

REPORT ON ORGANIZATION

OF THE

FIDUCIARY INSURANCE COMPANY OF AMERICA

AS OF

JANUARY 25, 2005

DATE OF REPORT

JANUARY 28, 2005

EXAMINER

ANNIE LAU

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

January 28, 2005

Honorable Howard Mills
Acting 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 22277 dated January 18, 2005 attached hereto, I have made an examination on organization of Fiduciary Insurance Company of America as of January 25, 2005, and submit the following report thereon.

The examination was conducted at the Company's branch office at 45-18 Court Square, Long Island City, NY 10019. The Company's main office is located at 23-08 Jackson Avenue, Long Island City, NY 11101.

Wherever the designations "the Company" or "FICA" appear herein without qualification, they should be understood to indicate Fiduciary Insurance Company of America.

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

1. SCOPE OF EXAMINATION

The examination comprised of a complete verification of the issuance of the Company's capital stock, the receipt of capital and surplus funds, and the determination of the Company's assets, liabilities, and surplus to policyholders. The corporate records examined were the declaration of intention and charter, the by-laws, the certificate of incorporation, the minutes of board of directors' and shareholders' meetings, the stock register, the custodial agreements, and reinsurance agreements entered into by the Company as of the examination date. In addition, an affidavit, appended hereto, was obtained from two officers of the Company indicating that the transactions noted in this report were lawful and bona fide.

2. INCORPORATION

Fiduciary Insurance Company of America was incorporated under the laws of the State of New York on October 24, 1977, as a stock accident and health company for the purpose of writing accident and health insurance and non-cancelable disability insurance. The Department approved the Company's declaration of intention and charter on the same date. FICA was licensed to transact insurance business in New York State on November 17, 1977. The Company's office was originally located in New York County, NY and was then moved to Rockland County, NY in 1999. The Department approved the amended charter reflecting the new Company location on January 12, 1999.

On September 24, 1999, Guardian Life Insurance Company of America ("Guardian Life") acquired FICA. On March 10, 2003, Transportation Risk Group, Inc. ("TRG") entered into a stock purchase agreement with Guardian Life to purchase FICA. The transaction was finalized on February 26, 2004. The Company again moved its location from Rockland County to Long Island City, New York in May 2004.

Ownership of FICA was transferred from TRG to the Kodogiannis Group on December 23, 2004. The Kodogiannis Group consists of four members of the Kodogiannis family each owning 25% of FICA. On December 23, 2004, Kodogiannis Group transferred all of FICA's common stock to Asphalia Holding Company USA, Inc. ("Asphalia") in exchange for all of the common stock of Asphalia. Asphalia is a holding company established by the Kodogiannis Group for the purpose of being the sole owner of FICA. Asphalia retired the outstanding shares of FICA common stock. FICA then issued 350 shares of Class A voting common stock and 650 shares of Class B non-voting common stock with par value of \$1,900 per share, receiving a consideration of \$4,350,994 from Asphalia.

On August 18, 2004, FICA submitted an application to the Department to amend its license to write the following additional lines of insurance as set forth in Section 1113(a) of the New York Insurance Law:

<u>Paragraph</u>	<u>Line of Business</u>
3	Accident & health
13	Personal injury liability
14	Property damage liability
15	Worker's compensation and employers' liability *
19	Motor vehicle and aircraft physical damage

*Subsequently withdrawn

In order to write these additional lines of business, FICA was required to convert from an accident and health company to a property and casualty company.

As of the examination date, the Company's board of directors was comprised of the following fifteen members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Charles Joseph Arcabasso Long Beach, NY	President, Bass Consulting Group
George Bilasz Middle Village, NY	Retired Retail Food Merchant

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Sevasti Toulia Frantzis-Lettas Nesconset, NY	Controller, Fiduciary Insurance Company of America
John J. Hession, Esq. Copiague Harbor, NY	Partner, Dougherty, Ryan, Giuffra, Zambito & Hession
Joseph Horodecki Hicksville, NY	Electrical Engineer, Kew Terrace, Inc.
Stella Horodecki Elmont, NY	Insurance Executive, Fiduciary Insurance Company of America
Barbara Kodogiannis Brooklyn, NY	Insurance Broker, Fiduciary Insurance Company of America
Gus Kodogiannis Douglaston, NY	Transportation Executive, Fiduciary Insurance Company of America
Hedy Kodogiannis Brooklyn, NY	Transportation Executive, Fiduciary Insurance Company of America
Maria Kodogiannis Brooklyn, NY	Insurance Broker, Fiduciary Insurance Company of America
Vincent Mistretta West Hempstead, NY	President, Fiduciary Insurance Company of America
Sebastian Olszewski Flushing, NY	Manager of Retail Petroleum Outlet, G&A Auto Center
Catherine Pullo-Bilasz Middle Village, NY	Accounts Payable Supervisor, Metro Fuel Oil, Inc.
Alan Renna Howard Beach, NY	Auto Appraiser, Auto Survey, Inc.
Serafein Peter Skenderis Bayside, NY	Chief Executive Officer, Fiduciary Insurance Company of America

As of January 25, 2005, the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
Vincent Mistretta	President
Serafein Peter Skenderis	Chief Executive Officer
Charles Joseph Arcabasso	Chief Financial Officer
Sevasti Toula Frantzis-Lettas	Controller
Gus Kodogiannis	Treasurer
Hedy Kodogiannis	Secretary
John J. Hession	Executive Vice-President and General Counsel

3. CAPITALIZATION AND SUBSCRIPTION

Fiduciary Insurance Company of America (“FICA”) is a wholly owned subsidiary of Asphalia Holding Company USA, Inc. (“Asphalia”). Each of the following individuals owns 25% of Asphalia: Gus Kodogiannis, Hedy Kodogiannis, Barbara Kodogiannis and Maria Kodogiannis.

FICA’s authorized capital is \$1,900,000, consisting of 350 shares of Class A voting common stock with par value of \$1,900 per share and 650 shares of Class B non-voting common stock with par value of \$1,900 per share. All outstanding shares were issued to Asphalia Holding Company USA, Inc. on December 23, 2004, for a consideration of \$4,350,994. The difference between the consideration received and the par value of the common stock, \$2,450,994, was allocated to gross paid in and contributed surplus.

In order to fulfill the deposit requirements of Section 4104 of the New York Insurance Law, the Company has placed securities with a par value of \$500,000 in a custodial account in the name of “the Superintendent of Insurance of the State of New York in trust for the security of the policyholders of Fiduciary Insurance Company of America, within the Unites States, its territories and possessions”. Section 1314(a)(1) of the New York Insurance Law requires that any deposit with the Superintendent must be kept in a bank, trust company or national bank in this state. As of the date of this examination, the Company had not provided any evidence that it had complied with the requirements of Section

1314(a)(1) of the New York Insurance Law. However, subsequent to the examination date, the deposit was moved to a custodial account with a New York State bank, as required by statute.

In addition, a confirmation with the Licensing Bureau of this Department indicated that the Company had only deposited \$150,000 of United States Treasury Bills in the state deposit account. The amount is \$350,000 less than the par value of assets confirmed by the custodian. It appears that the Company failed to notify the Department's Licensing Bureau of the additional deposit to the Superintendent's account.

4. BALANCE SHEET

The following shows the assets, liabilities and surplus as determined by this examination as of January 25, 2005:

	<u>Examination</u>		<u>Company</u>		<u>Surplus</u>
	<u>Assets</u>	<u>Assets Not Admitted</u>	<u>Net Admitted Assets</u>	<u>Net Admitted Assets</u>	<u>Increase (Decrease)</u>
Cash and short-term investments*	\$4,277,463	\$0	\$4,277,463	\$4,277,463	\$0
Interest, dividends and real estate income due and accrued	1,101	0	1,101	1,101	0
Premiums and agents' balances in course of collection	490,981	(400,000)	90,981	90,981	0
Reinsurance recoverables on loss and loss adjustment expense payments	195,243	(177,464)	17,779	195,243	(177,464)
EDP equipment and software	79,683	(79,683)	0	0	0
Total assets	<u>\$5,044,471</u>	<u>\$(657,147)</u>	<u>\$4,387,324</u>	<u>\$4,564,788</u>	<u>\$(177,464)</u>

*NOTE: Subsequent to the examination date, the deposit was moved to a custodial account with a New York State bank.

<u>Liabilities, surplus and other funds</u>	<u>Examination</u>	<u>Company</u>	Surplus Increase (Decrease)
Losses	\$178,277	\$356,554	\$178,277
Other expenses	1,166	1,166	0
Taxes, licenses and fees	2,632	2,632	0
Current federal and foreign income taxes	755	755	0
Unearned premiums	442,223	442,223	0
Ceded reinsurance premiums payable (net of ceding commission)	30,954	30,954	0
Aggregate writes-ins for liabilities	<u>1,571</u>	<u>1,571</u>	<u>0</u>
Total liabilities	<u>\$657,578</u>	<u>\$835,855</u>	<u>\$178,277</u>

Surplus and Other Funds

Common capital stock	\$1,900,000	\$1,900,000	\$0
Gross paid in and contributed surplus	2,450,994	2,450,994	0
Unassigned funds	<u>(621,248)</u>	<u>(622,061)</u>	<u>813</u>
Surplus as regards policyholders	<u>\$3,729,746</u>	<u>\$3,728,933</u>	<u>\$813</u>
Total liabilities, surplus and other funds	<u>\$4,387,324</u>	<u>\$4,564,788</u>	

5. REINSURANCE RECOVERABLE ON LOSS AND LOSS ADJUSTMENT EXPENSES

The examination asset of \$17,779 is \$177,464 less than the \$195,243 reported by the Company as of the examination date. The Company erroneously reported reinsurance on ceded reserves as reinsurance recoverable on paid losses.

6. LOSSES

The examination liability of \$178,277 is \$178,277 less than the \$356,554 reported by the Company. The examination decrease to the liability is a result of a reclassification of an amount that the Company had erroneously reported as reinsurance recoverable on paid losses.

7. REINSURANCE AGREEMENTS

The Company has two reinsurance agreements with unaffiliated companies in effect as of the examination date:

(1) New York Disability Benefits Law Group Quota Share Reinsurance Contract

Effective December 1 2003, the Company entered into a reinsurance agreement with an authorized reinsurer whereby it cedes 50% of its liability under its New York Disability Benefits Law (“DBL”) policies. The contract was effective December 1, 2003 and remains in effect until terminated.

(2) Automobile Liability Excess of Loss Reinsurance Contract

Effective October 1, 2004, the Company entered into an excess of loss reinsurance agreement with an authorized reinsurer. The contract has a term of one year and provides coverage for up to \$200,000 in excess of the Company’s retention of \$100,000, subject to aggregate of 175% of the ceded premium per contract year. The implementation of the contract is contingent upon the Department’s approval of Company’s request to add personal injury liability insurance to its certificate of authority. The following clause is included in Article 2 paragraph D of the contract:

“ if the Company does not receive approval by January 1, 2005, from the New York State Insurance Department to amend its license such as to allow the Company to issue such policies, then this Contract shall be terminated back to inception and the Reinsurer will have no further obligation to the Company. In such event, the Reinsurer also agrees to refund to the Company, 80% of the first installment of the deposit premium payable on October 1, 2004....”

The Company paid the initial deposit premium of \$243,000 to the reinsurer on December 3, 2004 and obtained the reinsurer’s permission to postpone the provisional termination date as set forth in Article 2 paragraph D of the contract from January 1, 2005 to April 1, 2005.

8. CUSTODIAL AGREEMENT

The custodial agreement entered between the Company and Comerica Bank is missing the following protective covenants set forth in Part 1-General, Section IV Subsection J-Custodial or Safekeeping Agreements of the NAIC Financial Condition Examiner's Handbook:

- f. That if the custodial agreement has been terminated or if 100% of the account assets in any one custody account have been withdrawn, the custodian shall provide written notification, within three business days of termination or withdrawal, to the insurer's domiciliary commissioner;
- g. That during regular business hours, and upon reasonable notice, an officer or employee of the insurance company, an independent accountant selected by the insurance company and a representative of an appropriate regulatory body shall be entitled to examine, on the premises of the custodian, its records relating to securities, if the custodian is given written instructions to that effect from an authorized officer of the insurance company;
- h. The custodian and its agents, upon reasonable request, shall be required to send all reports which they receive from a clearing corporation or the Federal Reserve book-entry system which the clearing corporation or the Federal Reserve permits to be redistributed and reports prepared by the custodian's outside auditors, to the insurance company on their respective systems of internal control;
- i. To the extent that certain information maintained by the custodian is relied upon by the insurance company in preparation of its annual statement and supporting schedules, the custodian agrees to maintain records sufficient to determine and verify such information;
- j. That the custodian shall provide, upon written request from a regulator or an authorized officer of the insurance company, the appropriate affidavits, with respect to the insurance company's securities held by the custodian;
- k. That the custodian shall secure and maintain insurance protection in an adequate amount.

It is recommended that the Company amend its custodial agreement to comply with the guidelines set forth in the NAIC Examiner's Handbook.

9. AUTHORIZED POWERS AND MINIMUM CAPITAL REQUIRED

The Company is seeking to amend its license to transact the kinds of insurance as defined in the following numbered paragraphs of Section 1113(a) of the New York Insurance Law:

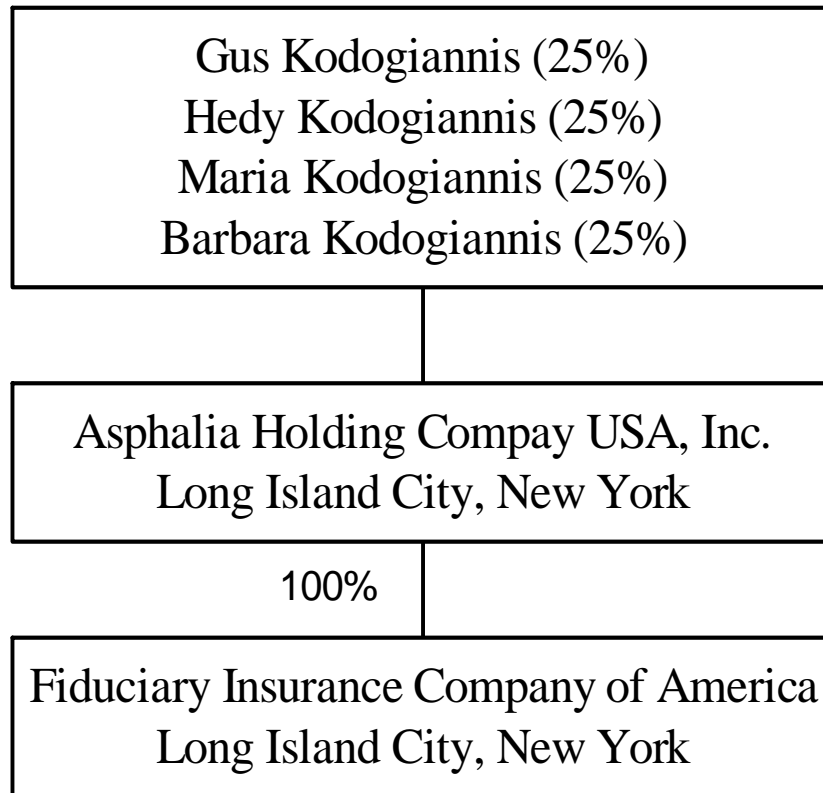
<u>Paragraph</u>	<u>Line of Business</u>
3	Accident & health
13	Personal injury liability
14	Property damage liability
19	Motor vehicle and aircraft physical damage

Based on the lines of business for which the Company is applying to write 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 \$900,000.

10. HOLDING COMPANY SYSTEM

FICA is wholly owned by Asphalia Holding Company USA, Inc. ("Asphalia"), a New York Corporation. Asphalia in turn is owned equally by four members of the Kodogiannis family.

The following is a chart of the holding company system at January 25, 2005:



11. CONCLUSION

Based on the foregoing examination, it is concluded that the Company sold 350 shares of Class A voting common stock with a par value of \$1,900 per share and 650 shares of Class B non-voting common stock with par value of \$1,900 per share. These shares represented the total authorized and issued stock for which the Company received a consideration of \$4,350,994, of which \$1,900,000 represents capital and \$2,450,994 represents gross paid in and contributed surplus.

As of the date of this examination, the Company had not provided any evidence that it had complied with the requirements of Section 1314(a)(1) of the New York Insurance Law. However, subsequent to the examination date, the deposit was moved to a custodial account with a New York State bank.

12. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>		<u>PAGE NO.</u>
A.	<u>Capitalization and Subscription</u>	
	As of the date of this examination, the Company had not provided any evidence that it had complied with the requirements of Section 1314(a)(1) of the New York Insurance Law. However, subsequent to the examination date, the deposit was moved to a custodial account with a New York State bank.	5-6
B.	<u>Custodial Agreement</u>	
	It is recommended that the Company amend its custodial agreement to comply with the guidelines set forth in the NAIC Examiner's Handbook.	9

Respectfully submitted,

_____/S/
Annie Lau, CFE
Associate Insurance Examiner

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

ANNIE LAU, being duly sworn, deposes and says that the foregoing report, subscribed by her, is true to the best of her knowledge and belief.

_____/S/
Annie Lau

Subscribed and sworn to before me
this _____ day of _____, 2005.

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

The undersigned, each an executive officer of **Fiduciary Insurance Company of America**, (the "Company") duly sworn, depose and say under oath that, on the 25th day of January 2005.

- (1) Each of the undersigned is an officer of the Company.
- (2) The Company's capital and surplus equals Four Million Three Hundred Fifty Thousand, Nine Hundred Ninety Four Dollars and Sixty-Nine Cents (\$4,350,994.69), consisting of paid in capital of One Million Nine Hundred Thousand Dollars (\$1,900,000.00) and contributed surplus of Two Million Four Hundred Fifty Thousand Nine Hundred and Ninety Four Dollars (\$2,450,994.00) (the "Capital" and "Surplus"). The Capital and Surplus is on deposit with Sterling National Bank, New York, New York.
- (3) No part of the Capital and Surplus has been withdrawn, pledged, or in any way impaired.
- (4) No part of the Capital and Surplus is to be invested or otherwise legitimately used or appropriated except for the sole and exclusive use and benefit of the Company.
- (5) There is no agreement or understanding, express or implied, made or existing between the Company and its officers, or any or either of them, or any other person or persons, to the effect or import that the money paid in by any stockholder shall be loaned or returned to it.
- (6) Neither the Company nor any of its officers is in any way, manner or form pledged or committed to make any investment, loan or disposition of the Capital and Surplus, or any part or portion thereof, which is not in strict conformity in all respects with the provisions of the Insurance Law of the State of New York.
- (7) The Capital and Surplus is the property of the Company and is possessed by the Company in its corporate name and capacity for the benefit of its policyholders.

1/25/05
~~PETER SKENDERS~~
Chief Executive Officer

1/25/05
JOHN J. HESSION, Esq.
Executive Vice-President and General Counsel

Sworn to before me this
25 day of January, 2005.

1/25/05
Notary Public

JESSICA MARTINEZ
Notary Public, State of New York
No. 01MA6077594
Qualified in Bronx County
Commission Expires July 15, 2006

Appointment No. 22277

**STATE OF NEW YORK
INSURANCE DEPARTMENT**

*I, HOWARD MILLS, Acting Superintendent of Insurance of the State of New York,
pursuant to the provisions of the Insurance Law, do hereby appoint:*

Annie Lau

as proper person to examine into the affairs of the

FIDUCIARY INSURANCE COMPANY OF AMERICA

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 18th day of January, 2005



Howard Mills

HOWARD MILLS
Acting Superintendent of Insurance