

REPORT ON EXAMINATION

OF THE

ICM INSURANCE COMPANY

AS OF

DECEMBER 31, 2009

DATE OF REPORT

April 25, 2012

EXAMINER

JOSEPH REVERS

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawsky
Superintendent

April 25, 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 30568 dated May 22, 2010 attached hereto, I have made an examination into the condition and affairs of ICM Insurance Company as of December 31, 2009, and submit the following report thereon.

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

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

The examination was conducted at the offices of Chilton International, Inc. located at 100 Commons Way, Suite 210, Holmdel, NJ 07733.

This examination has determined that as of December 31, 2009, the Company’s capital of \$5,000,000 was impaired in the amount of \$2,611,169. Subsequently, on February 6, 2012, the Company amended its charter to reduce its outstanding capital stock from \$5,000,000 to \$2,000,000. If the charter amendment had been in effect as of the examination date, the Company’s capital would not have been impaired.

1. SCOPE OF EXAMINATION

The Department has performed a multi-state examination of ICM Insurance Company. The previous examination was conducted as of December 31, 2006. This examination covered the three-year period from January 1, 2007 through December 31, 2009. 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 Financial Condition Examiners Handbook of the NAIC:

- Significant subsequent events
- Company history
- Corporate records
- Management and control
- Territory and plan of operation
- Growth of Company
- Loss experience
- Reinsurance
- Accounts and records
- Statutory deposits
- Financial statements
- Summary of recommendations

A review was also made to ascertain what action was taken by the Company 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 Company was incorporated under the laws of the State of New York on May 1, 1981, as Baltica-Skandinavia Reinsurance Company of America, Inc. It became licensed and commenced business on September 23, 1981.

In 1994, the Company ceased writing or accepting any new business. On July 18, 1995, pursuant to the provisions of Section 1104(c) of the New York Insurance Law, the Department issued a stipulation restricting the Company from writing any new or renewal business. On September 27, 2005, the Department rescinded the stipulation thereby allowing the Company to resume underwriting business. The Company resumed underwriting direct business in late 2005.

On December 22, 2000, Insurance Capital Management, Inc. (a Delaware corporation) purchased all of the outstanding shares of the Company from Trygg-Baltica Forsikring A/S and changed the Company's name to ICM Insurance Company on February 3, 2001.

At December 31, 2009, capital paid in was \$5,000,000 consisting of 50,000 shares of common stock at \$100 par value per share. Gross paid in and contributed surplus was \$5,592,077. Gross paid in and contributed surplus did not change since the last examination.

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 seven nor more than seventeen members. The board meets three to four times during each calendar year. At December 31, 2009, the board of directors was comprised of the following thirteen members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Jeffrey M. Fuhrman New Canaan, CT	President, IMG Artists, LLC
Mark R. Graham New York, NY	President & Chairman, Insurance Capital Management, Inc.
Joseph G. Grasso Philadelphia, PA	Partner, Wiggin and Dana LLP
Robert J. Hall Haveford, PA	Principal, Andesite Holdings
Clark K. Hunt Dallas, TX	Unity Hunt, Inc.
Loic De Kertanguy New York, NY	JB Martin Company
Jonathan Kline Queens, NY	Counsel, Smith, Gambrell & Russell LLP
Elliott M. Kroll New York, NY	Partner, Arent Fox, LLP
John McNiff Plymouth Meeting, PA	President, Discovery Capital Management
Julius A. Rousseau, III New York, NY	Partner, Arent Fox, LLP
David L. Tohir New Canaan, CT	Executive Vice President, K Road Power, Inc.
Alan Wade Tompkins Dallas, TX	Vice President and General Counsel, Unity Hunt, Inc.
Gerhard T. Van Arkel Haveford, PA	Wilmington Trust

A review of the minutes of the board of directors' meetings held during the examination period indicated that the meetings were generally well attended and each board member has an acceptable record of attendance with the exception of Robert J. Hall and John P. McNiff, each of whom attended less than 50% of the meetings for which they were eligible to attend.

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.

As of December 31, 2009, the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
Mark R. Graham	President
Elliott M. Kroll	Vice President and Secretary
Donald H. Wustrow	Treasurer
William H. Beikes	Vice President – Claims

Conflict of Interest Policy and Statements

The Company has not established a conflict of interest policy, which would describe what might constitute potential conflicts of interest for an officer, director or key employees of the Company. It is recommended that the Company establish a conflict of interest policy and submit such policy to its board of directors for approval. Additionally, it is recommended that the Company require its officers, directors and key employees to complete and sign on an annual basis a conflict of interest statement, wherein the signer would disclose any potential conflicts of interest, and retain the statements in its files. It is further recommended that the completed and signed conflict of interest statements be provided to the Company's board of directors annually and that the minutes of the board of directors' meetings acknowledge their review.

B. Territory and Plan of Operation

As of December 31, 2009, the Company was licensed to write business in nineteen states.

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 & health
4	Fire
5	Miscellaneous property
6	Water damage
7	Burglary and theft
8	Glass
9	Boiler and machinery
10	Elevator
11	Animal
12	Collision
13	Personal injury liability
14	Property damage liability
15	Workers' compensation and employers' liability
16	Fidelity and surety
17	Credit
19	Motor vehicle and aircraft physical damage
20	Marine and inland marine
21	Marine protection and indemnity

Based on the lines of business for which the Company was licensed at December 31, 2009, and pursuant to the provisions of Article 41 of the New York Insurance Law, its minimum required to maintain surplus to policyholders was \$2,200,000. Subsequently, on February 6, 2012, the Company's license was amended to remove the authority to write the kinds of insurance defined in subparagraphs 3, 8, 10, 11, 15, 16 and 17 of Section 1113(a) of the New York Insurance Law, which reduced its minimum required surplus pursuant to Article 41 of the New York Insurance Law from \$2,200,000 to \$1,050,000.

The Company writes substandard automobile insurance in the states of Colorado, Texas, Utah and Wisconsin through a network of independent insurance agents.

The following schedule shows the direct premiums written by the Company both in total and in New York for the period under examination:

<u>Calendar Year</u>	<u>New York State</u>	<u>Total Premiums</u>	<u>Premiums Written in New York State as a Percentage of Total Premium</u>
2007	\$ 0	\$6,322,353	0.00%
2008	\$ 0	\$5,131,549	0.00%
2009	\$ 0	\$5,619,335	0.00%

C. Reinsurance

Assumed

Assumed reinsurance accounted for 43% of the Company's gross premium written at December 31, 2009. The Company's assumed business was derived from one reinsurance contract and consisted only of substandard auto coverage. The contract was effective on January 1, 2009, but was not executed until December 31, 2009. The Company accounted for this contract as prospective reinsurance, which is contrary to the provisions of Paragraph 24 of Statements of Statutory Accounting Principle ("SSAP") No. 62R, which states:

“ . . . If an agreement entered into, renewed or amended on or after January 1, 1994 has not been finalized, reduced to a written form and signed by the parties within nine months after the commencement of the policy period covered by the reinsurance arrangement, then the arrangement is presumed to be retroactive and shall be accounted for as a retroactive reinsurance agreement.”

It is recommended that the Company account for the assumed reinsurance contract entered into effective January 1, 2009 as retroactive reinsurance pursuant to the provisions of Paragraph 24 of SSAP No. 62R.

Ceded

As of December 31, 2009 the Company had one ceded reinsurance contract in effect:

<u>Type of Treaty</u>	<u>Cession</u>
<u>Quota Share</u> 100% unauthorized	50% quota share on substandard auto business written in Texas

The ceded reinsurance agreement referenced above was reviewed and found to contain the required clauses, including an insolvency clause meeting the requirements of Section 1308 of the New York Insurance Law.

Loss Portfolio Transfer

Effective October 1, 2000, the Company entered into a loss portfolio transfer agreement whereby it ceded 100% of its outstanding losses and loss adjustment expenses, net of other

reinsurance, to Max Reinsurance Company (“Max Re”), a Bermuda insurer. The Company paid Max Re \$22,659,000, which was equal to the outstanding losses and loss adjustment expense reserves (including reinsurance payable on paid losses) reported by the Company as of September 30, 2000. The agreement provides coverage for up to \$30,000,000 of losses and loss adjustment expenses. The Company obtained a letter of credit from Max Re equal to the reserves transferred. The agreement was accounted for pursuant to the requirements of Department Regulation 108. As of December 31, 2009, the inception-to-date incurred losses subject to the loss portfolio transfer were \$29,371,313, which leaves only \$628,687 of coverage remaining.

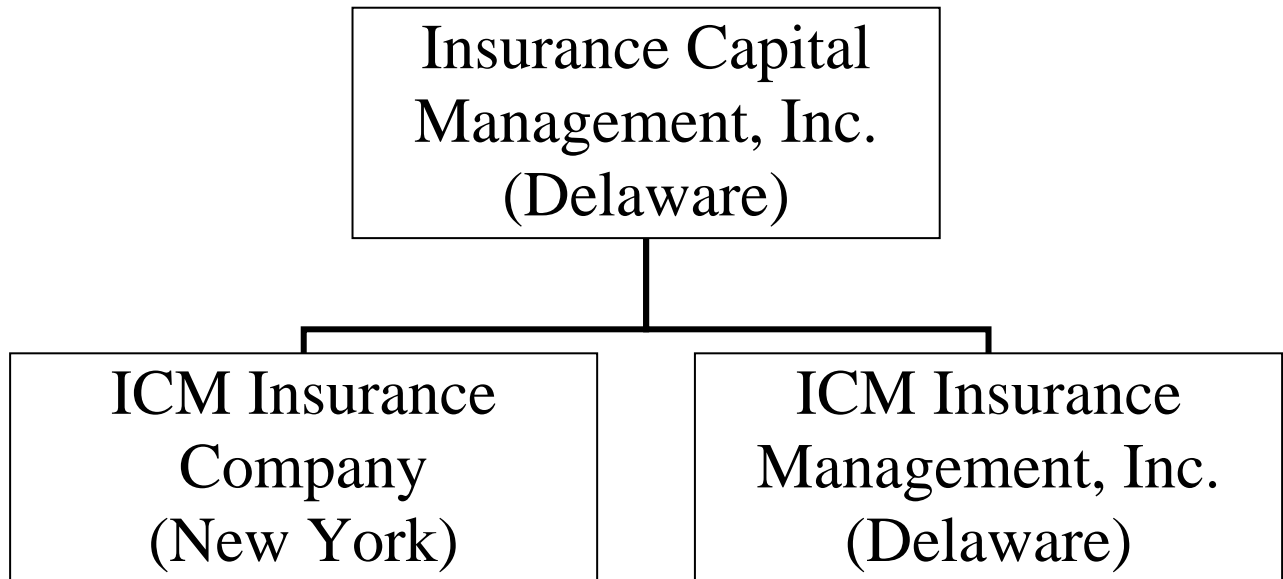
Upon review of the Schedule F data reported by the Company in its filed 2009 annual statement, it was noted that the Company reported an unauthorized reinsurer as authorized. The misclassification did not have a material effect on the provision for reinsurance; nevertheless, it is recommended that the Company take proper care in completing Schedule F-Part 3 and properly report unauthorized reinsurers.

It was also noted that the reinsurance recoverable on paid losses and loss adjustment expenses reported in Columns 7 and 8 of Schedule F - Part 3 did not agree with the amount reported on line 14.1 (Amounts recoverable from reinsurers) of the balance sheet in its 2009 annual statement. The difference in the recoverable amount was not material; therefore, no examination change is warranted. It is recommended that the Company take proper care in completing its annual statement to ensure that the reinsurance recoverable amount reported on the balance sheet agrees with the amount reported on Schedule F-Part 3.

Additionally, management has represented that all material ceded reinsurance agreements transfer both underwriting and timing risk as set forth in SSAP No. 62.

D. Holding Company System

The Company is wholly-owned by Insurance Capital Management, Inc., a Delaware corporation. A review of the holding company registration statements filed with this Department indicated that such filings were complete. The following is a chart of the holding company system at December 31, 2009:



As of December 31, 2009 the Company was party to the following agreement with an affiliate:

Services Agreement between ICM Insurance Company and ICM Insurance Management, Inc.

Effective January 1, 2006 ICM Insurance Company entered into a services agreement with ICM Insurance Management, Inc. (“Management”), whereby Management agrees to provide certain administration, investment and management services.

As of December 31, 2009 the Company was party to the following agreements with non-affiliates:

Service Agreement between ICM Insurance Company and Chilmington International, Inc.

Effective March 1, 2000, the Company entered into a service agreement with Chilmington International, Inc. (“Chilmington”), an insurance and reinsurance consulting firm, whereby Chilmington manages the day-to-day run-off operations of the Company. The Company pays Chilmington a flat annual fee plus any documented expenses incurred relating to the Company.

Investment Services Agreement between ICM Insurance Company and Chartwell Investment Partners

Effective December 1, 2001, the Company entered into an investment services agreement with Chartwell Investment Partners, LP (“Chartwell”), an investment advisory firm, whereby Chartwell provides investment services for the Company. The services include investment advisory services, purchases and sales of securities, and providing the information necessary to enable the Company to prepare the investment schedules in its annual and quarterly statements. The Company pays Chartwell a flat annual fee for these services.

General Agency Agreement between ICM Insurance Company and Destiny Insurance Agency

Effective June 30, 2009, ICM Insurance Company entered into a general agency agreement with Destiny Insurance Agency (“Destiny”), whereby Destiny agrees to produce and administer the Company’s personal automobile insurance policies in the State of Texas. The Company agrees to pay Destiny an agency commission, adjustable based on loss ratio. The claims administration of the Company’s Texas business will be performed by Lindsay General Insurance Agency.

Policy Administration Agreement between ICM Insurance Management, Inc. and Lindsay General Insurance Agency

Effective June 30, 2009, ICM Insurance Management, Inc. entered into a policy administration agreement with Lindsay Insurance Agency (“Lindsay”) whereby Lindsay agrees to issue and administer ICM Insurance Company’s personal automobile policies underwritten in the states of Colorado, Wisconsin and Utah. ICM Insurance Company agrees to pay Lindsay a percentage of the premium collected.

Claims Administration Agreement between ICM Insurance Management, Inc. and Lindsay General Insurance Agency

Effective June 30, 2009, ICM Insurance Management, Inc. entered into a claims administration agreement with Lindsay Insurance Agency. Pursuant to the terms of the agreement Lindsay agrees to administer the obligations of ICM Insurance Company arising from personal automobile policies: (1) underwritten by Destiny General Agency on behalf of the Company in the state of Texas and (2) underwritten directly by the Company in the states of Colorado, Utah and Wisconsin. The Company agrees to pay Lindsay a percentage of the premium collected.

E. Significant Operating Ratios

The following ratios have been computed as of December 31, 2009, based upon the results of this examination:

Net premiums written to surplus as regards policyholders	3.9:1
Liabilities to liquid assets (cash and invested assets less investments in affiliates)	133.2%
Premiums in course of collection to surplus as regards policyholders	193.3%

All of the above ratios fall outside the benchmark ranges set forth in the Insurance Regulatory Information System of the National Association of Insurance Commissioners.

The underwriting ratios presented below are on an earned/incurred basis and encompass the three-year period covered by this examination:

	<u>Amounts</u>	<u>Ratios</u>
Losses and loss adjustment expenses incurred	\$22,972,806	118.40%
Other underwriting expenses incurred	9,214,564	47.49
Net underwriting loss	<u>(12,785,332)</u>	<u>(65.90)</u>
Premiums earned	<u>\$19,402,038</u>	<u>100.00%</u>

F. Risk Management and Internal Controls

As noted in Section 2D of this report, the Company entered into a Policy Administration Agreement and a Claims Administration Agreement with Lindsay General Insurance Agency (“Lindsay”).

The examiners randomly selected a sample of 44 policy files produced by Lindsay pursuant to the Policy Administration Agreement for review. The Company requested that Lindsay provide the examiners with copies of the sample policy files; however, Lindsay did not maintain copies of the policy files. Therefore, the Company’s CFO had to send requests to each of the agents who produced the business in order to obtain the policy files.

The examiners were ultimately able to obtain 42 of the 44 sampled policy files from the agents; the remaining 2 files were never provided. 15 of the files were provided 2 weeks after the request was made; 22 files were provided 3 weeks after; 3 files after 4 weeks; and 2 files after 5 weeks.

Section 5.08 of the Policy Administration Agreement states:

The Administrator shall account for and furnish to the Company and upon request with reasonable notice, all Policy files created with respect to all Policies administered under this Agreement.

Further, Section 5.11 of the Policy Administration Agreement states, in part:

The Administrator shall maintain on behalf of the Company complete copies of all documents created with respect to all Policies.

The failure of the Administrator to maintain the policy files and furnish them to the Company upon request is in violation of Sections 5.08 and 5.11 of the Policy Administration Agreement. It is noted that as of the date of this report, the Company has never done an audit of the policy administration function of the Administrator, even though the Agreement has been in effect since June 30, 2009.

The failure to audit the Administrator represents a lack of internal control by the Company. It is recommended that the Company exercise proper oversight of the Administrator by performing periodic audits of the Lindsay’s policy administration function to ensure compliance with the terms of the Policy Administration Agreement.

The examiners also selected a sample of claim files administered by Lindsay pursuant to the Claim Administration Agreement for review. Although all of the requested files were provided, it was noted that the files did not contain sufficient documentation to support the claim payments made. Additionally, the claim files did not contain sufficient information to support cessions to National Guaranty Insurance Company (“NGIC”), whereby NGIC assumes 50% of the policies issued by the Company and underwritten by the Lindsay pursuant to a quota share reinsurance agreement. It is noted Lindsay is an affiliate of NGIC.

Section 5.11 of the Claims Administration Agreement states, in part:

The Administrator shall maintain on behalf of the Company complete copies of all documents and claim files created with respect to all loss occurrences thereunder.

The failure of the Administrator to maintain sufficient supporting documentation in the claim files is in violation of Sections 5.11 of the Claim Administration Agreement. It is noted that as of the date of this report, the Company has never done an audit of the claim administration function of the Administrator, even though the Agreement has been in effect since June 30, 2009.

The failure to audit the Administrator represents a lack of internal control by the Company. It is recommended that the Company exercise proper oversight of the Administrator by performing periodic audits of the Lindsay’s claim administration function to ensure compliance with the terms of the Claim Administration Agreement and to ensure that all claim payments are properly documented and the reinsured portion of the claims are properly billed to the reinsurer and collected.

It should be noted that all information regarding the run-off portion of the Company’s operations maintained by Chilton International pursuant to the terms of its service agreement with the Company was readily available and provided in a timely manner.

3. FINANCIAL STATEMENTS

A. Balance Sheet

The following shows the assets, liabilities and surplus as regards policyholders as of December 31, 2009 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	\$ 7,325,414	\$ 0	\$ 7,325,414
Cash and short-term investments	1,273,050		1,273,050
Investment income due and accrued	13,661		13,661
Uncollected premiums and agents' balances in the course of collection	4,692,388	74,544	4,617,844
Amounts recoverable from reinsurers	207,972	0	207,972
Funds held by or deposited with reinsured companies	366,168	170,236	195,932
Deposit	13,663	13,663	0
Retroactive Reinsurance Recoverable	<u>226,603</u>	<u>0</u>	<u>226,603</u>
Total assets	<u>\$14,118,919</u>	<u>\$258,443</u>	<u>\$13,860,476</u>
<u>Liabilities, Surplus and Other Funds</u>	<u>Examination</u>	<u>Company</u>	<u>Surplus Increase (Decrease)</u>
<u>Liabilities</u>			
Losses and loss adjustment expenses	\$14,555,992	\$11,284,992	\$(3,271,000)
Reinsurance payable on paid losses and loss adjustment expenses	2,407,172	2,407,172	
Commissions payable, contingent commissions and other similar charges	59,470	59,470	
Other expenses (excluding taxes, licenses and fees)	291,043	291,043	
Taxes, licenses and fees (excluding federal and foreign income taxes)	43,944	43,944	
Unearned premiums	2,046,486	2,046,486	
Ceded reinsurance premiums payable (net of ceding commissions)	277,600	277,600	
Funds held by company under reinsurance treaties	143,418	143,418	
Provision for reinsurance	269,852	269,852	
Miscellaneous liability	14,327	14,327	
Retroactive Reinsurance Ceded	<u>(8,637,659)</u>	<u>(8,008,972)</u>	<u>628,687</u>
Total liabilities	<u>\$11,471,645</u>	<u>\$ 8,829,331</u>	<u>\$(2,642,313)</u>
<u>Surplus and Other Funds</u>			
Segregated Surplus – Retroactive Reinsurance	\$4,712,312	\$4,712,312	
Common capital stock	5,000,000	5,000,000	
Gross paid in and contributed surplus	5,592,077	5,592,077	
Unassigned funds (surplus)	<u>(12,915,558)</u>	<u>(10,273,244)</u>	<u>(2,642,314)</u>
Surplus as regards policyholders	<u>2,388,831</u>	<u>5,031,145</u>	<u>(2,642,314)</u>
Total liabilities, surplus and other funds	<u>\$13,860,476</u>	<u>\$13,860,476</u>	

NOTES:

1. The Internal Revenue Service has not audited the Company's Federal Income Tax returns through tax year 2009. The examiner is unaware of any potential exposure of the Company to any tax assessment and no liability has been established herein relative to such contingency.
2. This examination has determined that as of December 31, 2009, the Company's capital of \$5,000,000 was impaired in the amount of \$2,611,169. Subsequently, on February 6, 2012, the Company amended its charter to reduce its outstanding capital stock from \$5,000,000 to \$2,000,000. If the charter amendment had been in effect as of the examination date, the Company's capital would not have been impaired.
3. It is noted that the examination reserves for losses and loss adjustment expenses includes approximately \$271,000 for runoff business assumed from Pine Top Insurance Company ("Pine Top"), an Illinois insurer that is currently in receivership in the state of Illinois. The examination reserve for the Pine Top claims is the same as the amount reported by the Company as of the examination date. However, it is noted that the Receiver has claimed an additional receivable in the amount of \$909,000, for which the Company is disputing its liability on the basis that claim information was not provided to them in a timely manner. Effective December 3, 2010, the Receiver assigned to a third party (the "Assignee") all of its rights, title, benefit and interest in monies due from the Company relative to the Pine Top claims. As of the date of this report, there has been no resolution on this matter.

B. Statement of Income

Surplus as regards policyholders decreased \$7,833,902 during the three-year examination period January 1, 2007 through December 31, 2009, detailed as follows:

Underwriting Income

Premiums earned		\$19,402,038
Deductions:		
Losses and loss adjustment expenses incurred	\$22,972,806	
Other underwriting expenses incurred	<u>9,214,564</u>	
Total underwriting deductions		<u>32,187,370</u>
Net underwriting gain or (loss)		\$(12,785,332)

Investment Income

Net investment income earned	\$ 880,220	
Net realized capital gain	<u>(96,364)</u>	
Net investment gain or (loss)		783,856

Other Income

Net gain or (loss) from agents' or premium balances charged off	\$ (689,645)	
Finance and service charges not included in premiums	2,191,207	
Miscellaneous expense	<u>(2,000)</u>	
Ceded to retroactive reinsurance	<u>4,313,543</u>	
Total other income		<u>5,813,105</u>
Net income after dividends to policyholders but before federal and foreign income taxes		\$(6,188,371)
Federal and foreign income taxes incurred		<u>0</u>
Net income (loss)		<u>\$(6,188,371)</u>

Surplus as regards policyholders per report on examination as of December 31, 2006			\$ 8,493,733
	<u>Gains in Surplus</u>	<u>Losses in Surplus</u>	
Net loss		\$6,188,371	
Change in non-admitted assets	\$131,673		
Change in provision for reinsurance	_____	<u>48,204</u>	
Total gains and losses	<u>\$131,673</u>	<u>\$6,236,575</u>	
Net increase (decrease) in surplus			<u>(6,104,902)</u>
Surplus as regards policyholders per report on examination as of December 31, 2009			<u>\$2,388,831</u>

4. LOSSES AND LOSS ADJUSTMENT EXPENSES

The examination liability for the captioned items of \$14,555,992 is \$3,271,000 more than the \$11,284,992 reported by the Company as of December 31, 2009. 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.

A review of the Company's loss and defense and cost containment ("DCC") expenses for its runoff business indicated that since 2007, the Company has reduced its outstanding reserves by the amount paid for each accident year, resulting in incurred loss and DCC expenses of \$0. Therefore, it appears that the Company has not updated its reserve review for the runoff business for several years. We also note that the Company booked its appointed actuary's selected asbestos and environmental ("A&E") reserve, but in order to maintain the \$0 incurred, it allocated only \$388,000 for Breast Implant and Non-Mass Tort liability. The Company reported known case loss and DCC reserves on these liabilities in the amount of \$1.970 million at December 31, 2009, which implies an unrealistic negative IBNR reserve in the amount of \$1.582 million. It is recommended that the Company regularly update its loss and DCC reserve review for its runoff business segment and establish adequate loss and DCC reserves.

Since 2002, the Company has consistently reported reserves for adjusting and other ("A&O") expenses in an amount of approximately \$1.9 million. Historically, the Company has reported A&O

payments in excess of \$500,000 per year. Based on the long-tailed nature of the exposures underlying the runoff business, the Department has determined that the A&O reserves established by the Company are significantly deficient. It is recommended that the Company perform ongoing loss and loss adjustment expense reserve reviews and establish sufficient A&O reserves for its runoff business.

It is noted that the examination reserves for losses and loss adjustment expenses includes approximately \$271,000 for runoff business assumed from Pine Top Insurance Company (“Pine Top”), an Illinois insurer that is currently in receivership in the state of Illinois. The examination reserve for the Pine Top claims is the same as the amount reported by the Company as of the examination date. However, it is noted that the Illinois Receiver of Pine Top had claimed an additional receivable in the amount of \$909,000, and the Company is still disputing this liability on the basis that claim information was not provided to it in a timely manner. It is noted that effective December 3, 2010, the Illinois Receiver assigned all of its rights, title, benefit and interest in monies due from the Company relative to the Pine Top claims to a third party. As of the date of this report, there has been no resolution on this matter.

5. RETROACTIVE REINSURANCE CEDED

The examination contra-liability for the captioned item of \$(8,637,659) is \$628,687 more than the \$(8,008,972) reported by the Company as of December 31, 2009. The increase in the contra-liability results from the examination increase in the liability for Losses and loss adjustment expenses and represents the full amount of coverage remaining on the loss portfolio transfer agreement, which is more fully described in item 2C of this report.

6. CONCLUSION

This examination has determined that as of December 31, 2009, the Company’s capital of \$5,000,000 was impaired in the amount of \$2,611,169. Subsequently, on February 6, 2012, the Company amended its charter to reduce its outstanding capital stock from \$5,000,000 to \$2,000,000. If the charter amendment had been in effect as of the examination date, the Company’s capital would not have been impaired.

7. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

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

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Accounts and Records</u>	
i. <u>Annual Statement Reporting – Schedule Y</u>	
It is recommended that the Company exercise care in the preparation of its filed annual statement and correctly report information concerning parent, subsidiaries, and affiliates in Schedule Y - Part I.	8
The Company has complied with this recommendation.	
ii. <u>Custodial Agreements</u>	
It is recommended that the Company enter into updated custodial agreements that comply with Part 1 Section IV(J) of the NAIC’s Financial Condition Examiner’s Handbook by revising its custodial agreements to include all of the requisite safeguards and controls.	9
The Company has not complied with this recommendation and a similar comment is included in this report.	
iii. <u>CPA Engagement Letter</u>	
It is recommended that the Company amend its contract with its CPA to include the terms and provisions required by Department Regulation 118.	10
The Company has complied with this recommendation.	
iv. <u>Annual Statement Reporting - Cash</u>	
It is recommended that the Company comply with the NAIC Annual Statement Instructions and properly report its investment in “Tri Party Repo Gov Agency 6018” in Schedule E – Pat 3 Columns 5 and 6 under the caption “All Other Special Deposits” as “Deposits to secure reinsurance obligations” per the Annual Statement Instructions on future filed financial statements.	
The Company has complied with this recommendation.	

8. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Surplus Impairment</u>	
This examination has determined that as of December 31, 2009, the Company's capital of \$5,000,000 was impaired in the amount of \$2,611,169. Subsequently, on February 6, 2012, the Company amended its charter to reduce its outstanding capital stock from \$5,000,000 to \$2,000,000. If the charter amendment had been in effect as of the examination date, the Company's capital would not have been impaired.	1, 15, 18
B. <u>Management</u>	
It is recommended that board members who are unable or unwilling to attend meetings consistently should resign or be replaced.	5
C. <u>Conflict of Interest Policy and Statements</u>	
i. It is recommended that the Company establish a conflict of interest policy and submit such policy to its board of directors for approval.	5
ii. It is recommended that the Company require its officers, directors and key employees to complete and sign on an annual basis a conflict of interest statement, wherein the signer would disclose any potential conflicts of interest, and retain the statements in its files.	5
iii. It is further recommended that the completed and signed conflict of interest statements be provided to the Company's board of directors annually and that the minutes of the board of directors' meetings acknowledge their review.	5
D. <u>Reinsurance</u>	
i. It is recommended that the Company account for the assumed reinsurance contract entered into effective January 1, 2009 as retroactive reinsurance pursuant to the provisions of Paragraph 24 of SSAP No. 62R.	7
ii. It is recommended that the Company take proper care in completing Schedule F-Part 3 and properly report unauthorized reinsurers.	8
iii. It is recommended that the Company take proper care in completing its annual statement to ensure that the reinsurance recoverable amount reported on the balance sheet agrees with the amount reported on Schedule F-Part 3.	8
E. <u>Risk Management and Internal Controls</u>	

<u>ITEM</u>	<u>PAGE NO.</u>	
i.	It is recommended that the Company exercise proper oversight of the Administrator by performing periodic audits of the Lindsay’s policy administration function to ensure compliance with the terms of the Policy Administration Agreement.	12
ii.	It is recommended that the Company exercise proper oversight of the Administrator by performing periodic audits of the Lindsay’s claim administration function to ensure compliance with the terms of the Claim Administration Agreement and to ensure that all claim payments are properly documented and the reinsured portion of the claims are properly billed to the reinsurer and collected.	13
F.	<u>Losses and Loss Adjustment Expenses</u>	
i.	It is recommended that the Company regularly update its loss and DCC reserve review for its runoff business segment and establish adequate loss and DCC reserves.	17
ii.	It is recommended that the Company perform ongoing loss and loss adjustment expense reserve reviews and establish sufficient A&O reserves for its runoff business.	18
iii.	It is noted that the examination reserves for losses and loss adjustment expenses includes approximately \$271,000 for runoff business assumed from Pine Top Insurance Company (“Pine Top”), an Illinois insurer that is currently in receivership in the state of Illinois. The examination reserve for the Pine Top claims is the same as the amount reported by the Company as of the examination date. However, it is noted that the Illinois Receiver of Pine Top had claimed an additional receivable in the amount of \$909,000 and the Company is still disputing this liability on the basis that claim information was not provided to it in a timely manner. It is noted that effective December 3, 2010, the Receiver assigned all of its rights, title, benefit and interest in monies due from the Company relative to the Pine Top claims to a third party. As of the date of this report, there has been no resolution on this matter.	18

Respectfully submitted,

_____/s/_____
Joseph Revers, CFE
Senior Insurance Examiner

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

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

_____/s/_____
Joseph Revers

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

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:

Joseph Revers

as proper person to examine into the affairs of the

ICM INSURANCE COMPANY

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

Company

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 22nd day of May, 2010



James J. Wrynn

JAMES J. WRYNN
Superintendent of Insurance