

REPORT ON EXAMINATION

OF THE

ORISKA INSURANCE COMPANY

AS OF

DECEMBER 31, 2010

DATE OF REPORT

JUNE 4, 2012

EXAMINER

MICHAEL V. IMBRIANO, AFE

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

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Andrew M. Cuomo  
Governor

Benjamin M. Lawsky  
Superintendent

June 4, 2012

Honorable Benjamin M. Lawsky  
Superintendent of Financial Services  
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 30522 dated May 18, 2010, attached hereto, I have made an examination into the condition and affairs of the Oriska Insurance Company as of December 31, 2010, and submit the following report thereon.

Wherever the designation “the Company” appears herein without qualification, it should be understood to indicate the Oriska Insurance Company.

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 Company’s home office located at 1310 Utica Street, Oriskany, New York 13424.

This examination has determined that as of December 31, 2010, the Company was insolvent in the amount of \$5,891,480 and its capital of \$1,500,000 was impaired in the amount of \$7,391,480. Additionally, the Company’s minimum required to be maintained surplus of \$2,200,000 was impaired in the amount of \$8,091,480.

## **1. SCOPE OF EXAMINATION**

The Department has performed an individual examination of the Company, a multi-state insurer. The previous examination was conducted as of September 30, 2005. This examination covered the period from October 1, 2005 through December 31, 2010. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

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

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

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

- Significant subsequent events
- Company history
- Corporate records
- Management and control
- Fidelity bonds and other insurance
- Pensions, stock ownership and insurance plans
- Territory and plan of operation
- Growth of Company
- Loss experience
- Reinsurance
- Accounts and records
- Statutory deposits
- Financial statements
- Summary of recommendations

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 Oriska Insurance Company was formed by the employer members of the Open Shop Association, Inc., a not-for-profit corporation consisting of heavy/highway construction contractors to provide supplemental benefits to their employees. The Company was incorporated under the laws of the State of New York on April 27, 1990. The Company became licensed and commenced business on January 14, 1993.

Capital paid in is \$1,500,000 consisting of 100 shares of \$15,000 par value per share common stock. Gross paid in and contributed surplus is \$ 8,559,068.

### A. Management

Pursuant to the Company's charter and by-laws management of the Company is vested in a Board of Directors, consisting of not less than thirteen nor more than twenty-one members. The Board is required to meet four times during each calendar year. At December 31, 2010, the board of directors was comprised of the following fifteen members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Gary R. Buhl Richmondville, NY	President, Gardner & Buhl CPAs
Edward J. Dague Stillwater, NY	Retired
Malcolm R. Didio Rome, NY	Retired
Richard G. Dobell Endwell, NY	President, Sieba, Ltd.
Roger M. Edmunds Columbia, MD	President, RSG and Associates LLC
Antonio J. Faga Naples, FL	Attorney, Law Offices of Antonio Faga

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Walter E. Fauntroy Washington DC	Retired
Patrick J. Hart Holly Ridge, NC	Retired
Irving Q. Hurdle Jr. Austin, TX	President, Chief Executive Officer, Oriska Insurance Company
Lisa E. Husted Whitesboro, NY	Assistant Producer, TMD, Inc. dba Grey for Blue Grass Festival
Isaac L. Muller Monsey, NY	President, Dynamic Claim Services and Broad Coverage Services
Edward R. Penczek Boonville, NY	Retired
William J. Riley Boonville, NY	Partner, Durr & Riley, Attorneys – at-Law
Frank R. Talarico Herkimer, NY	Retired
David R. Townsend Jr. Blossvale, NY	Retired

The prior report on examination was as of September 30, 2005, and was filed on June 4, 2009.

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.”

The Company was requested to provide signed statements from each of its directors stating that they had received and read the prior report on examination. However, the Company could provide signed statements from only six of their current directors, and such statements were not signed until October 2010; approximately 16 months after the report was filed.

The prior report on examination found that the Company was insolvent in the amount of \$2.0 million and its minimum required surplus of \$2.2 million was impaired in the amount of \$4.2 million.

The report noted that the insolvency and impairment were subsequently eliminated. Additionally, the report included 48 comments and recommendations, many of which were highly critical, including significant deficiencies identified in internal controls and lack of proper fiscal oversight by the officers and directors of the Company, as well as evidence of the Company's involvement with Robert "Skip" Anderson, a convicted felon.

Given the serious nature of the findings reported in the prior report on examination, the failure of the Company to provide the prior report to its directors in a timely manner and obtain signed statements from each director confirming that such member has received and read the report represents a serious weakness in its corporate governance. It is recommended that the Company provide copies of its filed examination reports to each of its directors and obtain signed statements from each member confirming that they have received and read such report in a timely manner pursuant to Section 312(b) of the New York Insurance Law.

As of December 31, 2010 the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
Irving Q. Hurdle Jr.	President, Chief Executive Officer
Gary R. Buhl	Treasurer
Fredrick K. Davis	Secretary, Vice President
Kevin J. Misiaszek	Vice President, Chief Operating Officer

B. Territory and Plan of Operation

As of December 31, 2010, the Company was licensed to write business in seven states including Georgia, New York, North Carolina, Pennsylvania, Tennessee, West Virginia and the District of Columbia; however, all of the Company's business was written in New York.

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

<u>Paragraph</u>	<u>Line of Business</u>
3	Accident and health
8	Glass
15	Workers' compensation and employers' liability
16	Fidelity and surety
24	Credit unemployment

Based on the lines of business for which the Company is licensed and the Company's current capital structure, and pursuant to the requirements of Articles 13 and 41 of the New York Insurance Law, the Company is required to maintain a minimum surplus to policyholders in the amount of \$2,200,000.

Prior to October 2008, the Company wrote high deductible Workers Compensation Insurance. In 2008, the Company cancelled or non-renewed all of its policies. The Company appeared to be in run-off and had not written any business through the first quarter of 2010. However, in the second quarter 2010, the Company insured a block of guaranteed cost workers' compensation business totaling \$7.8 million, which was produced by Broad Coverage Services, Inc. ("Broad"), pursuant to an agency agreement.

### C. Reinsurance

#### Ceded

The Company has agreements with several reinsurers to cover the run-off of the workers' compensation and surety business written prior to 2008.

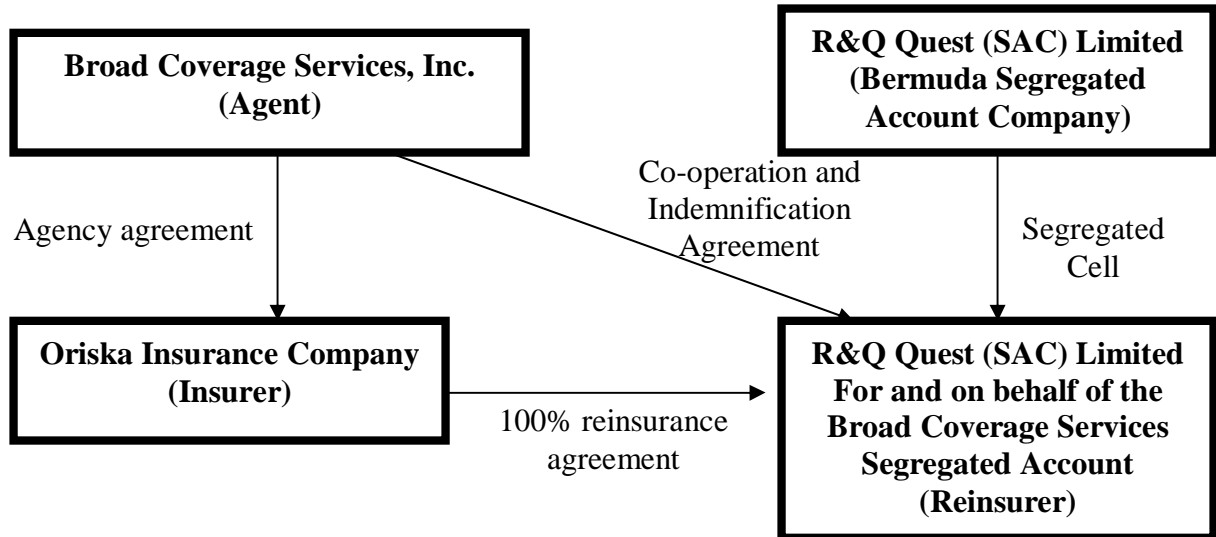
Effective June 10, 2010, the Company entered into a 100% quota share reinsurance agreement covering the first \$1 million each and every loss on the guaranteed cost workers' compensation business produced by Broad. The named reinsurer on the reinsurance agreement is "R&Q Quest (SAC) Limited for and on behalf of the Broad Coverage Services Segregated Account", a segregated cell of a Bermuda segregated account company, which operates as a captive of Broad. The Company provided the following documents in connection with this program:

1. Agency Agreement, effective December 15, 2009, between Broad and Oriska.
2. 100% quota share reinsurance agreement, effective June 10, 2010, whereby Oriska cedes to the reinsurer 100% of the first \$1 million each and every loss on the business produced by Broad. It is noted that the signatures on this agreement were not dated.
3. Co-operation and Indemnification Agreement, effective June 11, 2010, between Broad and R&Q Quest, under which Oriska claims that Broad agrees to be responsible for any shortfall in the Reinsurer Segregated Account. It is noted that Oriska is not a party to this agreement.
4. Trust Agreement, dated February 24, 2011, between R&Q Quest as Grantor, TD Bank, N.A. as Trustee, and Oriska as Beneficiary.



5. Consent to Substitution and Assignment in Relation to Rashbi Trust Agreement dated July 1, 2010, whereby Rashbi Management, Inc. (“Rashbi”) consented to the substitution of Broad for Rashbi as Grantor under the Rashbi and Oriska Insurance Company Irrevocable Trust Agreement dated November 28, 2006.

The following chart shows the parties to this program and the related agreements:



The surplus effect of this reinsurance transaction, based on the loss and loss adjustment expense reserves as reported by Oriska at December 31, 2010, was an increase to surplus as regards policyholders in the amount of \$2,752,432. This balance was calculated as follows:

<u>Description</u>	<u>Amount</u>	<u>Surplus Effect</u>
Ceded premiums written	\$7,793,190	
Unearned premiums ceded	<u>3,992,000</u>	
Ceded premiums earned		\$(3,801,190)
Reinsurance recoverable – known case reserves	\$ 775,000	
Reinsurance recoverable – IBNR	1,590,000	
Loss payments – ceded	<u>229,000</u>	
Ceded losses incurred		2,594,000
A&O unpaid – ceded	\$ 296,000	
A&O paid – ceded	<u>199,844</u>	
Ceded loss adjustment expenses incurred		495,844
Commission and brokerage – reinsurance ceded		<u>3,463,778</u>
Net reported surplus effect of the reinsurance transaction		\$ <u>2,752,432</u>

Oriska's reported surplus as regards policyholders at December 31, 2010 was \$4,615,923. Without this transaction, Oriska's reported surplus as regards policyholders at December 31, 2010 would have been \$1,863,491.

Upon review of the documents provided in connection with the 100% quota share reinsurance transaction, the Department has determined that the purpose of this transaction was to artificially inflate Oriska's surplus as regards policyholders and that the reinsurance agreement does not transfer risk. Therefore, no reinsurance credit should be allowed pursuant to SSAP No. 62R, which states:

"The essential ingredient of a reinsurance contract is the transfer of risk. The essential element of every true reinsurance agreement is the undertaking by the reinsurer to indemnify the ceding company, i.e., reinsured entity, **not only in form but in fact**, against loss or liability by reason of the original insurance. Unless the agreement contains this essential element of risk transfer, no credit shall be recorded." Emphasis added.

Our determination that the agreement does not transfer risk is based on the following:

R&Q Quest is a Bermuda Segregated Account Company, which operates as a "captive" of Broad pursuant to the Bermuda Segregated Accounts Companies Act 2000 as amended ("Bermuda Act"). Pursuant to Section 17(2) of the Bermuda Act, "any liability linked to a segregated account shall be a liability only of that account and not the liability of any other account and the rights of creditors in respect of such liabilities shall be rights only in respect of the relevant account and not of any other account."

The Notes to the Statutory Financial Return of R&Q Quest (SAC) Limited for the year ended December 31, 2009 states the following:

The Company offers an alternative risk financing vehicle ("rent-a-captive" program) to insureds who wish to assume a portion of their own risk. Each participant's rent-a-captive program is customized to meet their needs. The programs offered enable participants to share in the underwriting and investment profit or loss of their risks without having to own their own captive. All programs are "risk free," being defined as either fully secured, fully funded or fully reinsured. The Company itself does not retain any risk within the general account or any segregated account.

It is noted that in this instance, the captive was not organized by the insured, but rather by the agent who produced the business, i.e. Broad.

A review of the reinsurance agreement indicated the following:

Article 12 of the reinsurance agreement states that “Reinsurer shall allow the Reinsured to retain a ceding commission equal to 27.4%, plus amount payable by the Company for New York State Foreign Terrorism Tax, Domestic Terrorism Tax, Assessments and Workers’ Compensation Security Fund, and/or like taxes and charges imposed by any other jurisdiction if applicable including Federal Excise tax, on all premiums ceded to Reinsurer hereunder.” It is noted that in its 2010 annual statement, Oriska reported ceding commission income of \$3,463,778, which represented 44.4% of the subject ceded premiums.

Article 15 of the Reinsurance Agreement provides that “the Reinsured shall pay all premiums due the Reinsurer into a trust account (“Trust Account”) to be established pursuant to this Article.” Additionally, Article 15 states that “The Trust Account balance shall be defined as:

1. 100% of the cumulative Gross Written Premium; less
2. The ceding commission provided for herein on the Gross Net Written Premium; less
3. The cumulative Federal Excise Tax paid, if applicable; less
4. Reinsurer’s cumulative operating expenses; and less
5. The cumulative Loss and Loss Adjustment Expenses paid or offset, as the case may be, against the Trust Account.”

It is noted that as of December 31, 2010, no amount had been paid by Oriska into the Trust Account. The amount that should have been paid into the Trust Account was reported by Oriska as a liability under the caption “Ceded reinsurance premiums payable” in the amount of \$3,900,568 as follows:

<u>Description</u>	<u>Amount</u>
Ceded premiums written	\$7,793,190
Ceding commission	(3,463,778)
Ceded loss payments	(229,000)
Ceded A&O payments	(199,844)
Ceded reinsurance premiums payable	<u>\$3,900,568</u>

A Trust Agreement (“Broad Trust Agreement”) was established effective February 24, 2011 between TD Bank, NA (“Trustee”), R&Q Quest (SAC) Limited acting in respect of Broad Coverage Services, Inc., Segregated Account (“Grantor”), and Oriska Insurance Company (“Beneficiary”). A deposit in the amount of \$3,149,475 was made into the Trust Account on March 1, 2011; however, the money did not come from Oriska pursuant to Article 15 of the Reinsurance Agreement, but rather from an account at JPMorganChase Bank in the name of Quantum Partners Inc. That money, in turn, was transferred from an account at HSBC in the name of Rashbi Management/Oriska Trust on September 14, 2010. Oriska stated that the funds were transferred pursuant to the “Consent to

Substitution and Assignment in Relation to Rashbi Trust Agreement” dated July 1, 2010, which states:

“Rashbi Management, Inc. (“Rashbi”) consents to the substitution of Broad Coverage Services, Inc., to act in all respects, or their designee, (“Substituted Grantor”) for Rashbi as Grantor under that certain Rashbi and Oriska Insurance Company Irrevocable Trust Agreement dated November 28, 2006, under which Rashbi is Grantor, HSBC Bank is Trustee, and Oriska Insurance Company is Beneficiary (“Trust Agreement”). . . .”

The Broad Trust Agreement includes the following provisions:

"WHEREAS Grantor has agreed to provide continuing security for the payment of amounts payable under Policies of insurance issued to named insureds, pursuant to a certain Rashbi and Oriska Insurance Company Irrevocable Trust Agreement dated November 28, 2006 (“Rashbi Trust”) under which Beneficiary is insurance carrier and beneficiary and agreements supplementary thereto (hereinafter "Subject Program"); and

WHEREAS, the parties intend that the aforesaid Policies and reinsurance (collectively "Obligations") shall all be covered by this Trust Agreement; and

WHEREAS, the parties have agreed that the funds, securities and other assets to be deposited with Trustee hereunder shall be held in trust for the aforementioned purposes pursuant to the terms hereof to secure the payment of all amounts which may become lawfully due to Beneficiary"

When asked how the Rashbi Trust transactions became the subject of the trust agreement between Oriska and R&Q Quest, Oriska responded that through a “Co-Operation and Indemnification Agreement” between Broad Coverage Services, Inc. and R&Q Quest, R&Q Quest agreed to reinsure the policies originally covered by the Rashbi Trust and as a result, such policies are included in the Trust Agreement. Additionally, Oriska stated that Exhibit I of the Reinsurance Agreement, which provides a schedule of insured entities that are the subject of the agreement, includes the obligations that were originally held in the Rashbi Trust and are now included in the Reinsurance Agreement. Since Oriska was not party to the Co-operation and Indemnification Agreement, it would not appear feasible that it would have any standing to cede such business to R&Q Quest

Upon review, it was noted that nowhere in either the Co-Operation and Indemnification Agreement or the Reinsurance Agreement is there any mention of the Rashbi Trust or its obligations. Additionally, it is noted that the Co-Operation and Indemnification Agreement was neither signed nor dated by R&Q Quest. Further, Exhibit II, Item 3 of the Reinsurance Agreement defines the coverage period as “all losses on policies attaching on or after 10<sup>th</sup> June 2010, such policies being as set forth on Exhibit I.” Therefore, it is still unclear how the policies produced by Broad and written by Oriska

in June 2010 and reinsured by R&Q Quest pursuant to the Reinsurance Agreement were ever obligations of the Rashbi Trust.

Part 126.3(d) of Department Regulation 114, provides that:

- (d) The trust agreement must be clean and unconditional, in that:
  - (3) the trust agreement must indicate that it is not subject to any conditions or qualifications outside of the trust agreement;
  - (4) the trust agreement cannot contain references to any other agreements or documents; and
  - (5) no reference shall be made to the fact that these funds may represent reinsurance premiums or that such funds have been deposited for any specific purpose.

The inclusion in the Broad Trust Agreement of the provision that the Grantor has agreed to provide continuing security for the obligations of the Rashbi Trust, when there is no clear indication that the Rashbi Trust obligations are subject to the reinsurance agreement, is contrary to the provisions of Part 126.3(d) of Department Regulation 114. Therefore, the Broad Trust Agreement does not comply with Department Regulation 114.

The following provisions, which are included in the Reinsurance Agreement, clearly negate any transfer of risk to the reinsurer:

Article 34(C)(2) of the Reinsurance Agreement states:

In the event the assets of the Subject Segregated Account are insufficient to satisfy any Claims under the Agreement, the Reinsured agrees that it has no claim and undertakes that it shall make no claim against the assets of the Reinsurer or the assets of any other person maintained in the Reinsurer's general account, or against any assets in any other Segregated Account, except those assets of the Subject Segregated Account.

Exhibit II of the Reinsurance Agreement also states that "In no event will the aggregate limit of liability for losses under this Policy exceed 100% of the cumulative amount of the premium ceded hereunder plus collateral provided."

Oriska provided Endorsement #1 to the Reinsurance Agreement, which changed some of the terms of the reinsurance agreement, including changing the definition of the Trust Account balance to be comprised of Gross Earned Premium rather than Gross Written Premium and less the ceding commission on Gross Net Earned Premium rather than Gross Net Written Premium. It is noted that the endorsement was signed by the President of Broad as the Reinsurer, rather than an officer of R&Q Quest. The signatures on this endorsement were not dated.

Oriska also provided Endorsements #2 and #3, which added additional risks accepted for coverage under the Reinsurance Agreement. Endorsement #2 was signed by Oriska on November 10, 2011 and by R&Q Quest on February 29, 2012, and was acknowledged by Broad on July 12, 2012. Endorsement #3 was signed by Oriska on June 27, 2012 and by R&Q Quest on July 5, 2012, and acknowledged by Broad on July 12, 2012.

Additionally, Oriska provided a “Co-operation and Indemnification Agreement” between Broad and R&Q Quest, which was effective June 11, 2010, pursuant to which Oriska states that Broad agrees to be responsible for any shortfall in the Reinsurer segregated account. Article 7b of this Agreement provides that “in the event that a Program Loss occurs and funds held by [R&Q Quest] are not sufficient to meet the obligations of [Broad] under this agreement, then [Broad] agrees to pay [R&Q Quest] sufficient funds to meet those obligations on a timely basis.” It is noted that the Reinsurance Agreement is between Oriska and R&Q Quest; therefore, it is unclear what the obligations of Broad would be under this agreement. Additionally, this agreement was neither signed nor dated by R&Q Quest and that Oriska is not a party to this agreement. Further, paragraph 8 of SSAP 62R provides that the reinsurance agreement must constitute the entire contract between the parties; therefore, the Co-operation and Indemnification Agreement would be a side agreement and could not be considered part of the Reinsurance Agreement.

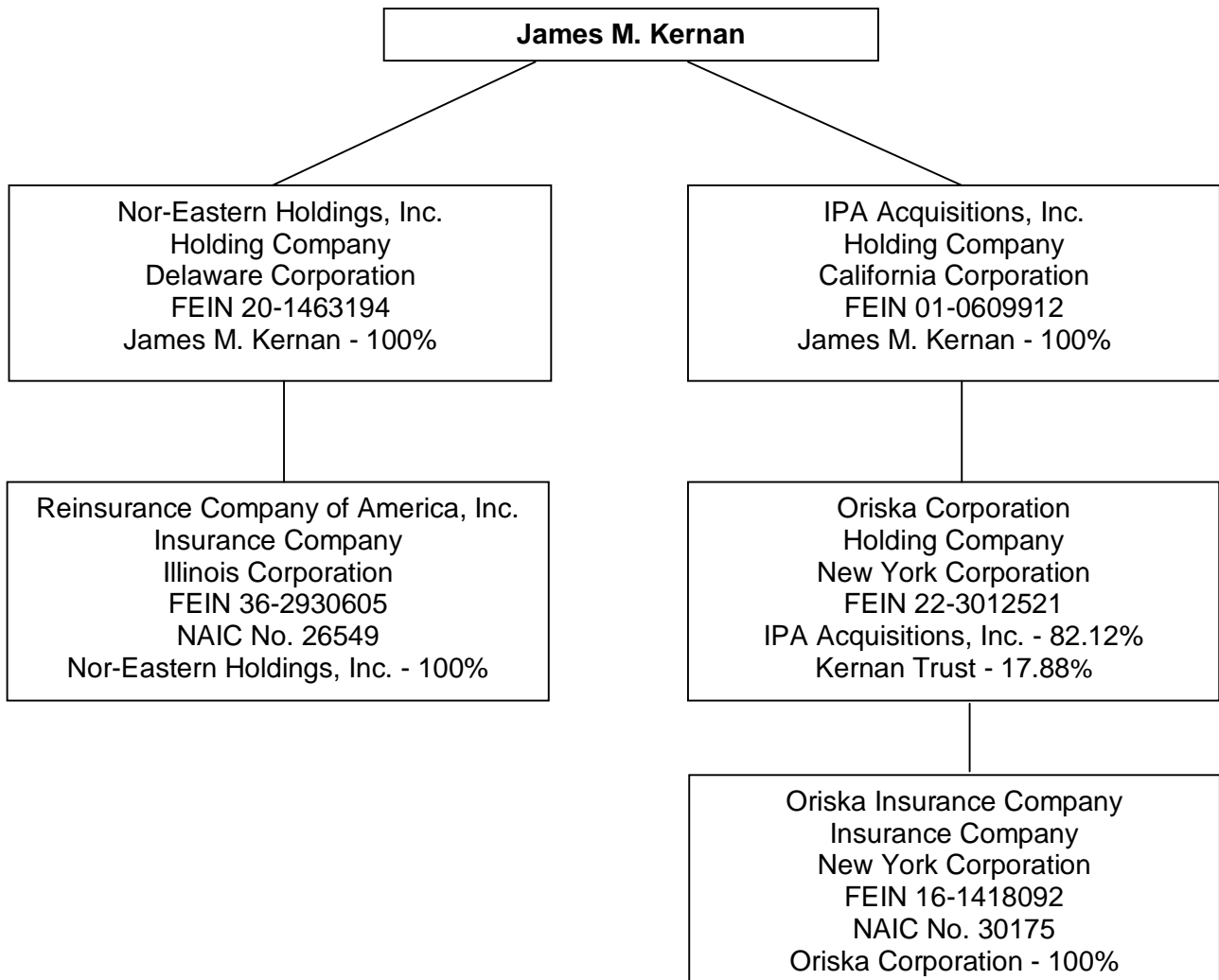
Therefore, based on the limits of liability of the Reinsurer as stated in Article 34(C)(2) and Exhibit II of the Reinsurance Agreement, the statement in R&Q Quest’s Statutory Financial Return that such programs are “risk-free” and that R&Q Quest itself does not retain any risk within the general account or any segregated account, it is clear that the reinsurance agreement does not transfer any risk to the reinsurer as required pursuant to SSAP 62R. This Report reflects the disallowance of any reinsurance credit as regards the Reinsurance Agreement between Oriska and R&Q Quest.

It is noted that the surplus effect of the disallowance of reinsurance credit in this Report is a decrease of \$7,252,432, which is \$4.5 million greater than the \$2,752,432 decrease using the Company’s reported loss and loss adjustment expense reserves. The difference represents an increase in accident year 2010 loss and loss adjustment expense reserves, based on the Department’s actuarial review.

D. Holding Company

The Company is a wholly-owned subsidiary of Oriska Corporation, which is owned 82.12% by IPA Acquisitions, Inc. (“IPA”), a privately held California corporation, with the remaining 17.88% held by the Kernan Trusts. IPA is ultimately controlled by James M. Kernan (“Mr. Kernan”).

The following is a chart of the holding company system at December 31, 2010:



In September 2008, following his federal indictment on multiple felony charges relating to his insurance activities, Mr. Kernan resigned as President and Director of Oriska and proposed transferring his shares in Oriska to a voting trust in response to the Department’s concerns regarding his indictment. On September 11, 2008, the Department directed Oriska to submit an application for acquisition of control (“Form A”) of Oriska Insurance Company by the voting trust pursuant to Section 1506 of the New York Insurance Law.

On March 20, 2009, Mr. Kernan was convicted, upon his plea of guilty, of knowingly and willfully permitting a convicted felon, Robert Anderson, to be engaged in the business of insurance, in violation of 18 U.S.C. §1033(e)(1)(B). Mr. Kernan's conviction prohibits him from engaging in the business of insurance without a waiver issued by the Superintendent under 18 U.S.C. §1033(e)(2). At the time of his guilty plea, Mr. Kernan's attorney represented to the court that Mr. Kernan's Oriska shares had not yet been divested, but that Mr. Kernan had arranged for his voting shares to be removed into a voting trust, which would be administered by three persons. On August 10, 2009, Mr. Kernan's counsel requested a postponement of the sentencing to allow Mr. Kernan additional time to divest his interest in Oriska.

On February 1, 2011, the Department called a meeting at the Department with Oriska's President and Counsel to ascertain why Mr. Kernan still retained his controlling interest in Oriska and why an acceptable voting trust had not been established. At the conclusion of the meeting the Department directed Oriska to submit a voting trust agreement and Form A filing to the Department within two weeks. Despite this directive from the Department, a proposed voting trust and Form A were not submitted.

On February 18, 2011, Mr. Kernan submitted a waiver application pursuant to 18 U.S.C. §1033(e)(2) seeking permission to engage in the business of insurance.

On July 27, 2011, the Department served a Citation on Mr. Kernan seeking to have him removed as a controlling person of Oriska. The Citation alleged that Mr. Kernan had demonstrated untrustworthiness based on his 2009 conviction of knowingly and willfully permitting a convicted felon to be engaged in the business of insurance, his suspension from the practice of Law in the State of New York, and his continued refusal to divest his controlling ownership interest in Oriska. A hearing on this matter was held at the Department on October 18, 19, and December 2, 2011.

Two insurance companies owned by Mr. Kernan in Illinois, including Oriska's affiliate, Reinsurance Company of America ("RCA"), were placed into conservation and then liquidation pursuant to an Illinois order dated April 27, 2011. In the Illinois order, the Court determined that the further transaction of business by each of the Illinois insurers "would be hazardous to its policyholders, its creditors and to the public due to the continuing involvement of James M. Kernan, the ultimate controlling person . . . in its operation of the business of insurance."



### 3. FINANCIAL STATEMENTS

#### A Balance Sheet

The following shows the assets, liabilities and surplus as regards policyholders as of December 31, 2010, as determined by this examination and as reported by the Company:

<u>Assets</u>	<u>Assets</u>	<u>Assets Not Admitted</u>	<u>Net Admitted Assets</u>
Bonds	\$ 3,930,967	\$ 0	\$ 3,930,967
Common stocks (stocks)	1,015,410	0	1,015,410
Cash, cash equivalents and short-term investments	1,515,404	0	1,515,404
Investment income due and accrued	27,116	0	27,116
Uncollected premiums and agents' balances in the course of collection	5,105,143	1,014,776	4,090,367
Amounts recoverable from reinsurers	571,014	0	571,014
Current federal and foreign income tax recoverable and interest thereon	274,883	0	274,883
Net deferred tax asset	355,198	269,555	85,643
Receivables from parent, subsidiaries and affiliates	325,612	0	325,612
Receivable Under High Deductibles	5,715,304	4,979,038	736,266
Other Receivables	<u>78,345</u>	<u>5,095</u>	<u>73,250</u>
Total assets	<u>\$18,914,396</u>	<u>\$6,268,464</u>	<u>\$12,645,932</u>

Liabilities, Surplus and Other Funds

<u>Liabilities</u>	<u>Examination</u>	<u>Company</u>	<u>Surplus Increase (Decrease)</u>
Losses and Loss Adjustment Expenses	\$14,160,206	\$3,744,235	\$(10,415,971)
Commissions payable, contingent commissions and other similar charges	68,658	68,658	0
Other expenses (excluding taxes, licenses and fees)	35,112	35,112	0
Taxes, licenses and fees (excluding federal and foreign income taxes)	257,500	257,500	0
Unearned premiums	4,015,806	23,806	(3,992,000)
Ceded reinsurance premiums payable (net of ceding commissions)	0	3,900,568	3,900,568
Payable to parent, subsidiaries and affiliates	<u>130</u>	<u>130</u>	<u>0</u>
Total liabilities	<u>\$18,537,412</u>	<u>\$8,030,009</u>	<u>\$(10,507,403)</u>
<u>Surplus and Other Funds</u>			
Common capital stock	\$1,500,000	\$1,500,000	\$ 0
Gross paid in and contributed surplus	8,559,068	8,559,068	0
Unassigned funds (surplus)	<u>(15,950,548)</u>	<u>(5,443,145)</u>	<u>(10,507,403)</u>
Surplus as regards policyholders	<u>\$(5,891,480)</u>	<u>\$4,615,923</u>	<u>\$(10,507,403)</u>
Total liabilities, surplus and other funds	<u>\$12,645,932</u>	<u>\$12,645,932</u>	

NOTE: This examination has determined that as of December 31, 2010, the Company was insolvent in the amount of \$5,891,480 and its capital of \$1,500,000 was impaired in the amount of \$7,391,480. Additionally, the Company's minimum required to be maintained surplus of \$2,200,000 was impaired in the amount of \$8,091,480.

B. Statement of Income

Surplus as regards policyholders decreased by \$3,002,503 during the period under examination from October 1, 2005 through December 31, 2010 detailed as follows:

Underwriting Income

Premiums earned		<u>\$17,533,634</u>
Deductions:		
Losses and loss adjustment expenses incurred	\$11,060,128	
Other underwriting expenses incurred	9,749,902	
Aggregate write-ins for underwriting deductions	<u>3,992,786</u>	
Total underwriting deductions		<u>24,802,816</u>
Net underwriting gain or (loss)		\$(7,269,182)

Investment Income

Net investment income earned	\$ 1,009,090	
Net realized capital gain	<u>1,283,682</u>	
Net investment gain or (loss)		2,292,772

Other Income

Net gain or (loss) from agents' or premium balances charged off	\$ (192,615)	
Finance and service charges not included in premiums	4,868	
Aggregate write-ins for miscellaneous income	<u>850,092</u>	
Total other income		<u>662,345</u>
Net income before federal and foreign income taxes		\$(4,314,065)
Federal and foreign income taxes incurred		<u>(579,327)</u>
Net income or (loss)		<u>\$(3,734,738)</u>

Surplus as regards policyholders per report on examination as of December 31, 2005			\$(2,049,849)
	<u>Gains in Surplus</u>	<u>Losses in Surplus</u>	
Net loss		\$3,734,738	
Net unrealized capital gains or (losses)		1,621,866	
Change in net deferred income tax		333,098	
Change in nonadmitted assets	1,047,939		
Change in provision for reinsurance	100,133		
Surplus adjustments paid in	<u>700,000</u>	<u>0</u>	
Net increase (decrease) in surplus	<u>\$1,848,072</u>	<u>\$5,689,702</u>	<u>\$(3,841,630)</u>
Surplus as regards policyholders per report on examination as of December 31, 2010			<u>\$(5,891,480)</u>

#### **4. LOSSES AND LOSS ADJUSTMENT EXPENSES**

The examination liability for losses and loss adjustment expenses of \$14,160,206 is \$10,415,971 more than the \$3,744,235 reported by the Company in its December 31, 2010 filed annual statement. The examination analysis of the loss and loss adjustment expense reserves was conducted in accordance with generally accepted actuarial principles and was based on statistical information contained in the Company's internal records and in its filed quarterly and annual statements.

The examination reserves include a reserve for accident year 2010 in the amount of \$4.5 million, which is subject to a 100% quota share reinsurance agreement with R&Q Quest (SAC) Limited. As discussed in item 2C (Reinsurance) of this report, it was determined that this agreement did not transfer risk and therefore, reinsurance credit has been disallowed pursuant to paragraph 34 of SSAP 62R, and the examination reserves include the \$4.5 million with no reduction for reinsurance.

#### **5. UNEARNED PREMIUM RESERVES**

The examination liability for the captioned item of \$4,015,806 is \$3,992,000 more than the \$23,806 reported by the Company as of December 31, 2010.

The change represents the ceded unearned premium on the 100% quota share reinsurance agreement with R&Q Quest (SAC) Limited, which was determined not to transfer risk as discussed in item 2C (Reinsurance) of this report.

## 6. CEDED REINSURANCE PREMIUMS PAYABLE

The Company reported a liability under this caption in the amount of \$3,900,568 as of the examination date. Pursuant to this examination, the captioned liability has been eliminated.

The change represents the ceded reinsurance premiums payable on the 100% quota share reinsurance agreement with R&Q Quest (SAC) Limited, which was determined not to transfer risk as discussed in item 2C (Reinsurance) of this report.

## 7. CONCLUSION

This examination has determined that as of December 31, 2010, the Company was insolvent in the amount of \$5,891,480 and its capital of \$1,500,000 was impaired in the amount of \$7,391,480. Additionally, the Company's minimum required to be maintained surplus of \$2,200,000 was impaired in the amount of \$8,091,480.

## 8. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Insolvency</u>	
This examination has determined that as of December 31, 2010, the Company was insolvent in the amount of \$5,891,480 and its capital of \$1,500,000 was impaired in the amount of \$7,391,480. Additionally, the Company's minimum required to be maintained surplus of \$2,200,000 was impaired in the amount of \$8,091,480.	1, 18, 21
B. <u>Management</u>	
Given the serious nature of the findings reported in the prior report on examination, the failure of the Company to provide the prior report to its directors in a timely manner and obtain signed statements from each director confirming that such member has received and read the report represents a serious weakness in its corporate governance. It is	7

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recommended that the Company provide copies of its filed examination reports to each of its directors and obtain signed statements from each member confirming that they have received and read such report in a timely manner pursuant to Section 312(b) of the New York Insurance Law.

C. Reinsurance

- i. Upon review of the documents provided in connection with the 100% quota share reinsurance transaction, the Department has determined that the purpose of this transaction was to artificially inflate Oriska's surplus as regards policyholders and that the reinsurance agreement does not transfer risk. Therefore, no reinsurance credit should be allowed pursuant to SSAP No. 62R 10
- ii. The inclusion in the Broad Trust Agreement of the provision that the Grantor has agreed to provide continuing security for the obligations of the Rashbi Trust, when there is no clear indication that the Rashbi Trust obligations are subject to the reinsurance agreement, is contrary to the provisions of Part 126.3(d) of Department Regulation 114. Therefore, the Broad Trust Agreement does not comply with Department Regulation 114. 13
- iii. Based on the limits of liability of the Reinsurer as stated in Article 34(C)(2) and Exhibit II of the Reinsurance Agreement, the statement in R&Q Quest's Statutory Financial Return that such programs are "risk-free" and that R&Q Quest itself does not retain any risk within the general account or any segregated account, it is clear that the reinsurance agreement does not transfer any risk to the reinsurer as required pursuant to SSAP 62R. 14

D. Holding Company

On July 27, 2011, the Department served a Citation on Mr. Kernan seeking to have him removed as a controlling person of Oriska. The Citation alleged that Mr. Kernan had demonstrated untrustworthiness based on his 2009 conviction of knowingly and willfully permitting a convicted felon to be engaged in the business of insurance, his suspension from the practice of Law in the State of New York, and his continued refusal to divest his controlling ownership interest in Oriska. A hearing on this matter was held at the Department on October 18, 19, and December 2, 2011. 16

Two insurance companies owned by Mr. Kernan in Illinois, including Oriska's affiliate, Reinsurance Company of America ("RCA"), were placed into conservation and then liquidation pursuant to an Illinois order dated April 27, 2011. In the Illinois order, the Court determined that the further transaction of business by each of the Illinois insurers "would be hazardous to its policyholders, its creditors and to the public 16

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due to the continuing involvement of James M. Kernan, the ultimate controlling person . . . in its operation of the business of insurance.”

Respectfully submitted,

  /s/    
Michael V. Imbriano, AFE  
Principal Insurance Examiner

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

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

  /s/    
Michael V. Imbriano, AFE

Subscribed and sworn to before me  
  
this\_\_\_\_\_ day of \_\_\_\_\_, 2012.



*Appointment No. 30522*

**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:*

**MICHAEL IMBRIANO**

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

**ORISKA INSURANCE COMPANY**

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

**Company**

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

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

*this 18th day of May, 2010*



*James J. Wrynn*

**JAMES J. WRYNN**

*Superintendent of Insurance*