

**REPORT ON EXAMINATION**

**OF**

**ANESTHESIOLOGISTS PROFESSIONAL**

**ASSURANCE COMPANY**

**JACKSONVILLE, FLORIDA**

**AS OF**

**DECEMBER 31, 2009**

**BY THE**

**OFFICE OF INSURANCE REGULATION**

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**TALLAHASSEE, FLORIDA**

August 6, 2010

Kevin M. McCarty  
Commissioner  
Office of Insurance Regulation  
State of Florida  
Tallahassee, Florida 32399-0326

Dear Sir:

Pursuant to your instructions, in compliance with Section 624.316, Florida Statutes, Rule 69O-138.005, Florida Administrative Code, and in accordance with the practices and procedures promulgated by the National Association of Insurance Commissioners (NAIC), we have conducted an examination as of December 31, 2009, of the financial condition and corporate affairs of:

**ANESTHESIOLOGISTS PROFESSIONAL ASSURANCE COMPANY  
1000 RIVERSIDE AVENUE, SUITE 800  
JACKSONVILLE, FLORIDA 32204**

Hereinafter referred to as, the "Company". Such report of examination is herewith respectfully submitted.

## **SCOPE OF EXAMINATION**

This examination covered the period of January 1, 2005, through December 31, 2009. The Company was last examined by representatives of the Florida Office of Insurance Regulation (Office) as of December 31, 2004. This examination commenced with planning at the Office on April 28, 2010, to April 30, 2010. The fieldwork commenced on May 4, 2010, and concluded as of August 6, 2010.

This financial examination was a statutory financial examination conducted in accordance with the Financial Condition Examiners Handbook, Accounting Practices and Procedures Manual and annual statement instructions promulgated by the NAIC as adopted by Rules 69O-137.001(4) and 69O-138.001, Florida Administrative Code, with due regard to the statutory requirements of the insurance laws and rules of the State of Florida.

The Financial Condition Examiners Handbook requires that the examination be planned and performed 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. An examination also includes assessing the principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation and management's compliance with Statutory Accounting Principles and annual statement instructions when applicable to domestic state regulations.

All accounts and activities of the Company were considered in accordance with the risk-focused examination process.

This report of examination is confined to significant adverse findings, a material change in the financial statements or other information of regulatory significance or requiring regulatory action. The report comments on matters that involved departures from laws, regulations or rules, or which were deemed to require special explanation or description.

## **SUMMARY OF SIGNIFICANT FINDINGS**

### **Current Exam Findings**

The following is a summary of material adverse findings, significant non-compliance findings, or material changes in the financial statements noted during this examination.

### **Holding Company System Registration Statement**

The Company did not disclose the intercompany pooling agreement in its holding company system registration statement filing and therefore was not in compliance with Rule 69O-143.046, (2) (c) 6, Florida Administrative Code.

### **Prior Exam Findings**

The following is a summary of significant adverse findings contained in the Office's prior examination report as of December 31, 2004, along with resulting action taken by the Company.

### **General**

The Company's MGA agreements did not contain the maximum annual premium volume as required by Section 626.7451(6) (a), Florida Statutes. **Resolution:** The Company amended the MGA agreements to comply with Section 626.7451(6) (a), Florida Statutes.

The Company maintained a custodial agreement with Brown Brothers Harriman & Co. which did not contain terms required in Rule 69O-143.042(2), (a)(b)(e)(f)(h)(i)(k)(l)(n) and (o), Florida Administrative Code. **Resolution:** The Company amended the custodial agreement to comply with Rule 69O-143.042(2), Florida Administrative Code.

### **Agent's Balances**

The Company was not timely accounting for non-admitted Agent's balances. **Resolution:** The Company changed its policies and procedures to be in compliance with Rule 69O-138.024(3), Florida Administrative Code.

### **Provision for Reinsurance**

The Company letters of credit did not qualify for the Company to take credit for unauthorized reinsurance and therefore an adjustment was made to increase the Provision for reinsurance account by \$3,606,150 and to decrease the Surplus account for the same amount. Also, the Company recorded an unauthorized reinsurer, Zurich Specialties as authorized. An adjustment was made to increase the Provision for reinsurance account in the amount of \$73,000 to account for unsecured reinsurance and corresponding decrease to Surplus. The total adjustment to this account was \$3,679,150. **Resolution:** The Company modified its policies and procedures to comply with Rule 69O-144.005, Florida Administrative Code and Section 624.610(4), Florida Statutes.

## **Aggregate Write-ins for Other Than Invested Assets (Fronting Fee Receivable) and Ceded Reinsurance Premiums Payable**

The Company reported \$3,625,336 for the asset account, Aggregate write-ins for other than invested assets – fronting fee receivables and \$4,180,932 for the liability account, Ceded reinsurance premiums payable on a gross basis in the 2004 annual statement. During the examination, supporting documentation for these accounts disclosed that the receivables were offset against the corresponding payable balances. The Company's annual statement presentation was inconsistent with the accounting treatment. In 2005, the receivable and corresponding payable balances were reported on a net basis in the annual statement in accordance with the offset clause in the reinsurance contracts. The contracts were in run-off in 2006. **Resolution:** The Company reported on a net basis receivable and payable balances in subsequent quarterly and annual statement filings until the run-off was completed.

## **HISTORY**

### **General**

The Company was incorporated in Florida on May 20, 1987, and commenced business on June 8, 1987, as Anesthesiologists Professional Assurance Company. The Company was a member of an insurance holding company system as defined by Rule 690-143.045(3), Florida Administrative Code.

The Company was only authorized to transact Medical Malpractice (occurrence and claims made) on a direct basis in Florida as of December 31, 2009. The Company was also authorized to reinsure and assume premiums for Commercial Multi-peril, Accident and Health, Workers' Compensation and Other Liability lines of business.



## **Dividends to Stockholders**

In accordance with Section 628.371, Florida Statutes, the Company declared and paid dividends to its stockholder in 2009 in the amounts of \$2,200,000.

## **Capital Stock and Capital Contributions**

As of December 31, 2009, the Company's capitalization was as follows:

Number of authorized common capital shares	5,000,000
Number of shares issued and outstanding	5,000,000
Total common capital stock	\$5,000,000
Par value per share	\$1.00

Control of the Company was maintained by its parent, FPIC Insurance Group (FIG), who owned 100% of the stock issued by the Company.

## **Surplus Debentures**

The Company did not have any surplus debentures.

## **CORPORATE RECORDS**

The recorded minutes of the shareholder, Board of Directors (Board), and certain internal committees were reviewed for the period under examination. The recorded minutes of the Board adequately documented its meetings and approval of Company transactions and events in accordance with Section 607.1601, Florida Statutes, including the authorization of investments as required by Section 625.304, Florida Statutes.

## **Conflict of Interest**

The Company adopted a policy statement requiring annual disclosure of conflicts of interest in accordance with the NAIC Financial Condition Examiners Handbook adopted by Rule 69O-138.001, Florida Administrative Code.

## **MANAGEMENT AND CONTROL**

### **Management**

The annual shareholder meeting for the election of directors was held in accordance with Sections 607.1601 and 628.231, Florida Statutes. Directors serving as of December 31, 2009, were:

#### **Directors**

<b>Name and Location</b>	<b>Principal Occupation</b>
John Ray Byers Jacksonville, Florida	Chairman of the Board, FPIC Insurance Group
Robert Elwood White, Jr. Jacksonville, Florida	President, FPIC
Charles Divita, III St. John's County, Florida	Chief Financial Officer, FIG
T. Malcom Graham Jacksonville, Florida	General Counsel and Secretary, FIG
Louis Vincent Sicilian Jacksonville, Florida	Sr. Vice President/Treasurer, FPIC

The Board in accordance with the Company's bylaws appointed the following senior officers:

#### **Senior Officers**

<b>Name</b>	<b>Title</b>
Robert E. White, Jr.	President
Robert L. Wortelboer, Jr.	Secretary
Louis V. Sicilian	Treasurer

The Board also appointed several internal committees in accordance with Section 607.0825, Florida Statutes. Following were the principal internal committees and their members as of December 31, 2009:

**Executive Committee**

Kenneth M. Kirschner<sup>1</sup>  
John K. Anderson, Jr.  
Robert O. Baratta, M.D.  
John R. Byers  
Joan D. Ruffier

<sup>1</sup> Chairman

**Audit Committee**

John K. Anderson, Jr. <sup>1</sup>  
Terence P. McCoy, M.D.  
John G. Rich  
Joan D. Ruffier

**Investment Committee**

Terence P. McCoy, M.D. <sup>1</sup>  
John K. Anderson, Jr.  
M.C. Harden III  
Kenneth M. Kirschner  
David M. Shapiro, M.D.

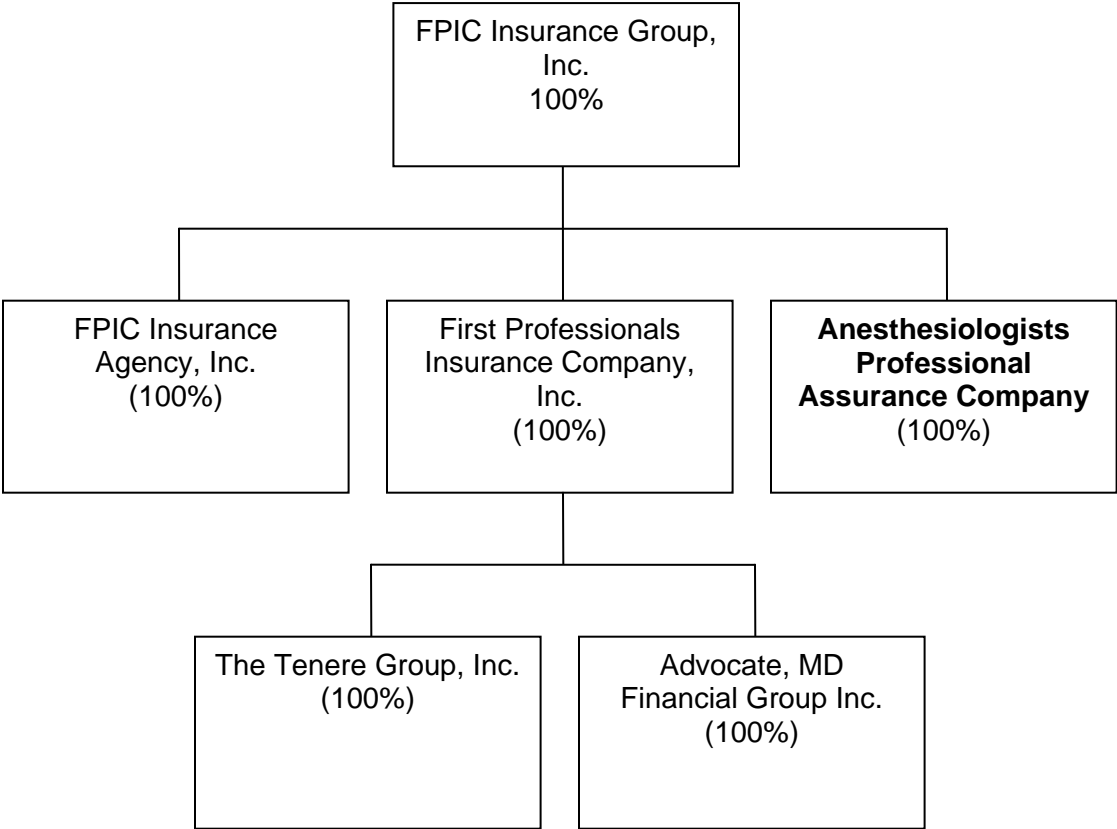
**Affiliated Companies**

The Company was a member of an insurance holding company system as defined by Rule 69O-143.045(3), Florida Administrative Code.

A simplified organizational chart as of December 31, 2009, reflecting the holding company system, is shown below. Schedule Y of the Company's 2009 annual statement provided a list of all related companies of the holding company group.

**ANESTHESIOLOGISTS PROFESSIONAL ASSURANCE COMPANY  
ORGANIZATIONAL CHART**

**DECEMBER 31, 2009**



The following agreements were in effect between the Company and its affiliates:

### **Management Services Agreement**

The Company had an agreement with FPIC Insurance Group, Inc. (FIG), the parent, at December 31 2009, whereby FIG provided management services to the Company. The agreement called for the Company to pay a monthly fee due on the first day of each month of an estimate one hundred and fifteen percent (115%) of the actual costs incurred by FIG as a result of providing the services to the Company.

### **Tax Allocation Agreement**

The Company, along with its parent and affiliates, filed a consolidated federal income tax return. As of December 31, 2009, the method of allocation between the Company, its parent, and affiliates, was that each member of the affiliated group would bear its appropriate portion of the liability that each would incur if they filed income tax returns separately. The Company amended the tax allocation agreement on June 3, 2005, to reference specific affiliates as having been included in the agreement since March 17, 1999. There was a second amendment effective November 13, 2009, to include additional affiliates.

### **Investment Advisor Agreement**

The Company maintained an investment advisor agreement with the parent, FIG, effective December 18, 1996.

### **Inter-company Pooling Agreement**

The Company was a participant with its U.S. insurance company affiliates in an Inter-Company Pooling Agreement whereby each member ceded 100% of its net written premium, after deducting premiums ceded to non-affiliates and one non-participating affiliate. The Company then allocated to itself and the participating affiliates a pro-rata portion of the premiums, losses, and administrative expenses based on the participant's proportionate surplus to total surplus of the participants prior to pooling. This agreement was not disclosed in the holding company statement, filed March 10, 2010, as required by Rule 69O-143.046(2)(c) 6, Florida Administrative Code.

### **Agency Agreement**

The Company had an Agency Agreement with its parent, FIG, effective December 31, 1996. The agreement stated that FIG would solicit sales of and sell certain insurance policies issued by the Company.

## **FIDELITY BOND AND OTHER INSURANCE**

The Company maintained fidelity bond coverage through its parent up to \$2,500,000 with a deductible of \$100,000. The Company was listed as a named insured on the fidelity bond with the parent and the affiliated companies. This insurance was considered adequate according to NAIC guidelines.

The Company also had D&O coverage up to \$35,000,000.

## **PENSION, STOCK OWNERSHIP AND INSURANCE PLANS**

The Company had no employees and therefore, it did not have a pension, stock, or insurance plan.

## **TERRITORY AND PLAN OF OPERATIONS**

The Company was authorized to transact insurance in the following states:

Florida	Alabama	Arizona	Georgia
Illinois	Indiana	Kentucky	Maryland
Michigan	Mississippi	New Jersey	North Carolina
Ohio	Pennsylvania	Tennessee	Texas
Virginia			

### **Treatment of Policyholders**

The Company established procedures for handling written complaints in accordance with Section 626.9541(1) (j), Florida Statutes.

## COMPANY GROWTH

### Profitability of Company

The following table shows the profitability trend (in dollars) of the Company for the period of examination, as reported in the filed annual statements.

	2009	2008	2007	2006	2005
Premiums Earned	10,511,655	13,963,073	19,547,648	19,826,742	16,836,008
Net Underwriting Gain/(Loss)	1,171,412	555,062	4,225,815	1,989,608	537,008
Net Income	3,361,647	2,506,323	6,251,703	3,004,918	2,001,847
Total Assets	76,985,099	82,562,700	90,088,943	96,200,073	83,862,276
Total Liabilities	53,795,699	60,526,741	63,593,660	70,661,471	63,131,422
Surplus As Regards Policyholders	23,189,400	22,035,959	26,495,283	25,538,602	20,730,584

## LOSS EXPERIENCE

There were no significant changes to the Company's loss experience.

## REINSURANCE

The reinsurance agreements reviewed complied with NAIC standards with respect to the standard insolvency clause, arbitration clause, transfer of risk, reporting and settlement information deadlines.

### Assumed

The Company assumed risk through its inter-company pooling agreement.



## **Ceded**

The Company ceded risk under reinsurance arrangements, primarily on an excess of loss basis to authorized and unauthorized reinsurers under various contracts that cover individual risks, or entire classes of business. The unauthorized reinsurers were covered by letters of credit in compliance with Rule 69O-144.005, Florida Administrative Code.

The reinsurance contracts were reviewed by the Company's appointed actuary and were utilized in determining the ultimate loss opinion.

## **ACCOUNTS AND RECORDS**

The Company maintained its principal operational offices in Jacksonville, Florida, where this examination was conducted.

An independent CPA audited the Company's statutory basis financial statements annually for the years 2005, 2006, 2007, 2008 and 2009, in accordance with Section 624.424(8), Florida Statutes. Supporting work papers were prepared by the CPA as required by Rule 69O-137.002, Florida Administrative Code.

The Company's accounting records were maintained on a computerized system. The Company's balance sheet accounts were verified with the line items of the annual statement submitted to the Office.

The Company and non-affiliates had the following agreements:

## **Custodial Agreement**

The Company had a standard custodial agreement in place with Brown Brothers Harriman & Co. to perform investment custodian duties. The agreement was in compliance with Rule 690-143.042, Florida Administrative Code.

## **Independent Auditor Agreement**

The Company entered into an independent auditor agreement with PricewaterhouseCoopers for annual statutory audit services for the year ending December 31, 2009.

## **Information Technology Report**

ParenteBeard performed an evaluation of the information technology and computer systems of the Company. Results of the evaluation were noted in the Information Technology Report provided to the Company.

## **STATUTORY DEPOSITS**

The following securities were deposited with the State of Florida as required by Section 624.411, Florida Statutes, and with various state officials as required or permitted by law:

State	Par Value	Market Value
FL	<u>\$3,687,666</u>	<u>\$3,810,891</u>
TOTAL FLORIDA DEPOSITS	\$3,687,666	\$3,810,891
GA	\$ 25,002	\$ 25,002
NC	256,908	275,918
TX	256,114	263,508
VA	<u>256,114</u>	<u>263,508</u>
TOTAL OTHER DEPOSITS	<u>\$ 794,138</u>	<u>\$ 827,936</u>
TOTAL SPECIAL DEPOSITS	<u>\$4,481,804</u>	<u>\$ 4,638,827</u>

## **FINANCIAL STATEMENTS PER EXAMINATION**

The following pages contain financial statements showing the Company's financial position as of December 31, 2009, and the results of its operations for the year then ended as determined by this examination. Adjustments made as a result of the examination are noted in the section of this report captioned, "Comparative Analysis of Changes in Surplus."

**ANESTHESIOLOGISTS PROFESSIONAL ASSURANCE COMPANY**  
**Assets**

**DECEMBER 31, 2009**

	<b>Per Company</b>	<b>Examination Adjustments</b>	<b>Per Examination</b>
Bonds	\$56,234,761		\$56,234,761
Stocks:			
Common	68,749		68,749
Cash:	9,398,561		9,398,561
Agents' Balances:			
Uncollected premium	2,267,068		2,267,068
Deferred premium	2,748,299		2,748,299
Reinsurance:			
Recoverable	4,062,537		4,062,537
Other amounts receivable	67,633		67,633
Interest and dividend			
income due & accrued	652,176		652,176
Net deferred tax asset	1,443,250		1,443,250
Guaranty funds receivable or on deposits	30,566		30,566
Aggregate write-in for			
other than invested assets	11,499		11,499
Totals	<u>\$76,985,099</u>	<u>\$0</u>	<u>\$76,985,099</u>

**ANESTHESIOLOGISTS PROFESSIONAL ASSURANCE COMPANY**  
**Liabilities, Surplus and Other Funds**

**DECEMBER 31, 2009**

	Per Company	Examination Adjustments	Per Examination
Losses	\$21,682,107		\$21,682,107
Reinsurance payable on paid losses and loss adj exp	2,782,164		2,782,164
Loss adjustment expenses	12,483,855		12,483,855
Commissions payable	130,310		130,310
Other expenses	14		14
Taxes, licenses and fees	24,121		24,121
Unearned premium	8,438,005		8,438,005
Advance premium	430,796		430,796
Ceded reinsurance premiums payable	1,396,521		1,396,521
Remittances and items not allocated	125,804		125,804
Provisions for reinsurance	5,053,983		5,053,983
Payable to parent, subsidiaries and affiliates	1,173,851		1,173,851
Aggregate write-ins for liabilities	74,168		74,168
Total Liabilities	\$53,795,699	\$0	\$53,795,699
Common capital stock	\$5,000,000		\$5,000,000
Gross paid in and contributed surplus	8,000,000		8,000,000
Unassigned funds (surplus)	10,189,400		10,189,400
Surplus as regards policyholders	\$23,189,400		\$23,189,400
Total liabilities, surplus and other funds	\$76,985,099	\$0	\$76,985,099

**ANESTHESIOLOGISTS PROFESSIONAL ASSURANCE COMPANY**  
**Statement of Income**

**DECEMBER 31, 2009**

**Underwriting Income**

Premiums earned		\$10,511,655
	<b>Deductions:</b>	
Losses incurred		2,582,410
Loss expenses incurred		3,342,310
Other underwriting expenses incurred		3,415,523
Aggregate write-ins for underwriting deductions		0
Total underwriting deductions		\$9,340,243
Net underwriting gain or (loss)		\$1,171,412

**Investment Income**

Net investment income earned		\$2,630,322
Net realized capital gains or (losses)		83,298
Net investment gain or (loss)		\$2,713,620

**Other Income**

Net gain or (loss) from agents' or premium balances charged off		(\$150,576)
Finance and service charges not included in premiums		35,875
Aggregate write-ins for miscellaneous income		0
Total other income		(\$114,701)
Net income before dividends to policyholders and before federal & foreign income taxes		\$3,770,331
Dividends to policyholders		0
Net Income, after dividends to policyholders, but before federal & foreign income taxes		\$3,770,331
Federal & foreign income taxes		408,684
Net Income		\$3,361,647

**Capital and Surplus Account**

Surplus as regards policyholders, December 31 prior year		\$22,035,959
Net Income		\$3,361,647
Net unrealized capital gains or losses		(1,660)
Change in net deferred income tax		(693,302)
Change in non-admitted assets		880,938
Change in provision for reinsurance		(194,181)
Change in excess statutory over statement reserves		0
Dividends to Stockholders		(2,200,000)
Aggregate write-ins for gains and losses in surplus		0
Examination Adjustment		0
Change in surplus as regards policyholders for the year		\$1,153,442
Surplus as regards policyholders, December 31 current year		\$23,189,401

A comparative analysis of changes in surplus is shown below.

**ANESTHESIOLOGISTS PROFESSIONAL ASSURANCE COMPANY**  
**Comparative Analysis of Changes in Surplus**

**DECEMBER 31, 2009**

The following is a reconciliation of Surplus as regards policyholders between that reported by the Company and as determined by the examination.

Surplus as Regards Policyholders December 31, 2009, per Annual Statement	\$23,189,400
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	<u>PER COMPANY</u>	<u>PER EXAM</u>	<u>INCREASE (DECREASE) IN SURPLUS</u>
ASSETS:			
No Adjustment			
LIABILITIES:			
No Adjustment			
Net Change in Surplus:			<u>0</u>
Surplus as Regards Policyholders December 31, 2009, Per Examination			<u><u>\$23,189,400</u></u>

## COMMENTS ON FINANCIAL STATEMENTS

### Liabilities

#### Losses and Loss Adjustment Expenses \$34,165,962

An outside actuarial firm appointed by the Board of Directors, rendered an opinion that the amounts carried in the balance sheet as of December 31, 2009, made a reasonable provision for all unpaid loss and loss expense obligations of the Company under the terms of its policies and agreements.

The Office engaged an independent actuarial firm, **AMI Risk Consultants**, to review the Losses and Loss Adjustment Expenses Reserve carried in the Company's balance sheet as of December 31, 2009 and was in concurrence with this opinion.

#### Capital and Surplus

The amount reported by the Company of \$23,189,400 exceeded the minimum \$5,234,160 required by Section 624.408, Florida Statutes.



## **SUMMARY OF RECOMMENDATIONS**

### **Holding Company System Registration Statement**

We recommend the Company file an amended holding company system registration statement disclosing the intercompany pooling agreement in accordance with Rule 690-143.046, Florida Administrative Code.

## CONCLUSION

The insurance examination practices and procedures as promulgated by the NAIC have been followed in ascertaining the financial condition of **Anesthesiologists Professional Assurance Company** as of December 31, 2009, consistent with the insurance laws of the State of Florida.

Per examination findings, the Company's Surplus as regards policyholders was \$23,189,400, in compliance with Section 624.408, Florida Statutes.

In addition to the undersigned, Mark Laccetti, CPA, Examiner In Charge, John Romano, CPA, Participating Examiner, Steven Dioguardi, Participating Examiner, Michelle Blau, CPA, Participating Examiner, Andrew Wittig, CISA, IT Consultant and Gail Flannery, FCAS, MAAA, Consulting Actuary representing ParenteBeard LLC participated in the examination.

Respectfully submitted,

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Mary James, CFE, CPM  
Chief Examiner  
Florida Office of Insurance Regulation