

REPORT ON EXAMINATION

OF

MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION

AS OF

DECEMBER 31, 2013

DATE OF REPORT

DECEMBER 19, 2014

EXAMINER

KEVIN MCNAMEE

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

June 18, 2018

Honorable Maria T. Vullo
Superintendent
New York State Department of Financial Services
New York, New York 10004

Madam:

Pursuant to the requirements of the New York Insurance Law, and in compliance with the instructions contained in Appointment Number 31201 dated July 9, 2014, attached hereto, I have made an examination into the condition and affairs of Motor Vehicle Accident Indemnification Corporation as of December 31, 2013, and submit the following report thereon.

Wherever the designation “the Corporation” or “MVAIC” appears herein without qualification, it should be understood to indicate the Motor Vehicle Accident Indemnification Corporation.

Wherever the term “Department” appears herein without qualification, it should be understood to mean the New York State Department of Financial Services.

The examination was conducted at the Corporation’s home office located at 100 William Street, 14th Floor, New York, NY 10038.

1. SCOPE OF EXAMINATION

The Department has performed an examination of the Corporation. The previous examination was conducted as of December 31, 2008. This examination covered the five-year period from January 1, 2009 through December 31, 2013. 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 Corporation by obtaining information about the Corporation including corporate governance, identifying and assessing inherent risks within the Corporation 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 New York laws, statutory accounting principles and annual statement instructions.

All financially significant accounts and activities of the Corporation were considered in accordance with the risk-focused examination process. The examiners also relied upon audit work performed by the Corporation’s independent public accountants where deemed appropriate.

This examination report includes, but is not limited to, the following:

- History of the Corporation
- Corporate records
- Management and control
- Territory and plan of operation
- Loss experience
- Financial statements
- Summary of recommendations

A review was also 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 that involve departures from laws, regulations or rules, or that are deemed to require explanation or description.

2. DESCRIPTION OF COMPANY

The Corporation was created by the New York State Legislature in 1958 by enactment of Article 17-A of the New York State Insurance Law that took effect on January 1, 1959. On September 1, 1982, Article 17-A was re-codified to Article 52 of the New York State Insurance law.

The Corporation was formed to provide compensation for injuries to persons who, through no fault of their own, were involved in accidents with hit-and-run drivers, operators of stolen or unregistered vehicles or uninsured motorists.

The Corporation is also authorized to transact the business of providing no-fault benefits for qualified persons for basic economic loss arising out of the use and operation of the following classes of motor vehicles in the state of New York as specified in Section 5201(b), of the New York Insurance Law. The Corporation is also obligated to provide the protection required by Article 52 to a qualified person on account of a motor vehicle accident caused by owners or operators of motor vehicles occurring within the state as outlined in Section 5203 of the New York Insurance Law. Qualified persons are residents of the State of New York or of another state that has a similar program, and who do not own automobiles or are not resident relatives of a household where there in an insured vehicle.

The Corporation operates as a non-profit corporation and is exempt from all taxes imposed by the State of New York or other political subdivisions except those levied on real property as outlined in Article 52 of the New York Insurance Law. The Corporation has no paid-in-capital, minimum surplus or contributed surplus. The Corporation has no underwriting functions and does not collect premiums. It is funded through assessments of member companies. Every insurer authorized to write motor vehicle liability insurance in New York and certain self-insurers permitted under §316 and §370 of New York State's Vehicle and Traffic law, as a condition precedent thereto, is required to be a member of the Corporation. Each insurer member's total assessment for the year is determined by the board of directors of the Corporation and is based upon the members' net direct written automobile premium on policies insuring against legal liability arising out of the ownership, operation or maintenance of motor vehicles which are principally garaged in New York State, as a proportion of such net direct written automobile premium of all members in the state in the last complete calendar year shown in the records of the Superintendent. The 2013 assessment is based upon such members' 2011 net direct written premium.

A. Corporate Governance

Pursuant to the Corporation's charter and by-laws, management is vested in a board of directors that shall be composed of nine members, seven of such directors shall be representatives of motor vehicle liability insurers, and two shall be appointed by the Superintendent as representing broad segments of the public of which one such director shall be a duly licensed insurance agent or broker and the other shall have no affiliation with insurers or insurance producers.

As of December 31, 2013, the board of directors were comprised of the following eight members.

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Maura Clancy Willisten Park, New York	Public Member for MVAIC; President, Clancy & Clancy Brokerage LTD
Gerard M. Curran St. James, New York	Assistant Vice President Underwriting, GEICO Insurance Corporation
Janet Glover White Plains, New York	Public Member
Patrick O'Malley Kirtland, Ohio	New York Product Manager, Progressive Insurance
Margo Palermo Malverne, New York	Claim Field Director, Allstate Insurance Corporation
Darryl Rahn New Hartford, New York	Assistant Vice President of Liability Claims, Utica National Insurance Group
Tim Rogers Westport, Connecticut	Chief Financial Officer, Travelers Personal Insurance
V. Daniel Robinson II Oneonta, New York	President and Chief Executive Officer, New York Central Mutual Fire Insurance

New York Insurance Law ("NYIL") Section 5204 (a) states in part:

"The board of directors of the corporation shall be composed of nine persons. Seven of such directors shall be representatives of motor vehicle liability insurers,... two of the directors shall be appointed by the superintendent of whom shall represent broad segments of the public, one such director shall be a duly licensed insurance agent or broker and one shall have no affiliation with insurers or insurance producers." (Emphasis added)

As of December 31, 2013, the board of directors consisted of only eight members. Thus, the Corporation did not comply with the above-noted section of the law.

It is recommended that the Corporation adhere to the provisions of NYIL Section 5204(a) and appoint the required number of directors.

The Corporation's board meetings were generally well-attended, with the exception of Mr. Michael Payne from State Farm who attended none of the four meetings he was eligible to attend during 2011. Examiners' review showed that Mr. Payne was removed from the board in 2012 and his slot remained vacant at year end 2013. The State Farm slot has since been filled as of May 2014 by Mr. Eric Miller.

The board met five times during each calendar year, conducting four quarterly meetings and an annual meeting. Examiner's review of board minutes under the examination period show that the board monitors the day to day business activities of the Corporation.

The Examiners compared the board composition in the meeting minutes to the board of directors section in the annual report for each year during the examination period. The following differences were noted:

- a) Timothy Rogers was nominated as a board member on February 18, 2011, filing Greg Toczydowski from Travelers' vacated seat as shown in the board minutes; however, Mr. Rogers was listed on the 2010 annual report of board of directors.
- b) Virginia Gonzalez was replaced by Michael Payne, from State Farm as noted in the February 18, 2011, board minutes; however, Mr. Payne was listed on the 2010 annual report of board of directors.

- c) A review of board minutes noted that at year-end 2010, there were seven board members; however, the 2010 annual report of board of directors listed nine members.

The Corporation explained that the directors listed in the annual report were sometimes not as of the year-end date. There were times when a director served for most of the year and were included as directors for that year's annual report.

It is recommended that the Corporation report its board's composition correctly as of December 31st of the reporting year in its annual report.

A review of meeting minutes of the board of directors noted that the prior report on examination was discussed. However, no signed statements were available acknowledging that the board has received and read such report.

Section 312(b) of the New York Insurance Law states in part:

“A copy of the report shall be furnished by such insurer or other person to each member of its board of directors and each such member shall sign a statement which shall be retained in the insurer's files confirming that such member has received and read such report.”

It is recommended that the Corporation adhere to the provisions of Section 312(b) of the New York Insurance law and maintain signed statements from each board member acknowledging the report on examination has been received and read.

The examiner reviewed the Corporation's by-laws and noted that the Corporation was unable to provide an executed copy of the by-laws.

It is recommended that the Corporation maintain an executed copy of the by-laws in their records.

As of December 31, 2013, the principal officer of the Corporation was as follows:

<u>Name</u>	<u>Title</u>
Fred Fossett	CFO, Treasurer, & Secretary

It is noted that Mr. Fossett is the sole officer of the Corporation. The Corporation does not currently have a chief executive officer. The previous chief executive officer, Mr. Jeffrey Rubinton, left the Corporation effective August 6, 2013. An executive search for Mr. Rubinton's replacement is being conducted by the Corporation's nominating committee.

B. Territory and Plan of Operation

The Corporation is authorized to provide compensation for basic economic loss arising out of the use and operation of motor vehicles in the State of New York to qualified persons who, through no fault of their own, were involved in accidents with hit-and-run drivers, operators of stolen or unregistered vehicles, or uninsured motorists as specified in Section 5201(b) of the New York Insurance Law.

The Corporation provides similar benefits to residents of other states or countries if those localities provide comparable coverage to New York residents injured in their jurisdiction as defined in Section 5202(b) (ii) of the New York Insurance Law.

As of December 31, 2013, the Corporation has reciprocity agreements with the following jurisdictions:

- District of Columbia
- New Jersey
- Michigan
- Ontario, Canada
- England / UK
- Israel

C. Significant Operating Ratios

The following ratio has been computed as of December 31, 2013, based upon the results of this examination:

Liabilities to Liquid Assets 7.01: 1

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	\$113,874,934	87.4%
Operating expenses	39,582,996	30.3%
Net underwriting gain (loss)	<u>(23,126,124)</u>	<u>(17.7%)</u>
Assessments earned	<u>\$130,331,806</u>	<u>100.0%</u>

3. FINANCIAL STATEMENTS

A Balance Sheet

The following shows the assets, liabilities and surplus as regards policyholders as of December 31, 2013 as reported by the Corporation:

<u>Assets</u>	Net Admitted <u>Assets</u>
Bonds	\$53,258,890
Cash, cash equivalents and short-term investments	8,193,124
Other invested assets	311,967
Investment income due and accrued	240,014
Assessments receivable	33,585
Fixed assets, net	<u>2,806,533</u>
Total assets	<u>\$64,844,113</u>
 <u>Liabilities and Net Deficit</u>	
<u>Liabilities</u>	
Losses and loss adjustment expenses	\$61,441,489
Accrued pension and postretirement benefits	6,491,399
Other liabilities	318,122
Assessment income deferred	88,292
Aggregate write-ins for other liabilities	<u>2,332,406</u>
Total liabilities	<u>\$70,671,708</u>
<u>Net deficit</u>	<u>(5,827,595)</u>
Total liabilities and net deficit	<u>\$64,844,113</u>

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

B. Statement of Income

The net loss for the examination period as reported by the Corporation was \$12,712,165 as detailed below:

Underwriting Income

Assessment income		\$130,331,906
Deductions:		
Loss and loss adjustment expenses incurred	\$113,874,934	
Operating expenses	<u>39,582,996</u>	
Total underwriting deductions		<u>153,457,930</u>
Net underwriting gain or (loss)		\$(23,126,024)
<u>Net Investment Income</u>		9,315,250
<u>Other Income</u>		<u>1,098,609</u>
Net income (loss)		<u><u>\$ (12,712,165)</u></u>

C. Capital and Surplus

Surplus as regards policyholders decreased \$13,698,374 during the five-year examination period January 1, 2009 through December 31, 2013, detailed as follows:

Surplus as regards policyholders as reported by the Corporation as of December 31, 2008		\$ 7,870,779
	<u>Losses in Surplus</u>	
Net loss	\$12,712,165	
Transferred to capital - Change in pension and postretirement unfunded benefit obligation	<u>986,209</u>	
Total losses	\$13,698,374	
Decrease in surplus		<u>(13,698,374)</u>
Net deficit as reported by the Corporation as of December 31, 2013		<u><u>\$ (5,827,595)</u></u>

4. LOSSES AND LOSS ADJUSTMENT EXPENSES

The examination liability for the captioned items of \$61,441,489 is the same as reported by the Corporation as of December 31, 2013. The examination analysis was conducted in accordance with generally accepted actuarial principles and practices and statutory accounting principles, including the NAIC Accounting Practices & Procedures Manual, Statement of Statutory Accounting Principle No. 55.

5. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

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

<u>ITEM</u>		<u>PAGE NO.</u>
A	It was recommended that the Corporation's actuary exercise greater care and ensure that all actuarial data and calculations are accurate and complete.	6
B	It was recommended that the Corporation amend its custodian agreement to include the above provisions in compliance with the National Association of Insurance Commissioners Handbook.	7

The Corporation has complied with the two recommendations listed above.

6. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>		<u>PAGE NO.</u>
A	<u>Management</u>	
i.	It is recommended that the Corporation adhere to the provisions of Section 5204(a) of the New York Insurance Law and appoint the required number of directors.	5
ii.	It is recommended that the Corporation report its board's composition correctly as of December 31 st of the reporting year in its annual report.	6
iii.	It is recommended that the Corporation adhere to the provisions of Section 312(b) of the New York Insurance law and maintain signed statements from each board member acknowledging the report on examination has been received and read.	6
iv.	It is recommended that the Corporation maintain an executed copy of the by-laws in their records.	6

Respectfully submitted,

_____/S/
Kevin McNamee
Associate Insurance Examiner

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

Kevin McNamee, being duly sworn, deposes and says that the foregoing report, subscribed by him,
is true to the best of his knowledge and belief.

_____/S/
Kevin McNamee

Subscribed and sworn to before me

this _____ day of _____, 2014.

APPOINTMENT NO. 31201

NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES

I, BENJAMIN M. LAWSKY, Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:

Kevin McNamee

as a proper person to examine the affairs of the

Motor Vehicle Accident Indemnity Corp.

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

COMPANY

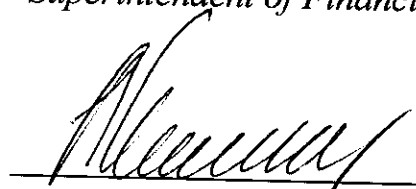
with such other information as he shall deem requisite.

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

this 9th day of July, 2014

BENJAMIN M. LAWSKY
Superintendent of Financial Services

By:



Rolf Kaumann
Deputy Chief Examiner

