

REPORT ON EXAMINATION

OF THE

ACADEMIC HEALTH PROFESSIONALS INSURANCE ASSOCIATION – A RECIPROCAL  
INSURER

AS OF

DECEMBER 31, 2006

DATE OF REPORT

JUNE 10, 2009

EXAMINER

BERNARD LOTT

## TABLE OF CONTENTS

<u>ITEM NO.</u>		<u>PAGE NO.</u>
1	Scope of examination	3
2.	Description of Reciprocal	4
	A. Management	4
	B. Territory and plan of operation	6
	C. Reinsurance	7
	D. Significant operating ratios	9
	E. Accounts and records	10
3.	Financial statements	12
	A. Balance sheet	12
4.	Reinsurance recoverable on paid losses	14
5.	Losses and loss adjustment expenses	14
6.	Ceded reinsurance premiums payable	15
7.	Conclusion	16
8.	Summary of comments and recommendations	17



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

June 10, 2009

Mr. Eric R. Dinallo  
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 22626 dated March 20, 2007 attached hereto, I have made an examination into the condition and affairs of Academic Health Professionals Insurance Association – A Reciprocal Insurer as of December 31, 2006, and submit the following report thereon.

Wherever the designation “Reciprocal” appears herein without qualification, it should be understood to indicate Academic Health Professionals Insurance Association – A Reciprocal Insurer. Where the designation “Solutions” appears herein without qualification, it should be understood to refer to AHPIA Solutions Inc., attorney-in-fact for Academic Health Professionals Insurance Association – A Reciprocal Insurer.

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 Reciprocal’s statutory home office located at 1250 Broadway, New York, New York 10001.

The examination has determined that the Reciprocal was insolvent at December 31, 2006, in the amount of \$27,735,081, and its minimum required surplus to be maintained of \$700,000 was impaired in the amount of \$28,435,081 on a discounted basis. The examination has determined that the Reciprocal was insolvent in the amount of \$43,206,063, and its minimum surplus to be

maintained of \$700,000 was impaired in the amount of \$43,906,083 on a full value (undiscounted) basis.

Notwithstanding the insolvency of the Reciprocal, it is noted that the Superintendent is prohibited from applying for an order of rehabilitation or liquidation of the Reciprocal pursuant to the provisions of Section 7402 of the New York Insurance Law based on the provisions of Section 2343(c) of the New York Insurance Law, which states:

Notwithstanding any other provision of this chapter, no application for an order of rehabilitation or liquidation of a domestic insurer whose primary liability arises from the business of medical malpractice insurance, as that term is defined in subsection (b) of section five thousand five hundred one of this chapter, shall be made on the grounds specified in subsection (a) or (c) of section seven thousand four hundred two of this chapter at any time prior to June thirtieth, two thousand eleven.

Further, Section 1104(c) of the New York Insurance Law, which gives the Superintendent the authority to suspend the license, restrict the license authority, or limit the amount of premiums written by an insurer in this state, excludes "...those insurers subject to the provisions of subsection (c) of section two thousand three hundred forty-three of this chapter . . ."

## 1. SCOPE OF EXAMINATION

The Department has performed an examination of the Reciprocal as of December 31, 2006. Transactions occurring subsequent to this date were reviewed where deemed appropriate by the examiner.

The examination comprised a verification of assets and liabilities as of December 31, 2006. The examination 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 Reciprocal's independent certified public accountants ("CPA"). A review or audit was also made of the following items as called for in the Examiners Handbook of the National Association of Insurance Commissioners ("NAIC"):

- History of Reciprocal
- Management and control
- Corporate records
- Fidelity bond and other insurance
- Territory and plan of operation
- Growth of Reciprocal
- Business in force by states
- Loss experience
- Reinsurance
- Accounts and records
- Financial statements

This report on examination is confined to financial statements and comments on those matters, which involve departures from laws, regulations or rules, or which are deemed to require explanation or description.

## 2. DESCRIPTION OF RECIPROCAL

The Reciprocal was incorporated on November 27, 1990 as the Academic Health Professionals Insurance Association, pursuant to the provisions of Section 6102(b) of the New York Insurance Law as a reciprocal insurer, as defined in Section 107(a)(37) of the New York Insurance Law. The declaration creating the Reciprocal was approved by the Superintendent prior to its licensing. It commenced business on January 1, 1991. In September 2000 the Reciprocal changed its name to Academic Health Professionals Insurance Association – A Reciprocal Insurer.

The business and affairs of the Reciprocal are managed by its attorney-in-fact, Solutions, pursuant to a management agreement dated April 17, 2002. Prior to that date, the Reciprocal's attorney-in-fact was M.Q. of New York, Inc. ("MQ").

### A. Management

#### Board of Governors

Pursuant to its articles of association, management of the Reciprocal is vested in an advisory committee, referred to as the board of governors, consisting of not less than nine members. The articles of association provide that the board of governors shall have the ultimate power and responsibility for the management and control of the affairs of the Reciprocal. The day-to-day operations of the Reciprocal are administered by Solutions, its attorney-in-fact.

As of December 31, 2006, the Reciprocal's board of governors consisted of the following twelve members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
James E. Cottrell, MD New York, New York	Chairman - Department of Anesthesiology, Downstate Medical Center, Brooklyn
William P. Dillon, MD East Aurora, New York	Associate Professor, Gynecology and Obstetrics, Children's Hospital of Buffalo
Mary E. Gordinier, MD Louisville, Kentucky	Assistant Professor - Gynecologic Oncology, University of Louisville School of Medicine
Donald P. Harrington, MD Setauket, New York	Chairman - Department of Radiology, Stony Brook University Medical Center

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
James M. Hassett, Jr., MD East Amherst, New York	Professor – Surgery, Millard Fillmore Hospital, Buffalo
Peter Bayard Kane, MD Cazenovia, New York	Professor – Anesthesiology, Upstate Medical University, Syracuse
John B. McCabe, MD Manlius, New York	Chairman - Department of Emergency Medicine, Upstate Medical University, Syracuse
Colleen E. O’Leary, MD Manlius, New York	Associate Professor – Anesthesiology, Upstate Medical Center, Syracuse
J. Gerald Quirk, MD Nissequoque, New York	Chairman - Department of Obstetrics and Gynecology, Stony Brook University Medical Center
Mark Swerdloff, DDS Stony Brook, New York	Associate Professor - Oral Maxillofacial Surgery, Stony Brook School of Dental Medicine
Roy A. Wilko, DDS East Amherst, New York	Professor Emeritus, Buffalo School of Dental Medicine
Michael Zenilman, MD Lawrence, New York	Chairman - Department of Surgery, Downstate Medical Center, Brooklyn

A review of the minutes of the board of governors meetings noted that the board met twenty-two times during the examination period. The meetings were generally well attended and each board member had an acceptable attendance record.

As of December 31, 2006, the principal officers of the Reciprocal were as follows:

<u>Name</u>	<u>Title</u>
James E. Cottrell, MD	Chairman
Peter B. Kane, MD	Treasurer
Roy A. Wilko	Secretary

#### Attorney-in-Fact

From July 1, 1989 through March 5, 2002, M.Q. served as AHIPA’s attorney-in-fact, at which time M.Q. was terminated by a vote of the Reciprocal’s subscribers. On April 17, 2002 the Department approved the appointment of Solutions as the Reciprocal’s new attorney-in-fact, pursuant

to Section 6107(b) of the New York Insurance Law. The Reciprocal owns 100% of the outstanding shares of Solutions.

Pursuant to a management agreement, retroactively effective as of December 18, 2001, Solutions has the responsibility for providing the Reciprocal with underwriting, administrative and other general management and operational services for a fee. The directors and officers of Solutions as of December 31, 2006 were as follows:

<u>Name</u>	<u>Title</u>
William P. Dillion, MD	Chairman
Peter B. Kane, MD	Treasurer
Roy A. Wilko, D.D.S.	Secretary

B. Territory and Plan of Operation

As of December 31, 2006, the Reciprocal was licensed to transact business in New York, Texas, and Kentucky. As of the examination date, the Reciprocal limited its premium writings to New York and Kentucky. The following schedule shows the direct premiums written by the Reciprocal during the past five years:

<u>Calendar Year</u>	<u>New York State</u>	<u>Total United States</u>	<u>Premiums Written in New York State as a percentage of United States Premium</u>
2002	\$16,483,746	\$16,483,746	100.00%
2003	\$18,186,261	\$20,628,595	88.16%
2004	\$17,803,077	\$18,721,120	95.10%
2005	\$22,599,699	\$23,570,557	95.88%
2006	\$27,619,722	\$28,516,104	96.86%

The Reciprocal is licensed to transact the kinds of insurance as set forth in the following numbered paragraphs of Section 1113(a) of the New York Insurance Law.

<u>Paragraph</u>	<u>Line of Business</u>
13	Personal injury liability
14	Property damage liability
29	Legal services



The Articles of Association, as amended, provide that subscribers to the Reciprocal shall be individual physicians, dentists, residents, nurses, midwives, nurse practitioners, certified registered nurse anesthetists and other health-related professionals affiliated with the State University of New York (“SUNY”). The above mentioned subscribers are required to practice in the geographic areas of Buffalo, Syracuse, Stony Brook and Brooklyn, inclusive of those subscribers who are faculty members of SUNY and members of medical or dental clinical practice plans. In addition, subscribers can also hold academic faculty appointments at accredited non-SUNY university medical schools, centers, or institutions located in or outside of New York State.

As a reciprocal insurer, the Reciprocal’s policyholders engage in the business of inter-insurance on the reciprocal plan, through an attorney-in-fact. Each policyholder is a subscriber and only policyholders may be subscribers. To accumulate surplus, the Reciprocal, through article 7 of its Articles of Association, requires each subscriber, as a prerequisite to the initial purchase of an insurance policy, to contribute to the surplus of the Reciprocal in the form of a Section 1307 loan, an amount equal to forty nine and a half percent (49.5%) of the first year base premium.

### C. Reinsurance

#### Assumed

The Reciprocal’s assumed reinsurance activity is limited to its mandatory participation in the New York Medical Malpractice Insurance Pool (“the pool”), which began in July 2000. The pool is a joint underwriting mechanism through which member insurers provide a medical malpractice insurance market for providers who are unable to obtain insurance in the voluntary market. Each member of the pool is assigned a participation percentage, which is determined by dividing its direct medical malpractice premiums written in New York by the aggregate direct medical malpractice premiums written in New York by all members. As of December 31, 2006, the Reciprocal’s percentage participation in the pool was 2.09%.

Assumed reinsurance accounted for approximately 6.3% of the Reciprocal’s gross premium written at December 31, 2006.

Ceded

The Reciprocal has structured its ceded reinsurance program to limit its maximum exposure to any one risk to \$500,000 for policies classified by the Reciprocal as medical professional liability insurance.

The Reciprocal maintains First and Second Layer Excess of Loss Reinsurance Agreements. These contracts terminate at the end of each calendar year. The first layer provides coverage up to \$1,300,000 in excess of the Reciprocal's retention of \$500,000. The second layer provides coverage of \$1,000,000 in excess of the first layer. AHIPA cedes only to authorized reinsurers.

All ceded reinsurance agreements in effect as of the examination date were reviewed and found to contain the required clauses, including an insolvency clause meeting the requirements of Section 1308 of the New York Insurance Law.

The examination's review of the Schedule F data reported in the Reciprocal's filed annual statements was not found to accurately reflect its reinsurance activities, pursuant to the terms of its reinsurance contracts, for each year covered by this examination. The Reciprocal's reinsurance contracts do not provide coverage for pure IBNR on occurrence policies. The review of Schedule F – Part 3, however, found that credit had been taken for IBNR due on ceded occurrence policies for the years 2002 and 2003. It is recommended that the Reciprocal report its Schedule F activity in accordance with the terms of its reinsurance agreements.

Management has represented that all material ceded reinsurance agreements transfer both underwriting and timing risk as set forth in SSAP No. 62. Representations were supported by an attestation from the Reciprocal's Chief Executive Officer pursuant to the NAIC annual statement instructions.

D. Significant Operating Ratios

The following ratios have been computed as of December 31, 2006, based upon the results of this examination:

Net premiums written during 2006 to surplus as regards policyholders	N/A
Liabilities to liquid assets	156.85%
Premiums in course of collection to surplus as regards policyholders	N/A

The examination has determined that the Reciprocal's surplus as regards policyholders is \$(27,735,081); therefore, the ratios for "Net premiums written during 2006 to surplus as regards policyholders" and "Premiums in course of collection to surplus as regards policyholders" were not applicable.

The liabilities to liquid assets ratio of 156.85% exceeds the benchmark range set forth in the Insurance Regulatory Information System of the National Association of Insurance Commissioners. This was due primarily to the examination liability for "Losses and loss adjustment expenses", which represented approximately 78.8% of the Reciprocal's total liabilities.

E. Accounts and Records

Custodian Agreements

As of December 31, 2006, the Reciprocal answered affirmatively to the following General Interrogatory in its Annual Statement:

“Excluding items in Schedule E, real estate, mortgage loans and investments held physically in the reporting entity's offices, vaults or safety deposit boxes, were all stocks, bonds and other securities, owned throughout the current year held pursuant to custodial agreement with a qualified bank or trust company in accordance with Part 1 - General, Section IV.J - Custodial or Safekeeping Agreements of the NAIC Financial Condition Examiners Handbook?”

A review of the custodian agreement, however, found it to be lacking four of the protective covenants set forth in the guidelines from the NAIC Financial Condition Examiners Handbook. It is recommended that the Reciprocal amend its custodial agreements to include all of the missing safeguards set forth in the NAIC Financial Condition Examiners Handbook.

Investment authorization

The Reciprocal answered affirmatively to the following General Interrogatory in its Annual Statement:

“Is the purchase or sale of all investments of the reporting entity passed upon either by the board of directors or a subordinate committee thereof?”

A review of the board of directors' minutes for the period covered by this examination found that not all investment transactions were approved pursuant to Section 1411(a) of the New York Insurance Law. It is recommended that the Reciprocal's board of directors approve all investment transactions pursuant to Section 1411(a) of the New York Insurance Law. It is also recommended that Reciprocal take due care to correctly complete the General Interrogatories in its filed annual statement.

Check authorization

The Reciprocal's check authorization policy summarizes the levels of authorization needed to issue checks at varying dollar amounts. A review of the policy's implementation found a number of

checks issued, above the highest authorization level, which did not receive the proper authorization. It is recommended that the Reciprocal comply with its own check authorization policy and obtain the proper authorization before issuing checks.

Deferred Premiums, Agents' Balances and Installments Booked But Deferred and Not Yet Due

The amount reported by the Reciprocal for this asset was not found to be materially different than the examination's recalculated amount; therefore, no examination change will be made, however, the following errors, if not addressed, could lead to material discrepancies in this asset:

- The Reciprocal's system failed to capture all receivables that were over ninety days past due while simultaneously including some receivables that were not over ninety days past due at the examination date.
- Included in the calculation of the nonadmitted portion of the asset were a number of negative premium amounts from prior years which should have been written-off.

Section 1302(b) of the New York Insurance Law states in part that:

“All non-admitted assets of doubtful value or character included as ledger or non-ledger assets in any statement by an insurer to the superintendent...shall also be reported to the extent of the value disallowed, as deductions from the gross assets such insurer.”

It is recommended that the Reciprocal not admit deferred premiums, agents' balances and installments booked but deferred and not yet due that are of doubtful value pursuant to Section 1302(b) of the New York Insurance Law.

Additionally, the NAIC's Statement of Statutory Accounting Principles (“SSAP”) No. 6 states in part that “[u]ncollected premium – To the extent that there is no related unearned premium, any uncollected premium balances which are over ninety days due shall be non-admitted. If an installment premium is over ninety days due, the amount over ninety days due plus all future installments that have been recorded on that policy shall be non-admitted.”

It is recommended that the Reciprocal comply with SSAP No. 6 and take the appropriate steps correct its accounting system to insure that the correct amount of uncollected premiums is non-admitted.

### 3. FINANCIAL STATEMENTS

#### A. Balance Sheet

The following shows the assets, liabilities and surplus as regards policyholders as of December 31, 2006 as determined by this examination and as reported by the Reciprocal:

Assets	<u>Examination</u>		<u>Reciprocal</u>	Surplus Increase (Decrease)	
	<u>Assets</u>	Assets Not <u>Admitted</u>	Net Admitted <u>Assets</u>		Net Admitted <u>Assets</u>
Bonds	\$58,116,910	\$ 0	\$58,116,910	\$58,116,910	\$ 0
Cash, cash equivalents and short-term investments	7,142,611		7,142,611	7,142,611	
Investment income due and accrued	623,315		623,315	623,315	
Deferred premiums, agents' balances and installments booked but deferred and not yet due	11,880,468	86,428	11,794,040	11,794,040	
Amounts recoverable from reinsurers	2,331,528		2,331,528	2,331,528	
Current federal and foreign income tax recoverable and interest thereon	487,672		487,672	487,672	
Net deferred tax asset	2,618,391	1,594,835	1,023,556	1,023,556	
Aggregate write-ins for other than invested assets	<u>6,164,248</u>	<u>286,059</u>	<u>5,878,189</u>	<u>5,878,189</u>	<u>0</u>
Total assets	<u>\$89,365,143</u>	<u>\$2,501,303</u>	<u>\$86,863,840</u>	<u>\$87,397,821</u>	<u>\$ 0</u>

<u>Liabilities, Surplus and Other Funds</u>			Surplus Increase
<u>Liabilities</u>	<u>Examination</u>	<u>Reciprocal</u>	<u>(Decrease)</u>
Losses and loss adjustment expenses	\$90,724,018	\$59,362,506	\$(31,361,512)
Other expenses (excluding taxes, licenses and fees)	144,593	144,593	
Unearned premiums	12,528,389	12,528,389	
Advance premium	68,265	68,265	
Ceded reinsurance premiums payable (net of ceding commissions)	10,719,599	2,337,697	(8,381,902)
Aggregate write-ins for liabilities	<u>948,038</u>	<u>948,038</u>	<u>0</u>
Total liabilities	<u>\$115,132,902</u>	<u>\$75,389,488</u>	<u>\$(39,743,414)</u>
 <u>Surplus and Other Funds</u>			
Surplus notes	\$11,008,709	\$11,008,709	
Gross paid in and contributed surplus	728,087	728,087	
Unassigned funds (surplus)	<u>(39,471,877)</u>	<u>271,537</u>	<u>\$(39,743,414)</u>
Surplus as regards policyholders	<u>\$(27,735,081)</u>	<u>\$12,008,333</u>	<u>\$(39,743,414)</u>
Totals liabilities, surplus and other funds	<u>\$87,397,821</u>	<u>\$87,397,821</u>	

NOTES:

1. The Internal Revenue Service has completed its audits of the Reciprocal's Federal Income Tax returns through tax year 2006. All material adjustments, if any, made subsequent to the date of examination and arising from said audits, are not reflected in the financial statements included in this report. Additionally, no provision has been made for any additional tax liability or refund due to changes made in this report on examination.
2. The examination has determined that the Reciprocal was insolvent at December 31, 2006, in the amount of \$27,735,081, and its minimum required surplus to be maintained of \$700,000 was impaired in the amount of \$28,435,081, on a discounted basis. The Reciprocal was insolvent in the amount of \$43,206,063, and its minimum surplus to be maintained of \$700,000 was impaired in the amount of \$43,906,083 on a full value (undiscounted) basis.
3. Notwithstanding the insolvency of the Reciprocal, it is noted that the Superintendent is prohibited from applying for an order of rehabilitation or liquidation of the Reciprocal pursuant to the provisions of Section 7402 of the New York Insurance Law based on the provisions of Section 2343(c) of the New York Insurance Law, which states:

“Notwithstanding any other provision of this chapter, no application for an order of rehabilitation or liquidation of a domestic insurer whose primary liability arises from the business of medical malpractice insurance, as that term is defined in subsection (b) of section five thousand five hundred one of this chapter, shall be made on the grounds specified in subsection (a) or (c) of section seven thousand four hundred two of this chapter at any time prior to June thirtieth, two thousand eleven.”

Further, Section 1104(c) of the New York Insurance Law, which gives the Superintendent the authority to suspend the license, restrict the license authority, or limit the amount of premiums written by an insurer in this state, excludes “...those insurers subject to the provisions of subsection (c) of section two thousand three hundred forty-three of this chapter...”

#### **4. REINSURANCE RECOVERABLE ON PAID LOSSES**

A review found that the Reciprocal consistently overstated its asset for reinsurance recoverable on paid losses for the first 3 quarters of 2006 and at year-end. The overstatements were due principally to the Reciprocal classifying amounts as recoverable prior to the actual payment of the loss. Statement of Statutory Accounting Principles (“SSAP”) No. 4 of the NAIC Accounting Practices and Procedures Manual states that one of the essential characteristics of an asset is that “...the transaction or other event giving rise to the entity’s right to or control of the benefit has already occurred.” The Reciprocal classified portions of its reinsurance recoverable as an asset prior to the event (paying the claim) taking place.

It is recommended that the Reciprocal report reinsurance recoverable on paid losses as an admitted asset only after it has paid the claim pursuant to the provisions of SSAP No. 4 of the NAIC’s Accounting Practices and Procedures Manual. It is also recommended that the Reciprocal take due care to complete its annual and quarterly statements as accurately as possible.

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

The examination liability for loss and loss adjustment expenses of \$90,724,018 on a discounted basis is \$31,361,512 more than the \$59,362,506 reported by the Reciprocal in its December 31, 2006, filed annual statement. The examination liability for loss and loss adjustment expenses of \$106,195,000 is \$46,832,494 more than the \$59,362,506 reported by the Reciprocal in its December 31, 2006, filed annual statement on a full value (undiscounted) basis.

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 Reciprocal’s internal records and in its filed annual statements.

It is noted that the Reciprocal’s reported ratios for One Year Reserve Development to Surplus, Two Year Reserved Development to Surplus, and Estimated Current Reserve Deficiency to Surplus have exceeded the benchmark ranges set forth in the Insurance Regulatory Information System of the National Association of Insurance Commissioners in each of the years from 2004 through 2006. Additionally, the 36-month run-off as of December 31, 2009, including Adjusting and Other expenses, for accident years 2006 and prior indicates that the Reciprocal has recognized a deficiency



of approximately \$39 million. Further, an historical comparison of the Reciprocal's ultimate incurred losses and loss adjustment expenses at successive valuation dates demonstrates, with the benefit of hindsight, that it has significantly underestimated its unpaid claim liabilities.

Section 1303 of the New York Insurance Law states in pertinent part the following:

Every insurer shall...maintain reserves in an amount estimated in the aggregate to provide for the payment of all losses and claims incurred on or prior to the date of statement, whether reported or unreported, which are unpaid as of such date and for which insurer may be liable, and also reserves in an amount estimated to provide for the expenses of adjustment or settlement of such losses or claims.

It is recommended that the Reciprocal establish adequate reserves for unpaid losses and loss adjustment expenses pursuant to the provisions of Section 1303 of the New York Insurance Law.

## **6. CEDED REINSURANCE PREMIUMS PAYABLE**

The examination liability of \$10,719,599 is \$8,381,902 more than the \$2,337,697 reported by the Reciprocal in its filed annual statement as of December 31, 2006.

The difference is due to adjustments to the Reciprocal's subject premiums and ultimate reinsurance rate. The examination adjusted the subject premiums for the years in which extended endorsement premiums reported to the reinsurer were understated pursuant to the terms of the first excess of loss reinsurance contract. The adjusted subject premiums were multiplied by the ultimate reinsurance rate determined by the examination. The ultimate rate was determined based on a projection of loss and loss adjustment expense reserves to the first excess of loss reinsurance contract. The application of the ultimate rate results in the need to establish a payable in the amount of \$9,778,120, for ceded reinsurance premiums in order to bring reinsurance premium expense, for the first excess of loss reinsurance contract, for treaty years 1992 (inception) through 2006 to ultimate. Both statutory and generally accepted accounting principles require an accrual for reinsurance premiums payable in keeping with the principal of matching income with their corresponding expenses.

In addition, the examination's re-calculated amount due for the second excess of loss reinsurance contract of \$92,639 was \$531,545 less than the \$624,184 reported in the Reciprocal's documentation. The difference was due to a miscalculation in the Reciprocal's work sheet.

Finally, the examination incorporated into its liability amount the \$848,840 listed as unpaid for treaty years 2001 through 2006 by the Reciprocal.

SSAP No. 62 states in part:

If the reinsurance agreement incorporates an obligation on the part of the ceding entity to pay additional premium to the assuming entity based upon loss experience under the agreement, a liability in the amount of such additional premium shall be recognized by the ceding entity during the accounting period in which the loss event(s) giving rise to the obligation to pay such additional premium occur(s)...

It is recommended that the Reciprocal comply with SSAP No. 62 and make the appropriate adjustments to ceded reinsurance premiums payable in order to bring reinsurance premium expense to ultimate.

## 7. CONCLUSION

The examination has determined that the Reciprocal was insolvent at December 31, 2006, in the amount of \$27,735,081, and its minimum required surplus to be maintained of \$700,000 was impaired in the amount of \$28,435,081 on a discounted basis. The Reciprocal was insolvent in the amount of \$43,206,063, and its minimum surplus to be maintained of \$700,000 was impaired in the amount of \$43,906,083 on a full value (undiscounted) basis.

Notwithstanding the insolvency of the Reciprocal, it is noted that the Superintendent is prohibited from applying for an order of rehabilitation or liquidation of the Reciprocal pursuant to the provisions of Section 7402 of the New York Insurance Law based on the provisions of Section 2343(c) of the New York Insurance Law, which states:

Notwithstanding any other provision of this chapter, no application for an order of rehabilitation or liquidation of a domestic insurer whose primary liability arises from the business of medical malpractice insurance, as that term is defined in subsection (b) of section five thousand five hundred one of this chapter, shall be made on the grounds specified in subsection (a) or (c) of section seven thousand four hundred two of this chapter at any time prior to June thirtieth, two thousand eleven.

Further, Section 1104(c) of the New York Insurance Law, which gives the Superintendent the authority to suspend the license, restrict the license authority, or limit the amount of premiums written by an insurer in this state, excludes "...those insurers subject to the provisions of subsection (c) of section two thousand three hundred forty-three of this chapter . . ."

8. **SUMMARY OF COMMENTS AND RECOMMENDATIONS**

<u>ITEM</u>	<u>PAGE NO.</u>
<p>A. The examination has determined that the Reciprocal was insolvent at December 31, 2006, in the amount of \$27,735,081, and its minimum required surplus to be maintained of \$700,000 was impaired in the amount of \$28,435,081 on a discounted basis. The examination has determined that the Reciprocal was insolvent in the amount of \$43,206,063, and its minimum surplus to be maintained of \$700,000 was impaired in the amount of \$43,906,083 on a full value (undiscounted) basis.</p> <p>Notwithstanding the insolvency of the Reciprocal, it is noted that the Superintendent is prohibited from applying for an order of rehabilitation or liquidation of the Reciprocal pursuant to the provisions of Section 7402 of the New York Insurance Law based on the provisions of Section 2343(c) of the New York Insurance Law, which states:</p> <p style="padding-left: 40px;">Notwithstanding any other provision of this chapter, no application for an order of rehabilitation or liquidation of a domestic insurer whose primary liability arises from the business of medical malpractice insurance, as that term is defined in subsection (b) of section five thousand five hundred one of this chapter, shall be made on the grounds specified in subsection (a) or (c) of section seven thousand four hundred two of this chapter at any time prior to June thirtieth, two thousand eleven.</p> <p>Further, Section 1104(c) of the New York Insurance Law, which gives the Superintendent the authority to suspend the license, restrict the license authority, or limit the amount of premiums written by an insurer in this state, excludes "...those insurers subject to the provisions of subsection (c) of section two thousand three hundred forty-three of this chapter..."</p>	<p>1, 13, 16</p>
<p>B. <u>Reinsurance</u></p> <p>It is recommended that the Reciprocal report its Schedule F activity in accordance with the terms of its reinsurance agreements.</p>	<p>8</p>
<p>C. <u>Accounts and Records</u></p> <p>i. It is recommended that the Reciprocal amend its custodial agreements to include all of the missing safeguards set-forth in the NAIC Financial Condition Examiners Handbook.</p> <p>ii. It is recommended that the Reciprocal's board of directors approve all investment transactions pursuant to Section 1411(a) of the New York Insurance Law.</p>	<p>10</p> <p>10</p>

ITEMPAGE NO.

- iii. It is also recommended that the Reciprocal take due care to correctly complete the General Interrogatories in its filed annual statement. 10
- iv. It is recommended that the Reciprocal comply with its own check authorization policy and obtain the proper authorization before issuing checks. 11
- v. It is recommended that the Reciprocal not admit deferred premiums, agents' balances and installments booked but deferred and not yet due that are of doubtful value pursuant to Section 1302(b) of the New York Insurance Law. 11
- vi. It is recommended that the Reciprocal comply with SSAP No. 6 and take the appropriate steps correct its accounting system to insure that the correct amount of uncollected premiums is non-admitted. 11

D. Reinsurance Recoverable on Paid Losses

- i. It is recommended that the Reciprocal report reinsurance recoverable on paid losses as an admitted asset only after it has paid the claim pursuant to the provisions of SSAP No. 4 of the NAIC's Accounting Practices and Procedures Manual. 14
- ii. It is also recommended that the Reciprocal take due care to complete its annual and quarterly statements as accurately as possible. 14

E. Losses and Loss Adjustment Expenses

It is recommended that the Reciprocal establish adequate reserves for unpaid losses and loss adjustment expenses pursuant to the provisions of Section 1303 of the New York Insurance Law. 15

F. Ceded Balances Payable

It is recommended that the Reciprocal comply with SSAP No. 62 and make the appropriate adjustments to ceded reinsurance premiums payable in order to bring reinsurance premium expense to ultimate. 16

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
Bernard Lott  
Senior Insurance Examiner

STATE OF NEW YORK     )  
                                  )SS:  
                                  )  
COUNTY OF NEW YORK   )

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

\_\_\_\_\_/s/\_\_\_\_\_  
Bernard Lott

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 200x.

Appointment No .22626

STATE OF NEW YORK  
INSURANCE DEPARTMENT

I, Eric R. Dinallo, Acting 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*

**ACADEMIC HEALTH PROFESSIONALS INSURANCE ASSOCIATION**

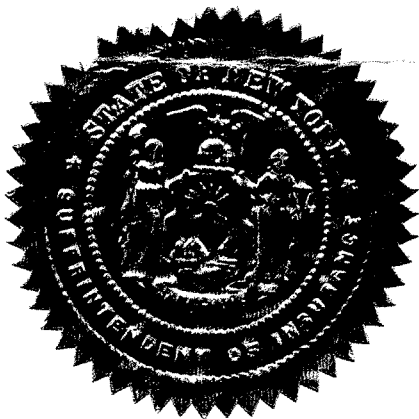
*and to make a report to me in writing of the condition of the said*

**Association**

*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 20th day of March, 2007*



A handwritten signature in cursive script, appearing to read "Eric R. Dinallo", written in black ink.

ERIC R. DINALLO  
Acting Superintendent of Insurance