicle Accident Indemnification Act (Article 52), Regulation 68, the Vehicle and Traffic Law and various Circular Letters which relate directly to the above mentioned Acts and Regulations.

Sixty randomly selected No-Fault files were comprehensively reviewed for compliance with Regulation 68. The examiners findings are summarized as follows:

	<u>No. of Claims in Violation</u>	<u>No. of Instances in Violation</u>
Application for benefits sent late [Section 65.15(c)(2)]	0	0
Verification forms must be sent within 10 business days after receipt of application [Section 65.15 (d)(1)]	6	6
Additional verification required shall be requested within 10 business days [Section 65.15(d)(2)]	0	0
A second application shall be mailed 30 days after original mailing [Section 65.15(e)(1)]	0	0
A second request for verification shall be sent 30 days after original request and to inform claimant and attorney [Section 65.15(e)(2)]	1	1
Late payment of claim [Section 65.15(g)(3)]	34	34
Interest on overdue payments [Section 65.15(h)(1)]	3	3

Similar violations were found during the previous examination. It is again recommended that MVAIC adopt measures to assure compliance with Department Regulation 68.

6. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior report on examination contained four recommendations and comments. The current status of these matters is as follows (page numbers refer to prior report):

<u>ITEM NO.</u>	<u>PAGE NO.</u>
<p>A. <u>Accounts and Records</u></p> <p>It is recommended that the Company comply with the provisions of Section 307(a)(1) of the New York Insurance Law and file a complete annual statement with this Department</p> <p>The Corporation has not complied with this recommendation. An amended recommendation is provided in Item 2F of this report concerning this matter.</p>	<p>9</p>
<p>B. <u>Miscellaneous Security Deposits</u></p> <p>The Corporation allowed various not-admitted assets to be carried as admitted assets in its filed 1994 annual statement, contrary to the provisions of Section 1301 of the New York Insurance Law. It is again recommended that the Corporation comply with the provisions of Section 1301 of the New York Insurance Law when reporting its admitted assets</p> <p>The Corporation has complied with this recommendation.</p>	<p>9</p>
<p>C. <u>Custodian Services Agreement</u></p> <p>The custodian agreement was found to be missing some of the required and necessary protective covenants and provisions. It is recommended that the Corporation amend its custodian service agreement to include those protective covenants that are indicative of proper internal controls and of sound business practices.</p> <p>MVAIC has not complied with this recommendation and it is reiterated in this report.</p>	<p>10</p>
<p>D. <u>Market Conduct Activities</u></p> <p>It is again recommended that MVAIC adopt measures to assure better compliance with Department Regulation 68.</p> <p>The Corporation has not complied with this recommendation and it is reiterated in this report.</p>	<p>16</p>

7. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>		<u>PAGE NO.</u>
A.	<u>Management</u>	
	As of December 31, 1999, the Corporation's board of directors was comprised of eight members. One of the two positions on the board to be filled by a public member appointed by the Superintendent remains vacant.	5
B.	<u>Conflict of Interest</u>	
	It is recommended that the Corporation require all of its directors and officers to complete conflict of interest statements on an annual basis and retain such statements for record purposes.	6
C.	<u>Custodian Agreement</u>	
	It is recommended that the Corporation amend its custodian agreement to include the provisions deemed by this Department to be representative of good business practices for the contents of such agreements.	9
D.	<u>Accounts and Records</u>	
	It is recommended that MVAIC submit an Annual Report to the superintendent by March 1 st of each year, amended to include a jurat page and a Schedule D and Schedule DA, in order to comply with Section 307(a) of the Insurance Law.	10
E.	<u>Internal Control</u>	
	i. <u>Loss and Benefit Cycle</u>	
	(a) It is recommended that the Corporation continue to correct or reconcile existing data conversion problems.	11
	(b) It is recommended that the Corporation amend its "Tort and No-Fault Best Practices" manuals and include more precise reserving methods.	11
	ii. <u>Investment Cycle</u>	
	It is recommended that the Corporation adhere to its check signing procedures in order to maintain proper safeguards and control of its cash account.	12

<u>ITEM</u>		<u>PAGE NO.</u>
iii.	<u>Disaster Recovery</u>	
	It is recommended that the Corporation establish a formal written agreement with its hardware/software vendor to ensure that such entity will provide service and resources to the Corporation in the event of a disaster.	12
F.	<u>Market Conduct Activities</u>	
	It is again recommended that MVAIC adopt measures to assure better compliance with Department Regulation 68.	17

Appointment No 21664

STATE OF NEW YORK
INSURANCE DEPARTMENT

I, GREGORY V. SERIO, First Deputy Superintendent of Insurance of the State of New York, pursuant to the provisions of the Insurance Law, do hereby appoint:

Veronica Duncan-Black

as proper person to examine into the affairs of the

Motor Vehicle Accident Indemnification Corporation

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

Corporation

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 27th day of December, 2000





GREGORY V. SERIO
First Deputy Superintendent of Insurance