

REPORT ON EXAMINATION
OF
HHC INSURANCE COMPANY, INC.
AS OF
DECEMBER 31, 2009

DATE OF REPORT

APRIL 6, 2011

EXAMINER

BERNARD LOTT

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

April 6, 2011

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 30610 dated October 6, 2010, attached hereto, I have made an examination into the condition and affairs of HHC Insurance Company, Inc. as of December 31, 2009, and respectfully submit the following report thereon.

Wherever the designation “Captive” or “HHC” appears herein without qualification, it should be understood to refer to HHC Insurance Company, Inc.

Wherever the designation “NYCHHC” appears herein without qualification, it should be understood to refer to the New York City Health and Hospital Corporation.

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

1. SCOPE OF EXAMINATION

The examination covered the period from the Captive's licensing on December 15, 2004 through December 31, 2009. The examination comprised a verification of assets and liabilities as of December 31, 2009. This included a review of income, disbursements and company records deemed necessary to accomplish such analysis or verification and utilized, to the extent considered appropriate, work performed by the Captive's independent certified public accountants ("CPA") and its opining actuary.

The report is submitted on an "exception" basis. Comments and recommendations are limited to those items requiring financial adjustment, procedural recommendations, or instances where the Captive was not conforming with the application submitted to the Department or Article 70 of the New York Insurance Law.

2. DESCRIPTION OF COMPANY

HHC is a not-for-profit pure captive insurance company, which is a wholly owned subsidiary of NYCHHC. It is a blended component unit which was incorporated on July 2, 2003, and commenced business on December 15, 2004, under the laws of New York State. The Captive, established as a mutual insurer, was formed for the sole purpose of providing NYCHHC's attending physicians with professional liability (medical malpractice) insurance coverage.

A. Articles of Incorporation

The Company is organized to transact the kinds of insurance specified in Section 7003 of the New York Insurance Law, subject at all times to the limitations on the business of a pure captive insurance company set forth in Article 70.

B. By-Laws

The Captive appears, in all material respects, to be in compliance with its by-laws.

C. Capital Structure

HHC is a pure captive insurance company which was incorporated as a mutual insurer. Pursuant to Section 7004(a)(2) of the New York Insurance Law it is required to possess, and thereafter maintain, unimpaired paid-in-capital and surplus of not less than \$250,000, in order to be issued a license in New York. Based on the proposed program and anticipated losses, HHC was

formed with a policyholder's surplus of \$2,000,000. The surplus was funded with a letter of credit. The Captive has maintained the initial paid in capital for each year covered by this examination. As of December 31, 2009, HHC's accumulated earnings totaled \$29,569,677.

D. Corporate Records

The corporate records reviewed appeared to be substantially accurate and complete in all material respects.

E. Reinsurance

Section 7011 of the New York Insurance Law prohibits captive insurers from joining, contributing financially, or receiving any benefit from any plan or pool. However, as a condition of licensing HHC as a captive insurer, the Department allowed NYCHHC to waive its rights to the protection afforded by Section 7011. NYCHHC agreed to the following waiver:

“The HHC Insurance Company, Inc., a domiciled captive insurer, agrees to waive any and all rights or protections afforded by Section 7011 of the New York Insurance Law, which exempt it from participation in any plan, pool, association, guaranty or insolvency fund in this state related in any way to the Hospital Excess Liability Pool. Therefore, the captive insurance company and/or its insured or its parent or affiliated company will join and contribute financially to any such plan, pool, association, guaranty or insolvency fund for claims arising out of the operations of the captive insurance company.”

HHC does not cede business to any other insurer. The Captive assumes business only from the New York Medical Malpractice Insurance Plan (“MMIP”). MMIP, established by New York Insurance Department Regulation 170, operates as a medical malpractice insurance pool. MMIP provides for the equitable distribution of eligible health care providers and facilities that are unable to obtain insurance in the voluntary market, to authorized medical malpractice insurers. All licensed insurers writing medical malpractice in New York State are required to participate in MMIP. MMIP is administered by the Medical Liability Mutual Insurance Company and is funded by all medical malpractice insurers, on a pro rata basis, based on their share of the medical malpractice insurance market.

Subsequent to the licensing of HHC no other captive insurer shall be allowed to participate in MMIP. The Office of General Counsel issued an opinion on October 29, 2007, stating the Department's current position on this matter.

F. Management and Control

(i) Captive Manager

The Captive is managed by Aon Insurance Managers (USA) Inc. (“AON”), the captive management arm of the Aon Corporation, an insurance consultant licensed by the Department. Aon is a sub-contractor on an agreement between NYCHHC and Sedgwick Claims Management Services, Inc. (“Sedgwick CMS”), a third party administrator with expertise in claims and risk management services in connection with medical malpractice claims. Through this agreement Sedgwick CMS retained Aon as a sub-contractor, to provide management services for HHC. As the captive manager, Aon provides financial and insurance services, which include:

- Preparation of all interim and year-end financial statements.
- Providing detailed supporting schedules and comparative data analysis.
- Maintaining all required books and records.
- Monitoring investments and investment income.
- Liaising with risk management and claims consultants to establish claims reporting procedures and maintenance.

Aon also provides treasury, corporate and regulatory services to the Captive, pursuant to the agreement.

(ii) Board of Directors

NYCHHC’s board of directors retains certain “reserved powers” over the affairs of HHC. These powers include, but are not limited to, being the sole power with respect to electing and moving members of HHC’s board and selling, transferring or otherwise disposing of all or substantially all of the Captive’s assets.

HHC’s board of directors has the authority and responsibility for the general management, control and supervision of the Captive’s affairs. At December 31, 2009, the board of directors was comprised of the following members:

Name and Residence

Principal Business Affiliation

Alan Aviles
Brooklyn, NY

President and Chief Executive Officer,
NYC Health and Hospital Corporation

Richard Levey
New York, NY

General Counsel,
NYC Health and Hospital Corporation

Name and ResidencePrincipal Business Affiliation

Ramanathan. Raju, M.D.
Staten Island, NY

Executive Vice President and Chief
Operating Officer,
NYC Health and Hospital Corporation

Bernard Rosen,
Rego Park, NY

Financial Consultant,
Metropolitan Transportation Authority

Marlene Zaurack,
Brooklyn, NY

Chief Financial Officer,
NYC Health and Hospital Corporation

The Captive's by-laws state that the board shall hold a regular meeting annually. The examination found that HHC's board met five times during the period covered by this examination and was in compliance with its by-laws. A review of the minutes of these meetings indicated that they were generally well attended and that each member had an acceptable record of attendance for all meetings for which they were eligible to attend with the exception of Marlene Zurack. Ms. Zurack attended only one of the five meetings held.

Members of the board have a fiduciary responsibility and must evince an ongoing interest in the affairs of the insurer. It is essential that board members attend meetings consistently and set forth their views on relevant matters so that the board may reach appropriate decisions. Individuals who fail to attend at least one-half of the regular meetings do not fulfill such criteria. It is recommended that board members who are unable or unwilling to attend meetings consistently should resign or be replaced.

Officers

The board of directors may elect such officers as it decides are necessary for the conduct of business. HHC's by-laws state that the officers of the Captive's shall be a President, Vice-President, Secretary, Treasurer, Executive Director and such other officers as the board may determine.

The following are the officers of the captive as of December 31, 2009:

<u>Name</u>	<u>Title</u>
Alan Aviles	President and Chief Executive Officer
Ramanathan Raju, M.D.	Executive Vice President
Richard Levy	Secretary
Marlene Zurack	Treasurer

G. Certified Public Accountant and Actuarial Services

The Captive was audited by the independent CPA firm KPMG LLP, 345 Park Avenue, New York, NY 10154, for the years covered by this examination. HHC's opening actuary as of December 31, 2009, was from Aon Risk Consultants, Inc., 555 Lancaster Avenue, Radnor, PA 19087.

H. Growth of Company

The following schedule sets forth the Captive's significant summary financial information for the period covered by this examination:

<u>Year</u>	<u>Net Premiums Earned</u>	<u>Net Income</u>	<u>Assets</u>	<u>Shareholders' Equity</u>
2005	\$ 6,800,000	\$ 5,687,442	\$ 9,066,800	\$ 7,687,442
2006	\$12,400,000	\$ (3,974,866)	\$21,450,000	\$ 3,712,576
2007	\$17,245,741	\$ 15,339,246	\$40,204,523	\$ 19,041,73
2008	\$12,661,010	\$ 7,770,276	\$52,829,189	\$29,812,007
2009	\$13,073,955	\$ 4,757,607	\$65,782,353	\$29,569,353

3. FINANCIAL STATEMENTS

The financial statements of the Captive have been prepared in conformity with accounting principles prescribed and permitted by the New York State Insurance Department. The financial position of the Captive, as presented below, was accepted by the Department. HHC's independent accounting firm, KPMG LLP, concluded that the following statutory financial statements presented fairly, in all material respects, the Captive's assets, liabilities and surplus and the results of its operations as of December 31, 2009:

A. Balance Sheet

BALANCE SHEET AS OF DECEMBER 31, 2009

Assets

Investment in and advances to affiliates accrued	\$61,700,000
Net receivable due from MMIP	2,082,353
Accounts receivable	<u>44,794</u>
Total assets	<u>\$63,827,147</u>

Liabilities and Shareholder's Equity

Liabilities

Losses	\$30,667,790
Loss adjustment expenses	560,445
Unearned premium	360,715
Amount due to affiliates	2,562,736
Accounts payable	10,065
Premium deficiency reserve	<u>95,719</u>
Total liabilities	\$34,257,470

Shareholder's Equity

Surplus (accumulated earnings)	<u>\$29,569,677</u>
Total shareholder's equity	<u>29,569,677</u>
Total liabilities and shareholders' equity	<u>\$63,827,147</u>

B. Statement of IncomeSTATEMENT OF INCOME FOR THE YEAR ENDED DECEMBER 31, 2009Underwriting income

Net premiums earned		\$13,073,955
Deductions:		
Net losses incurred	\$7,807,581	
Net loss adjustments expenses incurred	125,124	
Administrative expenses	437,970	
Change in premium deficiency reserve	<u>7,047</u>	
Total underwriting deductions		<u>8,377,772</u>
Net underwriting gain (loss)		\$4,696,233

Investment income

Net investment income earned	<u>\$ 61,437</u>	
Net investment gain or (loss)		<u>61,437</u>
Net income		<u>\$4,757,670</u>

4. LOSS AND LOSS ADJUSTMENT EXPENSES

HHC provides claims-made physician's liability coverage to NYCHHC's attending physicians practicing in the areas of neurosurgery, obstetrics, and gynecology. As of December 31 2009, HHC reported a combined liability for unpaid loss and loss adjustment expenses ("LAE") of \$31,228,235 (\$28,360,000 net of losses and LAE related to MMIP). The Captive's opening actuary states the following in her "Statement of Actuarial Opinion:"

"In my opinion the Company's December 31, 2009 combined loss and loss adjustment expense reserves identified herein:

- Meet the requirement of the insurance laws of New York.
- Are computed in accordance with accepted loss reserving standards and principles.
- Make a reasonable provision for all unpaid loss and loss expense obligations of the Company under the terms of its policies and agreements..."

The actuary's report goes on to state that no opinion was expressed on the \$2,868,235 in unpaid losses and loss adjustment expenses relating to the Medical Malpractice Insurance Pool of New York State.

Based on the opinion of the opining actuary, no examination change will be made to the Captive's reported reserve for loss and loss adjustment expenses.

5. ARTICLE 70 COMPLIANCE

Article 70 of the New York State Insurance Law is the governing section of the law for the formation and continued operation of captive insurers in New York State. A review was performed to test the Captive's compliance with all applicable parts of Article 70. No significant areas of non-compliance were found.

6. ORGANIZATIONAL STRUCTURE

The Captive is a blended component unit of the New York Health and Hospitals Corporation. It was formed as a pure captive insurance company and incorporated as a mutual insurer, with NYCHHC as its sole member.

7. INSURANCE PROGRAM

HHC provides professional liability insurance (medical malpractice), on a claims-made basis, to NYCHHC's attending physicians that are practicing in the areas of neurosurgery, obstetrics, and gynecology. Liability policies for eligible physicians provide coverage with limits up to \$1.3 million per occurrence and \$3.9 million in the aggregate. In addition HHC participates in the New York State Hospital Excess Liability Pool ("Pool"). The Pool offers physicians' affiliated with hospitals an additional layer of excess coverage up of \$1 million per occurrence and \$3 million in the aggregate. To the extent that NYCHHC's insured physicians have obtained such excess coverage from their affiliated hospitals, HHC provides the excess coverage and receives the premiums from the Pool. No additional cost for this excess coverage is incurred by either NYCHHC or its physicians.

8. SUMMARY OF COMMENTS AND RECOMMENDATIONS

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

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Respectfully submitted,

_____/S/_____
Bernard Lott
Senior Insurance Examiner

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

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

_____/S/_____
Bernard Lott

Subscribed and sworn to before me
this _____ day of _____ 2011.

Appointment No. 30610

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:

Bernard Lott

as proper person to examine into the affairs of the

HHC INSURANCE COMPANY, INC.

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

Corporation

with such other information as he 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 6th day of October, 2010



James J. Wrynn

JAMES J. WRYNN
Superintendent of Insurance