REPORT ON EXAMINATION

OF THE

FIDUCIARY OF INSURANCE COMPANY OF AMERICA

AS OF

DECEMBER 31, 2008

DATE OF REPORT	NOVEMBER 6, 2009
EXAMINER	MOSES EGBON

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

November 6, 2009

Honorable James Wrynn
Superintendent of Insurance
Albany, New York 12257

Sir:

Pursuant to the requirements of the New York Insurance Law, and in compliance with the instructions contained in Appointment Number 22751 dated February 27, 2008, attached hereto, I have made an examination into the condition and affairs of Fiduciary Insurance Company of America as of December 31, 2008, and submit the following report thereon.

Wherever the designation "the Company" or "FICA" appear herein without qualification, it 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.

The examination was conducted at the Company's administrative office located at 45-07 Davis Street, Long Island City, New York 11101.

1. SCOPE OF EXAMINATION

The Department has performed a risk-focused examination of Fiduciary Insurance Company of America. This is the first financial examination of the Company after the report on organization, which was conducted as of as of January 25, 2005. An organizational review was conducted when the Company, formerly classified as a health insurance company, amended its license and became a property and casualty insurance company. This examination covered the period from January 26, 2005 through December 31, 2008. 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, 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. The 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
Fidelity bonds and other insurance
Pensions, stock ownership and insurance plans
Territory and plan of operation
Growth of Company
Loss experience
Reinsurance
Accounts and records

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 COMPANY

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. The Company commenced business January 1, 1978. On September 24, 1999, all the Company's outstanding shares were acquired by Guardian Life Insurance of America ("GLIC'). On February 26, 2004, Transportation Risk Group, Inc. ("TRG"), an entity owned by the Kodogiannis Group, acquired 100% ownership of the Company's stock from Guardian Life.

Ownership of FICA was transferred from TRG to the shareholders of TRG on December 23, 2004. The shareholders then transferred all of FICA's common stock to Asphalia Holding Company USA, Inc. ("Asphalia") in exchange for all of the common stock of Asphalia. The holding company was established by the Kodogiannis Group for the purpose of taking possession of all of FICA's common stock. Subsequently, Asphalia retired the outstanding shares of FICA common stock, and 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.

At December 31, 2008, capital paid-in was $1,900,000 consisting of 350 Class A shares and 650 Class B shares of common stock all with a par value of $1,900 per share. Gross paid in and contributed surplus decreased by $52,336 during the examination period as follows:

Year	Description	Amount
January 25, 2005	Beginning gross paid in per organization	$2,450,994
2005	Reclassified from gross paid-in to surplus note	(52,336)
December 31, 2008	Ending gross paid in and contributed surplus	$2,398,658

A. Management

Pursuant to the Company's charter and by-laws, management of the Company is vested in a board of directors consisting of not less than thirteen nor more than seventeen members. The board met three times during each calendar year. At December 31, 2008, the board of directors was comprised of the following thirteen members:

Name and Residence	Principal Business Affiliation
Chuck Arcabbasso Long Beach, NY	Certified Public Accountant, Bass Consultant Group
George Bilasz Middle Village, NY	Retired, Retail Food Merchant
S. Toula Lettas Nesconset, NY	Chief Financial Officer Fiduciary Insurance Company of America
John J. Hession, Esq. Copiague Harbor, NY	Partner, Dougherty, Ryan, Giuffra, Zambito & Hession
Barbara Kodogiannis-Skenderis 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-Olszewski Brooklyn, NY	Insurance Broker, Fiduciary Insurance Company of America
Albert Lewis New York, NY	Partner, D' Amato & Lynch, LLP
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.
Peter Skenderis Oceanside, NY	Chief Executive Officer, Fiduciary Insurance Company of America

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 had an acceptable record of attendance.

As of December 31, 2008, the principal officers of the Company were as follows:

Name	Title
Vincent Mistretta	President
Peter Skenderis	Chief Executive Officer
S. Toula Lettas	Chief Financial Officer
Gus Kodogiannis	Treasurer
Hedy Kodogiannis	Secretary
John J. Hession	Executive Vice-President and General Counsel

Subsequent to examination date, John J. Hession was replaced by Peter May.

B. Territory and Plan of Operation

The Company is licensed to write business in New York only.

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:

Paragraph	Line of Business
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 licensed and the Company's current capital structure, and pursuant to the requirements of Articles 13 and 41 of the New York Insurance Law, the Company is required to maintain a minimum surplus to policyholders in the amount of $1,900,000. The Company's premium writings are almost all in commercial auto liability insurance with a very small amount in group disability. The commercial auto liability is marketed through insurance brokers, and the group disability line is marketed on a direct basis.

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

Calendar Year	Total Premiums
2005	$6,431,513
2006	$17,276,144
2007	$23,365,334
2008	$35,518,853

C. Reinsurance

The Company has no assumed business.

The company has structured its ceded reinsurance program, from April 1, 2007 through February 28, 2009, to limit its maximum exposure to any one occurrence to approximately $300,000 through 45% quota share treaties on its commercial auto liability business. There were two reinsurers participating in this treaty, an authorized reinsurer accepting 30% and an unauthorized reinsurer accepting 15%. The Company has a letter of credit for its cessions to the unauthorized reinsurer. In 2005, the Company had one excess of loss reinsurance contract with a $100,000 retention. The 2005 contract was commuted in 2008. In 2006 the Company did not have reinsurance coverage.

There were a number of issues with the Company reinsurance accounting, its reinsurance contracts and its disclosures during the examination period and subsequent to the examination period. These issues are as follows:

i. Transfer of Risk

Management represented that all material ceded reinsurance agreements transfer both underwriting and timing risk as set forth in NAIC Accounting Practices and Procedures Manual, Statement of Statutory Accounting Principles (“SSAP”) No. 62. Representations were supported by an attestation from the Company's chief executive officer pursuant to the NAIC Annual Statement Instructions.

However, examination review of the Company’s ceded reinsurance contracts indicated that the 2007 and 2008 quota share agreements did not transfer risk in accordance with SSAP No. 62. The determination that these treaties do not transfer risk was primarily based on the caps on the reinsurers' liability, which for the 2007 and 2008 treaties were 120% and 125%, respectively, which included the ceding commissions required under the treaties.

Reinsurance agreements that do not transfer risk are required to be accounted for using reinsurance deposit accounting as specified in SSAP No. 75, paragraph 3 which states in part:

> To the extent that a reinsurance agreement does not, despite its form, transfer both components of insurance risk, all or part of the agreement shall be accounted for and reported as deposits …

There were no changes made to the balance sheet or income statement in this report as it was determined that the application of reinsurance deposit accounting would not have a material adverse impact on the Company's surplus.

It is recommended that, in the future, the Company perform a more diligent review of its ceded reinsurance contracts to determine if risk transfer is taking place in accordance with the provisions of SSAP 62.

It is additionally recommended that, if in the future, a ceded reinsurance contract is determined not to transfer risk, the Company account for it using reinsurance deposit accounting as specified in SSAP 72.

ii. Improper Netting of Recoverables and Premiums Payable

It was noted that the Company did not report an asset for reinsurance recoverables on paid losses on its 2008 annual statement. Examination review indicated that the Company had such an asset at December 31, 2008, but reflected it as a reduction of ceded reinsurance premiums payable. This is not in compliance with SSAP 62, paragraph 19 which states in part:

> Reinsurance recoverable on loss payments is an admitted asset. Notwithstanding the fact that reinsurance recoverables on paid losses may meet the criteria for offsetting under the provisions of SSAP No. 64 — Offsetting and Netting of Assets and Liabilities (SSAP No. 64), reinsurance recoverables on paid losses shall be reported as an asset without any available offset....

It is recommended that the Company record its reinsurance transactions in accordance with SSAP 62, paragraph 19.

All ceded reinsurance agreements in effect as of the examination date were reviewed to determine if they contained all of the required clauses, including an insolvency clause meeting the requirements of Section 1308 of the New York Insurance Law. Upon review of the Company's 2007, 2008 and 2009 quota share agreements, it was noted that the insolvency clauses included therein contained reference to a novation; however, they did not include the additional language required when reference is made to a novation pursuant to Department Circular Letter No. 5 (1988), which states:

> Any references to such an event in the reinsurance agreement should indicate that, prior to the implementation of a novation, the certificate of assumption on New York risks would have to be approved by the Superintendent…

It is recommended that the Company include language consistent with Circular Letter No. 5 (1988) in all reinsurance contracts which make reference to a novation.

iii. <u>Accounting for Ceding Commissions</u>

The Company's ceded reinsurance contracts provide that the Company will receive a ceding commission at a provisional rate of 24%, which is adjustable based on the loss experience of the business ceded to an ultimate rate ranging from 15% to 28%. In its 2007 annual statement, the Company reflected the ceding commission at the provisional rate of 24%; however, it is noted that based on the Company's reported ceded losses, the projected ultimate ceding commission rate was 15%. SSAP 62, paragraph 46 states in part:

> An accrual shall be maintained for the following adjustable features based on the experience recorded for the accounting period: ...
>
> > b. Sliding Scale - a provisional rate of commission is paid over the course of the agreement, with a final adjustment based on the experience of the business ceded under the agreement.

In its 2008 annual statement, upon being prompted by the Department, the Company established a liability for the difference between the provisional rate and the projected ultimate commission rate of 15% for treaty year 2008. Additionally, the Company made a prior period adjustment directly to surplus for the difference between the provisional rate and the projected ultimate rate of 15% (net of federal taxes) for treaty years 2007.

While it is acknowledged that the Company corrected its accounting for adjustable ceding commissions in its 2008 annual statement, it is nevertheless recommended that, in the future, the Company adhere to the provisions of SSAP 62 in accounting for its reinsurance transactions.

iv. Limitation of Risk

Prior to March 1, 2007, the Company did not have any reinsurance coverage in place. During 2006, the Company wrote policies with per-risk limits of up to $550,000 and reported surplus to policyholders ranging from $3,698,278 at March 31, 2006 to $5,004,614 at December 31, 2006. Section 1115(a) of the New York Insurance Law states:

> Except as otherwise provided in this chapter, no insurer doing business in this state shall expose itself to any loss on any one risk in an amount exceeding ten percent of its surplus to policyholders. . .

The failure to have reinsurance coverage in 2006 put the Company in violation of Section 1115(a) of the New York State Insurance Law. It is recommended that the Company maintain adequate reinsurance coverage in order to comply with Section 1115(a) of the New York Insurance Law. It is noted that the Company corrected this violation at March 1, 2007 when it entered into a 45% quota share reinsurance treaty. It is additionally noted that the Company may be in violation of Section 1115(a) of the New York Insurance Law as of the examination date after consideration of surplus adjustments included in this report.

v. Subsequent Events

Effective March 1, 2009, the Company entered into the following ceded reinsurance agreements:

1. A quota share treaty ceding 50% of the Company’s commercial auto liability business for yellow taxis, black car, and livery and 30% for car services.
2. A 34% quota share treaty for the net retained liability for commercial auto liability business.

The 34% quota share treaty is with Asphalia Re, a Cayman Islands company, which is 100% owned by Asphalia Holding Company, FICA’s direct parent. Asphalia Re was established in 2009 as an offshore captive reinsurer to cover a portion of the risk written by the Company. It was originally proposed that Asphalia Re would be capitalized in the amount of $900,000 and was expected to assume approximately $1 million in premiums from the Company; however, a review of Asphalia

Re's June 30, 2009 financial statements indicated an initial capitalization of only $150,000. Additionally, it is noted that the Company ceded approximately $7.5 million in premiums to Asphalia Re in 2009. Therefore, it does not appear that Asphalia Re was adequately capitalized to assume the volume of business that the Company has ceded to it.

Additionally, upon review of the Asphalia Re quota share treaty, it was noted that the agreement did not provide for the Company to receive a ceding commission. A ceding commission is a standard provision in a quota share treaty to compensate the ceding company for a proportionate share of its acquisition expenses. The agreement, as written, provides no compensation to the Company for any ceded acquisition expenses and is therefore in violation of Section 1505(a)(1) of the New York Insurance Law, which requires that the terms of transactions between companies within a holding company system be fair and equitable. It is recommended that the terms of agreements between the Company and its affiliates be fair and equitable pursuant to the provisions of Section 1505(a)(1) of New York Insurance Law.

Additionally, it was noted that this agreement was not submitted to the Department for non-disapproval at least 30 days prior to implementation pursuant to Section 1505(d) of the New York Insurance Law. It is recommended that the Company submit all reinsurance agreements with affiliates to the Department for non-disapproval at least 30 days prior to implementation pursuant to Section 1505(d) of the New York Insurance Law. Based on the weak capitalization of Asphalia Re, and the lack of a ceding commission in the agreement, the Department would not have approved the agreement.

When questioned about the lack of a ceding commission in the treaty, the Company indicated that it was an oversight and in November, 2009, the Company amended the treaty retroactively back to inception to include a ceding commission of 15%. The Company indicated that reflecting the ceding commission will result in a gain to the Company in the amount of approximately $1,161,000 and a loss to Asphalia Re in the same amount in 2009. It is noted that Asphalia Re's June 30, 2009 financial statements indicated a net profit of $963,004. After adjusting for the ceding commission, Asphalia Re would have reported a net loss of approximately $200,000. As previously noted, Asphalia Re was only capitalized with $150,000.

A review of the Company's June 30, 2009 quarterly statement indicated that it reported no liability under the caption "Provision for reinsurance," even though it reported unsecured reinsurance recoverable amounts due from Asphalia Re, an unauthorized reinsurer, in the amount of $6,776,617. This is not in compliance with Part 125.6(b) of Department Regulation 20, which states in part:

> . . . credit taken by a ceding insurer for reinsurance ceded to an unauthorized insurer, which is not an accredited reinsurer, shall not exceed the amounts withheld under a reinsurance treaty with such unauthorized insurer as security for the payment of obligations thereunder, provided such funds are held subject to withdrawal by, and under the control of, the ceding insurer. Amounts withheld include:
>
> 1. Funds withheld for which the ceding insurer has set up a liability,
> 2. Letters of credit complying with Part 79 of this Title (Regulation 133), and
> 3. Funds deposited in trust agreements complying with Part 126 of this Title (Regulation 114).

It is noted that the Company's reported surplus as regards policyholders at June 30, 2009 was $3,234,805; therefore, the Company would have reported itself insolvent at June 30, 2009 if it had properly reported a liability for the unsecured reinsurance recoverables due from Asphalia Re.

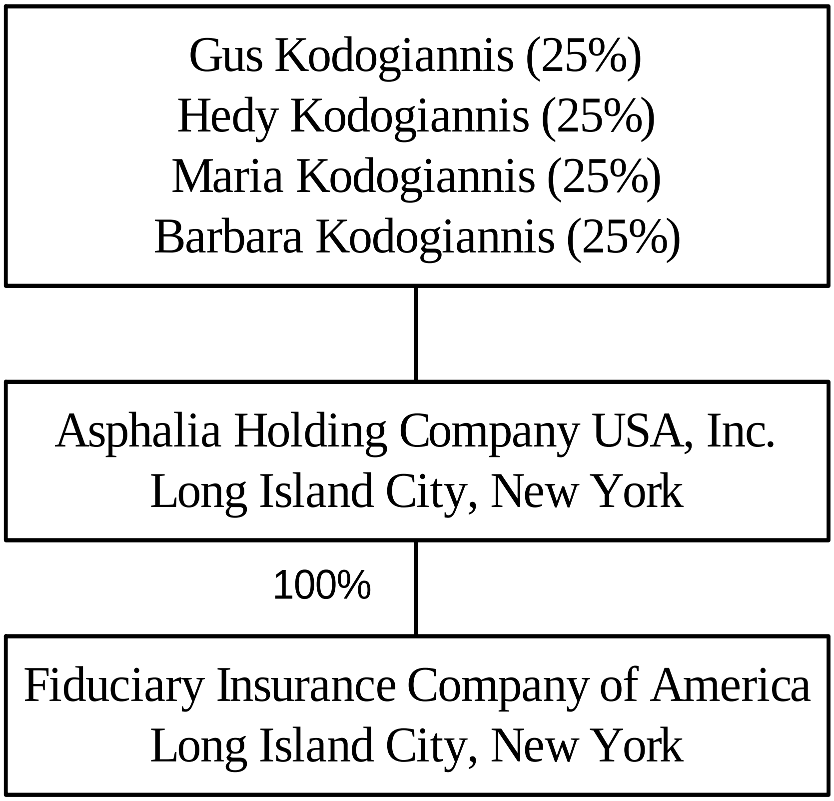
Additionally, a review of Schedule F Part 5 in the Company's 2009 annual statement indicated that the Company reported a letter of credit in the amount of $4,832,000 as an offset against reinsurance recoverables due from Asphalia Re in the same amount, although no such letter of credit was actually in place as of that date. Subsequently, in May 2010, Asphalia Re established a letter of credit in the amount of $4,600,000. It is noted that as of December 31, 2009, the Company's reported surplus as regards policyholders was $5,972,124; therefore, it would have reported its minimum surplus as impaired if it had correctly reflected its unsecured reinsurance recoverables due from Asphalia Re at that date.

It is recommended that the Company comply with Part 125.6(b) of Department Regulation 20 and not take credit for reinsurance ceded to unauthorized reinsurers without appropriate collateral in place.

D. Holding Company System

FICA is wholly-owned by Asphalia Holding Company USA, Inc. ("Asphalia"), a New York Corporation. Asphalia is in turn owned equally by four members of the Kodogiannis family. Three of the four family members also own the Mystic Brokerage Inc., one of the agencies producing business for FICA.

The following is a chart of the holding company system at December 31, 2008:



A review of the holding company registration statements filed with this Department indicated that such filings were complete and were filed in a timely manner pursuant to Article 15 of the New York Insurance Law and Department Regulation 52.

E. Significant Operating Ratios

The following ratios have been computed as of December 31, 2008, based upon the results of this examination:

Net premiums written to surplus as regards policyholders	823.36%*
Liabilities to liquid assets (cash and invested assets less investments in affiliates)	98.00%
Premiums in course of collection to surplus as regards policyholders	43.28%*

The above ratios, denoted with an asterisk, fell outside the benchmark ranges set forth in the Insurance Regulatory Information System of the National Association of Insurance Commissioners.

It is noted that the net premium written to surplus ratio is significantly above the benchmark ratio of 300%. It is also significantly above the 200% ratio that the Company committed to maintain as a condition of being licensed by this Department, as more fully described in Section 2F, paragraph viii of this report.

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

	Amounts	Ratios
Losses and loss adjustment expenses incurred	$38,486,252	74.06%
Other underwriting expenses incurred	16,641,611	32.02
Net underwriting loss	(3,162,153)	(6.08)
Premiums earned	$51,965,710	100.00%

F. Accounts, Records and Internal Controls

During the period under examination, the Company showed the following deficiencies in its system of accounts, records and internal controls:

i. Fidelity Bond Insurance

The Company did not have fidelity bond insurance coverage, as suggested by the National Association of Insurance Commissioner’s manual.

It is recommended that the Company obtain fidelity bond insurance coverage.

ii. Annual Statement Reporting

The following annual statement reporting issues were noted during the examination of the Company:

a. The Company reported the change in net its deferred income tax asset on the aggregate write-in line of the annual statement instead of the specific line provided on the annual statement.

b. The Company accrued interest on its surplus notes and made additional errors in attempting to correct this as indicated in paragraph iv of this section.

c. The Company did not disclose the method of its bond investment amortization in its Notes to the Financial Statement and the General Interrogatories as required by SSAP No. 26, paragraph 17.

d. The Company had to amend its 2008 annual statement filing twice due to various reporting errors. These errors included, but were not limited to, reclassification of various bank money market accounts from common stock to cash, correction in the value of preferred stock from cost to fair market value, and correction in the Company's financial statement notes, etc.

It is recommended that the Company take the necessary steps to improve its internal controls over its compliance with the annual statement instructions.

iii <u>Executive Compensation</u>

During the examiner's review of the board minutes, it was noted that the executive compensation was not documented in the meetings of the board of directors.

It is recommended that executive compensations be approved by the board of directors and such approval be documented in the minutes of the board.

iv. <u>Surplus Note</u>

In September 2005, the Company obtained a surplus note in the amount of $992,197 from Transportation Risk Group, Inc. pursuant to Section 1307 of the New York Insurance Law. The note provides that the Company will pay interest annually at a rate of 7%, subject to the approval of the Superintendent. In 2006 and 2007, the Company increased the reported value of the surplus note by $90,452 and $78,265, respectively, for accrued interest. The accrual of interest on a surplus note is not permitted pursuant to paragraph 5 of SSAP 41, which states:

> Interest shall not be recorded as a liability nor an expense until approval for payment of such interest has been granted by the commissioner of the state of domicile. All interest, including interest in arrears, shall be expensed in the statement of operations when approved for payment. Unapproved interest shall not be reported through operations, shall not be represented as an addition to the principal or notional amount of the instrument, and shall not accrue further interest, i.e., interest on interest.

The Company reversed the interest accruals in 2008 and restored the reported value of the surplus note back to its face value; however, it is recommended that the Company report interest on its surplus note only when approved by the Superintendent, pursuant to the provisions of paragraph 5 of SSAP 41.

v. Custodian Agreement

Examination review revealed that the Company did not have custodian agreements in place with its three custodians, Brown Brothers Harriman, UBS, and Smith Barney. This is important for the safekeeping of the Company's investments.

It is recommended that Company establish custodial agreements that contain the safeguards and provisions stated in Section 3(III)(H) of the 2008 NAIC Financial Condition Examiners Handbook.

vi. Contract With CPA

The certified public accountants ("CPA") engagement letter did not comply with Department Regulation 118, which states in part as follows:

> Every insurer subject to this Part shall retain an independent Certified Public Accountant (CPA) who agrees by written contract with such insurer to comply with the provisions of section 307(b) of the Insurance Law, this Part and the Code of Professional Conduct adopted by the American Institute of Certified Public Accountants (AICPA). Such contract must specify that:
>
> (a) on or before May 31st, the CPA shall provide an audited financial statement of such insurer and of any subsidiary required by section 307(b)(1) of the Insurance Law together with an opinion on the financial statements of such insurer and any such subsidiary for the prior calendar year and an evaluation of the insurer's and any such subsidiary's accounting procedures and internal control systems as are necessary to the furnishing of the opinion;
>
> (b) any determination by the CPA that the insurer has materially misstated its financial condition as reported to the superintendent or that the insurer does not meet minimum capital or surplus to policyholder requirements set forth in the Insurance Law shall be given by the CPA, in writing, to the superintendent within 15 calendar days following such determination; and
>
> (c) the workpapers and any communications between the CPA and the insurer relating to the audit of the insurer shall be made available for review by the superintendent at the offices of the insurer, at the Insurance Department or at any other reasonable place designated by the superintendent. The CPA must retain for review such workpapers and communications in accordance with the provisions of Part 243 of this Title (Regulation 152). More specifically, such workpapers and communications must be retained by the CPA for the period specified in sections 243.2(b)(7) and (c) of this Title. For the purposes of this subdivision, the workpapers and communications shall be deemed to have been created on the date the filing required by section 89.2(a) of this Part was submitted to the superintendent."

It is recommended that the Company include in all future contracts written to engage CPA firm, the provisions required by Department Regulation 118.

It is noted that effective January 1, 2010, Department Regulation 118 was revised; therefore the Company should comply with the revised regulation after that date.

vii. Business Plan

As part of its license application, the Company prepared a business plan dated November 2004, covering the operations of the Company from 2005 through 2007. It is noted that the actual premium growth of the Company during that period far exceeded the projected premium growth as outlined in its business plan. Based on the fact that the Company's operations did not conform to its business plan as originally submitted, and the fact that the original business plan is outdated, it is recommended that the Company prepare a revised business plan to reflect its current operations and provide projections for its next three years of operations and submit such plan to the Department.

viii. Premium Writings

On February 10, 2005, the Department approved FICA's application to become a licensed property casualty insurance company based on management's commitment to limit the Company's net premium writings on commercial auto liability business to a level not greater than 1.5 times its policyholders' surplus. In early 2006, the Department gave the Company permission to increase the net premiums written limit to not greater than 2 times its policyholders' surplus for renewal business.

The following chart shows the Company's reported net premium writings for commercial auto liability and its year-end surplus for each year in the examination period.

Year	Commercial Auto Liability Net Premiums Written	Reported Surplus at December 31	Ratio of Premiums Written to Surplus
2005	4,088,180	3,596,787	113.7%
2006	16,601,769	5,004,614	331.7%
2007	12,452,469	5,421,385	229.7%
2008	19,293,680	5,312,760	363.2%

It is noted that the Company did not honor its commitment to limit its commercial auto liability net premium writings in 2006, 2007, and 2008.

It is noted that in 2008, the Company's ratio of net premiums written for all lines of business to its reported surplus as regards policyholders was 3.7 to 1, which exceeds the NAIC benchmark range of 3.0 to 1. Additionally, it is noted that the ratio of net premiums written to the surplus as regards policyholders as determined by this examination is 8.2 to 1.

It is recommended that the Company take the necessary steps to reduce its commercial auto liability net premiums written to surplus ratio to no more than the 2 to 1 ratio it committed to the Department that it would maintain. Additionally, it is recommended that the Company limit the ratio of its total net premiums written to surplus to no more than the 3 to 1 benchmark ratio set forth in the Insurance Regulatory Information System of the National Association of Insurance Commissioners.

ix. Annual Statement General Interrogatories Part 2- Concerning Largest Net Aggregate Amount Insured In Any One Risk

In response to General Interrogatory 13.1 in its 2007 and 2008 annual statements, the Company indicated that its largest net aggregate amount insured in any one risk (excluding workers' compensation) was $200,000. The correct amount should have been $300,000. Additionally, it is noted that the Company did not indicate any amount in the 2005 and 2006 annual statements.

It is recommended that the company exercise greater care in its response to this annual statement interrogatory concerning the largest net aggregate amount insured in any one risk.

x. Concentration of Investments In Banks

As of December 31, 2008, the Company had funds on deposit with two banks in excess of 10% of its admitted assets. The funds on deposit were in the form of money market accounts, certificates of deposit and checking accounts. It is noted that the amounts on deposit also exceeded the $250,000 insurance protection provided by the Federal Deposit Insurance Corporation. Section 1409(a) of the New York Insurance Law states, in part:

> No domestic insurer shall have more than ten percent of its admitted assets as shown by its last statement on file with the superintendent invested in, or loaned upon, the securities (including for this purpose certificates of deposit, partnership interests and other equity interests) of any one institution.

It is recommended that the Company limit its investments in any one institution to no more than 10% of its admitted assets pursuant to the provisions of Section 1409(a) of the New York Insurance Law.

3. FINANCIAL STATEMENTS

A Balance Sheet

The following shows the assets, liabilities and surplus as regards policyholders as of December 31, 2008 as determined by this examination and as reported by the Company:

Assets	Examination Net Admitted Assets	Company Net Admitted Assets	Surplus Increase (Decrease)
Bonds	$21,716,464	$21,716,464	
Preferred stocks	832,426	832,426	
Common stocks	332,392	332,392	
Cash, cash equivalents and short-term investments	10,140,535	10,140,535	
Miscellaneous Interest receivable	1,325	1,325	
Investment income due and accrued	149,760	149,760	
Uncollected premiums and agents' balances in the course of collection	1,037,322	1,037,322	
Current federal and foreign income tax recoverable and interest thereon	474,815	474,815	
Net deferred tax asset	217,897	644,789	$(426,892)
Aggregate write-ins for other than invested assets	2,400	2,400	0
Total assets	$34,905,336	$35,332,228	$(426,892)

Liabilities, Surplus and Other Funds

Liabilities	Examination	Company	Surplus Increase (decrease)
Losses and loss adjustment expenses	$22,256,283	$19,917,283	$(2,339,000)
Commissions payable, contingent commissions and other similar charges	2,097,022	2,097,022	
Other expenses	12,227	12,227	
Taxes, licenses and fees	442,948	442,948	
Unearned premiums	3,395,025	3,395,025	
Ceded reinsurance premiums payable	4,135,084	4,135,084	
Aggregate write-ins for liabilities	19,879	19,879	0
Total liabilities	$32,358,468	$30,019,468	$(2,339,000)
Surplus and Other Funds			
Common capital stock	$1,900,000	$1,900,000	
Surplus notes	992,197	992,197	
Gross paid in and contributed surplus	2,398,658	2,398,658	
Unassigned funds (surplus)	(2,743,987)	21,905	$(2,765,892)
Surplus as regards policyholders	2,546,868	5,312,760	$(2,765,892)
Total liabilities, surplus and other funds	$34,905,336	$35,332,228	

NOTE: The Internal Revenue Service has never audited the Company's Federal Income Tax returns. 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.

B. Underwriting and Investment Exhibit

Surplus as regards policyholders decreased $1,182,065 during the three year and eleven month examination period detailed as follows:

Underwriting Income		
Premiums earned		$51,965,710
Deductions:		
Losses and loss adjustment expenses incurred	$38,486,252	
Other underwriting expenses incurred	16,641,611	
Total underwriting deductions		55,127,863
Net underwriting gain or (loss)		$(3,162,153)
Investment Income		
Net investment income earned	$2,888,891	
Net realized capital gain	(887,650)	
Net investment gain or (loss)		2,001,241
Other Income		
Finance and service charges not included in premiums	$110,138	
Aggregate write-ins for miscellaneous income	14,500	
Total other income		124,638
Income before federal and foreign income taxes		$(1,036,274)
Federal and foreign income taxes incurred		751,043
Net income		$(1,787,317)

	Gains in Surplus	Losses in Surplus	
Surplus as regards policyholders per report on organization as of January 25, 2005			$3,728,933
Net income		$1,787,317	
Net unrealized capital gains or losses		37,227	
Change in net deferred income tax	217,897		
Change in nonadmitted assets		246,236	
Change in surplus notes	992,197		
Surplus adjustments paid in		51,912	
Aggregate write-ins for gains and losses in surplus	0	269,467	
Total gains and losses	$1,210,094	$2,392,159	
Net increase (decrease) in surplus			(1,182,065)
Surplus as regards policyholders per report on examination as of December 31, 2008			$2,546,868

4. NET DEFERRED TAX ASSET

The examination admitted asset of $217,897 is $426,892 less than the $644,789 reported by the Company in its December 31, 2008 filed annual statement.

The examination adjustment reflects the limitation on this asset provided for in Section 1301(a)(16) of the New York Insurance law. This section provides that the net deferred tax asset shall be limited to ten percent of the statutory surplus adjusted to exclude the net deferred tax asset. The admitted asset of $217,897 reflects this ten percent limitation.

5. LOSSES AND LOSS ADJUSTMENT EXPENSES

The examination liability for the captioned items of $22,256,283 is $2,339,000 more than the $19,917,283 reported by the Company in its December 31, 2008 filed annual statement. The Company's reserves for Losses and Defense and Cost Containment Expenses were found to be deficient by $2,433,000 while its Adjusting and Other Expense reserves were found to be redundant by $93,000.

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, including Loss and Loss Adjustment Expense experience through December 31, 2009.

It should be noted that adjustments were made to the loss and loss adjustment expense reserves as a result of anticipated potential legal expense savings because the Company, subsequent to the examination date, has shifted a portion of its legal expenses from outside legal firms to an in-house legal firm.

6. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior report was an organization, and it contained one recommendation and one comment as follows (page numbers refer to the prior report on organization):

ITEM		PAGE NO.
A.	Capitalization and Subscription	
	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.	Custodial Agreement	
	It is recommended that the Company amend its custodial agreement to comply with the guidelines set forth in the NAIC Examiner's Handbook.	9
	The Company has not complied with this recommendation. A similar comment is made in this report.	

7. SUMMARY OF COMMENTS AND RECOMMENDATIONS

ITEM		PAGE NO.
A.	Reinsurance	
i.	Transfer of Risk	
	It is recommended that, in the future, the Company perform a more diligent review of its ceded reinsurance contracts to determine if risk transfer is taking place in accordance with the provisions of SSAP 62.	7

ITEM		PAGE NO.
	It is additionally recommended that, if in the future, a ceded reinsurance contract is determined not to transfer risk, the Company account for it using reinsurance deposit accounting as specified in SSAP 72.	7
ii.	Improper netting of recoverables and premiums payable	
	It is recommended that the Company record its reinsurance transactions in accordance with SSAP 62, paragraph 19.	7
	It is recommended that the Company include language consistent with Circular Letter No. 5 (1988) in all reinsurance contracts which make reference to a novation.	8
iii.	Accounting for ceding commission	
	It is recommended that, in the future, the Company adhere to the provisions of SSAP 62 in accounting for its reinsurance transactions.	9
iv.	Limitation of risk	
	It is recommended that the Company maintain adequate reinsurance coverage in order to comply with Section 1115(a) of the New York Insurance Law. It is noted that the Company corrected this violation at March 1, 2007 when it entered into a 45% quota share reinsurance treaty. It is additionally noted that the Company may be in violation of Section 1115(a) of the New York Insurance Law as of the examination date after consideration of surplus adjustments included in this report.	9
v.	Subsequent Events	
	It does not appear that Asphalia Re was adequately capitalized to assume the volume of business that the Company has ceded to it.	10
	It is recommended that the terms of agreements between the Company and its affiliates be fair and equitable pursuant to the provisions of Section 1505(a)(1) of New York Insurance Law.	10
	It is recommended that the Company submit all reinsurance agreements with affiliates to the Department for non-disapproval at least 30 days prior to implementation pursuant to Section 1505(d) of the New York Insurance Law. Based on the weak capitalization of Asphalia Re, and the lack of a ceding commission in the agreement, the Department would not have approved the agreement.	10
	It is recommended that the Company comply with Part 125.6(b) of Department Regulation 20 and not take credit for reinsurance ceded to unauthorized reinsurers without appropriate collateral in place.	11

ITEM		PAGE NO.
B.	Accounts, Records and Controls	
i.	Fidelity Bond Insurance	
	It is recommended that the Company obtain fidelity bond insurance coverage.	13
ii.	Annual Statement Reporting	
	It is recommended that the Company take the necessary steps to improve its internal controls over its compliance with the annual statement instructions.	14
iii.	Executive Compensation	
	It is recommended that executive compensations be approved by the board of directors and such approval be documented in the minutes of the board.	14
iv.	Surplus Note	
	it is recommended that the Company report interest on its surplus note only when approved by the Superintendent, pursuant to the provisions of paragraph 5 of SSAP 41.	14
v.	Custodian Agreement	
	It is recommended that Company establish custodial agreements that contain the safeguards and provisions stated in Section 3(III)(H) of the 2008 NAIC Financial Condition Examiners Handbook.	15
vii.	Contract with CPA	
	It is recommended that the Company include in all future contracts written to engage CPA firm, the provisions required by Department Regulation 118. It is noted that Department Regulation 118 was revised effective January 1, 2010, and therefore the Company should comply with the revised regulation.	16
viii.	Business Plan	
	It is recommended that the Company prepare a revised business plan to reflect its current operations and provide projections for its next three years of operations and submit such plan to the Department.	16

ITEM		PAGE NO.
ix.	Premium Writings	
	It is recommended that the Company take the necessary steps to reduce its commercial auto liability net premiums written to surplus ratio to no more than the 2 to 1 ratio it committed to the Department that it would maintain. Additionally, it is recommended that the Company limit the ratio of its total net premiums written to surplus to no more than the 3 to 1 benchmark ratio set forth in the Insurance Regulatory Information System of the National Association of Insurance Commissioners.	17
x.	Annual Statement General Interrogatories-concerning net aggregate amount insured in any one risk	
	It is recommended that the company exercise greater care in its response to this annual statement interrogatory concerning the largest net aggregate amount insured in any one risk.	17
xi.	Concentration of Investments In Banks	
	It is recommended that the Company limit its investments in any one institution to no more than 10% of its admitted assets pursuant to the provisions of Section 1409(a) of the New York Insurance Law.	17

Respectfully submitted,

/s/
Moses Egbon, CFE
Senior Insurance Examiner

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

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

/s/
Moses Egbon, CFE

Subscribed and sworn to before me

this__________ day of ___________________, 2010.

Appointment No. 22751

STATE OF NEW YORK
INSURANCE DEPARTMENT

I, Eric R. Dinallo, *Superintendent of Insurance of the State of New York, pursuant to the provisions of the Insurance Law, do hereby appoint:*

Moses Egbon

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 27th *day of* February, *2008*

STATE OF NEW YORK ★ SUPERINTENDENT OF INSURANCE ★ EXCELSIOR

ERIC R. DINALLO
Superintendent of Insurance