

THE COMMONWEALTH OF MASSACHUSETTS

**OFFICE OF CONSUMER AFFAIRS AND BUSINESS
REGULATION**

Division of Insurance

Report on the Statutory Examination of the

Massachusetts Medical Malpractice Reinsurance Plan

Westborough, Massachusetts

As of December 31, 2006

EMPLOYERS ID NUMBER: 04-3290451

For Informational Purposes Only

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May 9, 2008

Honorable Nonnie S. Burnes
Commissioner of Insurance
Commonwealth of Massachusetts
Division of Insurance
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Honorable Commissioner:

Pursuant to your instructions and in accordance with Section 10 of Chapter 330 of the Acts of 1994 of the Massachusetts Legislature, and as promulgated in Article XV of the Plan of Operation of the Massachusetts Medical Malpractice Reinsurance Plan, an examination has been made of the financial condition and affairs of the

MASSACHUSETTS MEDICAL MALPRACTICE REINSURANCE PLAN

At its home office located at 95A Turnpike Road, Westborough, Massachusetts, 01581. The following report thereon is respectfully submitted.

SCOPE OF EXAMINATION

The Massachusetts Medical Malpractice Reinsurance Plan (hereinafter referred to as “the Plan” or “MMMRP”) was last examined for the year ended December 31, 2003 by the Massachusetts Division of Insurance (the “Division”). This examination covers the three-year period from January 1, 2004 through December 31, 2006, including any material transactions and/or events occurring subsequent to the examination date and noted during the course of this examination.

The examination was conducted in accordance with standards established by the Financial Condition (E) Committee of the NAIC as well as with the requirements of the NAIC Financial Condition Examiners Handbook, the examination standards of the Division and with Massachusetts General Laws. The principal focus of the examination was 2006 activity however transactions both prior and subsequent thereto were reviewed as deemed appropriate.

In addition to a review of the financial condition of the Plan, the examination included a review of the Plan’s business policies and practices, corporate records, conflict of interest disclosure statements, fidelity bond and other insurance, employees’ pension and benefits plans, disaster recovery plan, and other pertinent matters to provide reasonable assurance that the Plan was in compliance with applicable laws, rules and regulations. In planning and conducting the examination, consideration was given to the concepts of materiality and risk and examination efforts were directed accordingly.

The Plan is currently audited annually by Saslow, Lufkin & Buggy, LLP, an independent Certified Public Accounting firm. Prior to 2005, the Plan was audited by Ernst & Young LLP. For each of the three years covered under this examination, the independent auditors expressed an unqualified opinion as to the conformity of the Plan’s financial statements for the years ended December 31, 2004, 2005, and 2006. A review and use of the Certified Public Accountants’ work papers were made to the extent deemed appropriate and effective.

The Tillinghast actuarial arm of Towers Perrin performs an independent actuarial analysis of the Plan’s loss and allocated loss adjustment expense liabilities each year. This independent report was also reviewed and relied upon where deemed appropriate and effective.

HISTORY

General

The MMMRP is a nonprofit entity established on January 11, 1995 under Section 10, Chapter 330 of the Acts of 1994, as amended by Chapter 372 of the Acts of 1998, (the “Act”) for the purpose of making available reinsurance to the voluntary medical malpractice insurance market in covering certain health care providers in the Commonwealth of Massachusetts. This legislation required the establishment of a “Plan of Operation” which was submitted to the Commissioner of Insurance (the “Commissioner”) and approved on August 1, 1996.

The Plan’s enabling legislation as amended requires every medical malpractice insurer to make available to every health care provider the primary medical malpractice insurance coverage as

defined in the Plan's Rules of Operation. Medical malpractice insurers may cede primary medical malpractice insurance policies to the Plan. Membership in the Plan is required for all insurers licensed, admitted, authorized or approved to write liability other than auto insurance risks within the Commonwealth of Massachusetts on a direct basis. The Plan is authorized by its enabling statute to recoup any annual net losses incurred by the Plan by assessment of the members.

The MMMRP has adopted "Rules of Operation" (the "Rules") in accordance with the Plan of Operation, in order to carry out the provisions of the Plan of Operation. The purpose of the Rules is to provide the detailed instructions needed to operate the MMMRP. The Rules supplement the Plan of Operation and contain instructions to members concerning the processing of policies ceded to the Plan. The Rules contain specific guidance designed to regulate the conduct of members and provide information concerning the responsibilities of all members and their participation in the results of the Plan. The Rules assign necessary responsibility to both the members and the Plan staff and define their duties.

Growth of Plan

The growth of the Plan over the previous five year period ending December 31, 2006 is shown in the following table which was prepared from the Plan's filed statutory annual statements.

Year Ending	Premium Income	Admitted Assets	Total Liabilities	Surplus
2006	\$10,472,184	\$72,340,703	\$95,049,632	(\$22,708,929)
2005	10,816,465	61,803,914	84,910,371	(23,106,457)
2004	11,204,983	33,209,701	64,618,288	(31,408,587)
2003	7,530,499	25,676,403	47,882,708	(22,206,305)
2002	2,501,874	8,876,208	23,514,209	(14,638,001)

MANAGEMENT

The MMMRP shall perform its functions under the Plan of Operation and in accordance with the enabling Act. Amendments to the Plan of Operation may be suggested by any medical malpractice insurer and may be made by majority vote of the entire Governing Committee, subject to the approval of the Commissioner.

The MMMRP is administered by a Governing Committee appointed by the Massachusetts Governor for terms of three years, and shall consist of five members representing medical malpractice insurers. At least three members of the Governing Committee shall be representatives of any domestic medical malpractice insurer(s), and at least one member shall be a representative of any non-domestic medical malpractice insurer. The Governing Committee shall elect a Chairman and Secretary from among its membership as well as other officers as it deems appropriate.

The Governing Committee shall authorize, review and approve all reports on administration of the Plan including audited financial reports, reports of the subcommittees, and all other material matters; establish and review procedures, including limitations on allowable investments and for

the investment of available funds; establish premium rates for coverage reinsured through the Plan; determine the earned premiums, credit allowances, the expenses of the Plan administration, and the incurred losses for each prior policy year; determine if an assessment is necessary to recoup any net loss for each fiscal year; determine if any technical corrections or amendments to the Act should be recommended to the Legislature and; review, consider, and act on any matters deemed to be necessary and proper for the administration of the Plan within the powers allowed by the Act. The Governing Committee shall be granted all powers and duties necessary to carry out the operation of the Plan not otherwise listed and carry out all operating functions of the Plan unless expressly delegated by the Governing Committee. The Governing Committee may delegate or contract for administration of some or all of its duties or the operation of the Plan, however they shall retain all executive powers established by the Act. The Governing Committee is responsible for hiring the employees of the Plan and for appointing legal, actuarial, and other subcommittees to provide technical assistance in the operation of the Plan.

The Governing Committee shall meet at least quarterly and meetings shall be conducted in accordance with the open meeting laws as found in Massachusetts General Laws Chapter 30A, Section 11A ½. Minutes of the proceedings of each Governing Committee meeting shall be recorded. Original records shall be retained by the Secretary of the Governing Committee, and a copy shall be provided to the Commissioner. The votes of the Governing Committee shall be on a one person, one vote basis. A majority of the Governing Committee members shall constitute a quorum for the transaction of business.

Governing Committee Members

The following individuals were members of the Governing Committee as of December 31, 2006:

<u>Name</u>	<u>Affiliation</u>
William T. McGrail, JD, MBA, CPCU	Chairman and President of Massachusetts Medical Malpractice Reinsurance Plan
John S. Coldiron, MD	Retired, Newport Hospital; Massachusetts Hospital Association; and former member of the Risk Management Committee of Medical Professional Mutual Insurance Company (ProMutual)
Peter T. Robertson, Esquire	Attorney at Law and member of the Board of Directors of ProMutual
Gerald J. Cassidy	Retired CEO, Healthcare Underwriters Mutual Insurance Company (a non-domestic medical malpractice insurer no longer authorized to write business in Massachusetts)
Jill A. Gold	Former Sr. Vice-president of Frontier Insurance Company (a non-domestic medical malpractice insurer currently in regulatory rehabilitation): Principal, Telemon Insurance Network

Article VIII of the Plan of Operation provides that the Governing Committee may appoint subcommittees and their members as it deems necessary. Each subcommittee shall have at least one Governing Committee member and such other representation of medical malpractice insurers as the Governing Committee shall establish. Minutes of the proceedings of each subcommittee shall be maintained by a secretary appointed from the membership of the subcommittee. The initial subcommittees included the Compliance Committee, External Relations Committee, Investment Committee, and Operations Committee. Since its inception, the External Relations Committee was dissolved into the Operations Committee, which not only assumed the responsibilities of the External Relations Committee, but also assumed the responsibilities of an Audit Committee.

Operations and Audit Committee

The principal purpose of the Operations and Audit Committee is to assist the Governing Committee in fulfilling its responsibility to oversee the Plan’s accounting and financial reporting processes and audits of the Plan’s financial statements. The Operations and Audit Committee is directly responsible for the appointment, compensation and oversight of the work performed by the external auditors. The Operations and Audit Committee shall be comprised of not less than two members of the Governing Committee and a least one other member that is not a member of the Governing Committee.

The following were members of the Operations and Audit Committee as of December 31, 2006:

<u>Name</u>	<u>Affiliation</u>
John S. Coldiron, MD	Committee Chairman and Governing Committee Representative
Gerald J. Cassidy	Governing Committee Representative
Michael J. Sabbagh	Former Commissioner of Insurance, Commonwealth of Massachusetts
Peter F. Kiely (Audit Committee only)	Chairman of the Investment Committee and former CIO, Eaton Vance

Compliance Committee

In accordance with the Plan of Operation, the mission of the Compliance Committee is to recommend to the Governing Committee and implement thereafter minimum standards with respect to service, reserving, and overall handling of claims on behalf of the Plan, including such measures as are deemed necessary to assure the earliest and most accurate estimation of the Plan’s future liabilities for incurred claims and their associated expenses. The Compliance Committee will advise the Governing Committee with respect to claim and underwriting disputes of any kind, and will establish and implement methods of auditing the claims, risk management and underwriting practices of ceding members to insure a quality of service equal to the members own voluntary business, as well as compliance with the Plan and Rules of Operation.

The following were members of the Compliance Committee as of December 31, 2006:

<u>Name</u>	<u>Affiliation</u>
Peter T. Robertson	Committee Chairman and member of Governing Committee
Jill A. Gold	Governing Committee Representative
Philip Carling, MD	Practicing physician and former medical claims reviewer for ProMutual
Geraldine M. Foley	Practicing attorney, former practicing nurse, and former claims adjuster for ProMutual
Richard W. Brewer	Chief Executive Officer, ProMutual
Bonnie Bower, DDS	Practicing Dentist and former Board Director, ProMutual

Investment Committee

In accordance with the Plan of Operation, the mission of the Investment Committee is to prepare and administer a Statement of Investment Guidelines outlining appropriate investment vehicles for all Plan funds for recommendation to the Governing Committee and fulfill other responsibilities as deemed appropriate by the Governing Committee.

The following were members of the Investment Committee as of December 31, 2006:

<u>Name</u>	<u>Affiliation</u>
Peter F. Kiely, Chairman	Retired CIO, Eaton Vance
John S. Coldiron, MD	Governing Committee Representative
John W. Tympanick	President and CEO, Liquor Liability Joint Underwriting Association
James R. Bacon	CEO Woodlands Financial, LLC; retired Managing Director, International Business, Putnam Investments

Officers

The Plan has only three permanent employees that manage and administer the day-to-day operations of the Plan. Mr. William T. McGrail, serves as the Plan's President and Chief Executive Officer and holds the title of Chairman of the Governing Committee. Mr. McGrail has been with the Plan since its inception. The Plan has established and filled the position of Chief Financial Officer; however, it should be noted that this is a part-time position. The Plan employs one additional part-time person who holds the title of Director of Administration.

Conflict of Interest

As noted during the previous examination, the Plan lacked a formal conflict of interest policy that required annual signed disclosure statements by all committee members, officers, and key employees/interested parties. A formal recommendation to adopt a more comprehensive conflict of interest policy was included in the prior examination report. The Plan acted upon this recommendation and approved a formal "Conflicts of Interest Policy" at the September 8, 2005 Governing Committee meeting. Included as part of the policy is a requirement that each officer, Governing Committee Member, Committee Member, and key employee annually sign a conflict of interest disclosure statement. It has been noted during this examination that the conflicts of interest policy has not been fully followed. As a result of this finding, the Plan has provided signed disclosure statements for 2008. See the Comment and Recommendations section of this Report for additional details.

Plan Records

The enabling statute, Plan of Operation, Rules of Operation, and minutes of the Governing Committee and all subcommittee meetings were reviewed. Provisions of the Plan of Operation require each Committee to elect or appoint a Secretary from its membership, and the minutes of all meetings shall be recorded. Although it appears that minutes were kept for all meetings, there does not appear to be an appointed or elected Secretary for each committee. Minutes are transcribed by an administrative employee and although most are signed, some are not and some sub-committee minutes are signed by an attending officer who is not a member of the committee.

EMPLOYEE WELFARE AND BENEFIT PLANS

As of December 31, 2006, the Plan provided certain benefits to its employees, the associated cost thereof are entirely provided for by the Plan. The benefits include a 401K/Profit Sharing Plan; health and dental programs including supplemental coverage at retirement; and life insurance, accidental death and dismemberment and long-term disability coverage.

FIDELITY BOND AND OTHER INSURANCE

The Plan appears to maintain adequate insurance coverage's from authorized insurers for the period covered by this examination. The plan has in place a Business Owners Policy covering commercial general liability risks, property coverage, employee dishonesty and forgery, and ERISA Welfare/Pension coverage.

TERRITORY AND PLAN OF OPERATION

The Plan does not write direct business. The Plan was established on January 11, 1995 under Section 10, Chapter 330 of the Acts of 1994, as amended by Chapter 372 of the Acts of 1998, for the purpose of making available reinsurance to the voluntary medical malpractice insurance market in covering certain health care providers in the Commonwealth of Massachusetts. Massachusetts prohibits licensed insurers from refusing coverage ("take all comers" law) with

respect to medical malpractice insurance and as such, the Plan only assumes business and premiums for medical malpractice risks in Massachusetts and accepts all cessions.

The Plan only accepts risks from “Members”. “Medical Malpractice Insurers” are defined by the Plan of Operation as “any corporation that is licensed, admitted, authorized or approved to write liability other than auto insurance risks within the Commonwealth on a direct basis”. All Medical Malpractice Insurers are Members of the Plan and are categorized as either “active or inactive”. An “inactive member” is defined as any medical malpractice insurer which did not, in fact, issue any medical malpractice insurance policies in Massachusetts during the most recent calendar year and which is not the issuing company on any outstanding Massachusetts medical malpractice insurance policies. An “active member” is defined as a Medical Malpractice Insurer that does not qualify for inactive status. Policy coverage limits assumed shall not exceed \$2,000,000 per occurrence and \$6,000,000 in the aggregate for an individual or \$2,000,000 per occurrence and \$20,000,000 in the aggregate for a facility.

The Massachusetts medical malpractice insurance market is limited in terms of the number of Companies willing to write this line of business. The principal writer in the State is Medical Professional Mutual Insurance Company, or “ProMutual”. Not all “members” that do write this line of business cede policies to the Plan and, in fact, only two companies ceded premium to the Plan during 2006. ProMutual ceded \$8.55 million to the plan in 2006 which represents over 92% of the Plan’s 2006 assumed premium. In 2005 and 2004, total premium assumed from ProMutual amounted to \$8.82 million and \$7.48 million respectively, or approximately 88% and 80% of the total Plan’s assumed premium, respectively.

Obligations of Members

All medical malpractice insurers as a condition of membership in the Plan shall be required to meet standards for treatment of ceded risks, claim practices and other criteria as established by the Governing Committee. Each member shall pay an annual fee of not more than \$500 dollars which shall be credited to the expense of operating the Plan. Each member is obligated to remit premiums for risks ceded and to pay assessments levied against it for losses or expenses or any combination thereof incurred under policies reinsured through the Plan; to pay assessments levied against it for the operating expenses of the Plan; to pay penalties levied against it under any rules adopted by the Governing Committee; and to submit in a timely and accurate fashion all statistics, records, and accounting required by the Plan.

A member company shall provide the same level and type of service, and in no event less service than the minimal standard established by the Governing Committee to policies reinsured through the Plan as they provide to policies issued voluntarily. Every member shall be bound by the Plan of Operation and all rules adopted pursuant to the Plan of Operation.

The fee for active members is \$500 dollars annually and for inactive members is \$200 dollars annually.

Amended Rules of Operations

Under the Rules of Operation (“Rule 4”) the Plan has the ability to assess member companies for Plan’s reserve deficiencies. The assessment methodology is based on two formulas, one of which is based on a members plan participation ratio, and the other on a step allocation, or weighting percentage, for each policy year. On June 17, 2005, the Governing Committee voted to modify “Rule 4” of the Rules of Operation, changing the assessment method formula used to assess member companies.

In order to decrease the Plan’s deficit, the weighting percentages applied to the deficit attributed to each policy year were amended to assess the most current four policy years, as illustrated below:

<u>Policy Year Age</u>	<u>Previous Weighting %</u>	<u>Weighting % Effective 2005</u>
1 st year	0%	25%
2 nd year	0%	50%
3 rd year	25%	75%
4 th year	50%	100%
5 th year	75%	100%
6 th year & beyond	100%	100%

This change, combined with a change in reserving methodology, resulted in an accelerated assessment formula that increased member company assessments by approximately \$20 million dollars, from \$3.7 million dollars to \$23.6 million dollars. This amendment was submitted to the Commissioner and subsequently approved on November 3, 2005. See the “Notes to Financial Statements” section of this report for additional details.

ACCOUNTS AND RECORDS

The MMMRP maintains its accounts and records electronically through the use of various integrated software programs and information reporting systems. The MMMRP uses an automated general ledger system capable of producing various financial and management reports. The trial balances were reconciled and traced from the general ledger and supporting documents to the 2006 Annual Statement as filed with the Division. No significant exceptions were noted. The internal control structure was discussed with management and through a review of the work performed by the Plan’s independent Certified Public Accountants, Saslow, Lufkin & Buggy, LLP. The books and records of the Plan have been audited annually by Saslow, Lufkin & Buggy, LLP, since 2005 in accordance with Section B of Article XVI of the Plan of Operation and an unqualified audit opinion has been issued each year.

FINANCIAL STATEMENTS

The following financial statements are presented on the basis of accounting practices prescribed or permitted by the Division of Insurance of the Commonwealth of Massachusetts and by the National Association of Insurance Commissioners, as of December 31, 2006.

Statement of Assets, Liabilities, Surplus and Other Funds as of December 31, 2006.

Statement of Income, Capital and Surplus for the Year Ended December 31, 2006.

Reconciliation of Capital and Surplus for the Three Year Period Ended December 31, 2006.

For Information Purposes Only

**Massachusetts Medical Malpractice Reinsurance Plan
Statement of Assets, Liabilities, Surplus and Other Funds
as of December 31, 2006**

	<u>Per Company</u>	<u>Examination Changes</u>	Notes	<u>Per Examination</u>
Assets				
Bonds	\$43,109,559	\$0		\$43,109,559
Preferred stocks	13,636			13,636
Common stocks	12,571,160			12,571,160
Cash on hand and on deposit	6,287,361			6,287,361
Short-term investments	9,820,263			9,820,263
Investment income due and accrued	501,801			501,801
Current federal and foreign income tax recoverable	36,923			36,923
 Total Assets	 <u>\$72,340,703</u>	 <u>\$0</u>		 <u>\$72,340,703</u>

For Information Purposes Only

**Massachusetts Medical Malpractice Reinsurance Plan
Statement of Assets, Liabilities, Surplus and Other Funds
as of December 31, 2006**

	Per Company	Examination Changes	Notes	Per Examination
Liabilities, Surplus and Other Funds				
Losses	\$64,216,520		1	\$64,216,520
Loss adjustment expenses	16,552,173		1	16,552,173
Other expenses (excluding taxes, licenses and fees)	99,600			99,600
Unearned premiums	4,217,185			4,217,185
Aggregate write-ins for liabilities				
Premium deficiency reserve	3,964,154			3,964,154
Assessment income payable	6,000,000		2	6,000,000
Total Liabilities	<u>95,049,632</u>	<u>0</u>		<u>95,049,632</u>
Unassigned funds (surplus)	<u>(22,708,929)</u>		3	<u>(22,708,929)</u>
Surplus as regards policyholders	<u>(22,708,929)</u>		3	<u>(22,708,929)</u>
Total liabilities and policyholders surplus	<u>\$72,340,703</u>	<u>\$0</u>		<u>\$72,340,703</u>

For Information Purposes Only

Massachusetts Medical Malpractice Reinsurance Plan
Statement of Income, Capital and Surplus
For the Year Ended December 31, 2006

	Per Company	Examination Changes	Per Examination
Underwriting Income			
Premiums earned	\$10,472,184	\$0	\$10,472,184
Deductions:			
Losses incurred	6,954,362		6,954,362
Loss expenses incurred	1,157,243		1,157,243
Other underwriting expenses incurred	1,995,811		1,995,811
Aggregate write-ins for underwriting deductions	438,367		438,367
Total underwriting deductions	<u>10,545,783</u>		<u>10,545,783</u>
Net underwriting gain or (loss)	<u>(73,599)</u>		<u>(73,599)</u>
Net investment income earned	2,387,949		2,387,949
Net realized capital gains or (losses)	28,754		28,754
Net investment gain or (loss)	<u>2,416,703</u>		<u>2,416,703</u>
Aggregate write-ins for miscellaneous income	<u>(5,889,100)</u>		<u>(5,889,100)</u>
Total other income	<u>(5,889,100)</u>		<u>(5,889,100)</u>
Net income before dividends to policyholders and before federal income taxes	(3,545,996)		(3,545,996)
Federal income taxes incurred	(20,909)		(20,909)
Net income	<u>(\$3,525,087)</u>	<u>0</u>	<u>(3,525,087)</u>
Capital and Surplus Account			
Surplus as regards policyholders, December 31 prior year	<u>(\$23,106,457)</u>	<u>0</u>	<u>(\$23,106,457)</u>
Net income	(3,525,087)		(3,525,087)
Change in net unrealized capital gains (losses)	1,084,983		1,084,983
Change in net deferred income tax	881,234		881,234
Change in nonadmitted assets	1,956,398		1,956,398
Change in surplus	<u>397,528</u>	<u>0</u>	<u>397,528</u>
Surplus as regards policyholders, December 31 current year	<u>(\$22,708,929)</u>	<u>\$0</u>	<u>(\$22,708,929)</u>

Massachusetts Medical Malpractice Reinsurance Plan
Reconciliation of Capital and Surplus
For Each Year in the Three Year Period Ended December 31, 2006

	<u>2006</u>	<u>2005</u>	<u>2004</u>
Surplus as regards policyholders, December 31 previous year	<u>(\$23,106,457)</u>	<u>(\$31,408,587)</u>	<u>(\$22,206,305)</u>
Net income (loss)	(3,525,087)	10,953,217	(9,370,423)
Change in net unrealized capital gains (losses)	1,084,983	0	(9,462)
Change in net deferred income taxes	881,234	7,056,719	0
Change in nonadmitted assets	<u>1,956,398</u>	<u>(9,707,806)</u>	<u>177,603</u>
Change in surplus	<u>397,528</u>	<u>8,302,130</u>	<u>(9,202,282)</u>
Surplus as regards policyholders, December 31 current year	<u><u>(\$22,708,929)</u></u>	<u><u>(\$23,106,457)</u></u>	<u><u>(\$31,408,587)</u></u>

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NOTES TO FINANCIAL STATEMENTS

NOTE 1 - Loss and Allocated Loss Adjustment Expenses (ALAE) Reserves

The Plan retained the Tillinghast business of Towers Perrin, an independent actuarial consulting firm, to prepare an independent actuarial analysis of the Plan's loss and allocated loss adjustment expense (ALAE) liabilities as of December 31, 2006. The analysis is performed on a gross basis as to ceded business assumed by the Plan, as the Plan does not write any direct business or retrocede any assumed business.

Based on the Tillinghast analysis, estimated total loss and ALAE liabilities as of December 31, 2006 are \$66.8 million on an "expected basis" and \$80.8 million at an "85% confidence level". The Plan chose to hold net reserves at the 85% confidence level. Holding reserves at a higher confidence level increases the probability that the reserves will be adequate to meet actual future losses, but does not eliminate the possibility that ultimate paid losses and ALAE could exceed current estimates.

The following chart illustrates loss and ALAE reserve liabilities as estimated by Tillinghast and held by the Plan for the three year period covered by this examination.

	<u>2006</u>	<u>2005</u>	<u>2004</u>
Unpaid Losses	\$64,216,520	\$59,337,158	\$41,748,981
Unpaid ALAE	<u>16,552,173</u>	<u>16,311,841</u>	<u>10,607,328</u>
Total	\$80,768,693	\$75,648,999	\$52,356,309

The Plan began holding reserves at the 85% confidence level effective with its year-end 2005 financial statements. Prior to 2005, reserve liabilities were held at Tillinghast's "expected level of estimated unpaid loss and ALAE", which did not incorporate any margin for the risk of adverse deviation.

For 2006 year-end, as a result of the 85% confidence level calculation, the carried reserves of \$80.8 million are \$14 million higher than the "expected level". For 2005 year-end, application of the 85% confidence level resulted in carried reserves being \$13.1 million higher than expected.

Tillinghast notes in its 2006 report dated February 26, 2007, that the estimated ultimate losses and ALAE for 2005 and prior years underlying the 2006 indications are 14% below the ultimate losses and ALAE contained in its most recent prior analysis (the 2005 year-end report). The 2006 analysis indicated loss and ALAE for coverage years 2005 and prior decreased \$9.6 million. The decrease was the result of favorable loss emergence during 2006, particularly for occurrence cessions from 2002 through 2004. Tillinghast also notes that the 2006 coverage year is showing favorable experience, however, the year is immature and estimates could change significantly based on future evaluations of data.

NOTE 2 – Assessment Income Payable

As noted previously in this report, MMMRP operates under guidelines established in its Rules of Operation. Under the Rules of Operation, the Plan has the ability and authority to make assessments of member companies when the Governing Committee deems it necessary to fund any reserve deficiencies experienced by the Plan. The calculation of assessments is provided by Tillinghast and is heavily dependent on its review of the Plan’s profitability and its review of indicated ultimate losses and ALAE. The Plan made its first assessment of members in 2003 based on policy years 2002 and prior, and has made an assessment of members each year since. The following chart illustrates the Plan’s assessment/return of assessment history since inception.

2003 based on 2002 policy year and prior	\$5,681,100
2004 based on 2003 policy year and prior	839,720
2005 based on 2004 policy year and prior	23,596,000
2006 based on 2006 policy year and prior	(6,000,000)

As illustrated, annual assessments have ranged from negative (return of assessment) \$6 million to \$23.5 million over the last five years. The assessment amount each year is based on a number of factors. The principal factors are the estimated reserves for loss and ALAE liabilities, and the assessment methodology promulgated under Rule 4 of the Plan’s Rules of Operation. During 2005, both of these factors were changed. The Plan decided to record and hold reserves at the calculated 85% confidence level, and the Governing Committee voted to amend Rule 4, which substantially accelerated the assessment payment stream. The new Rule 4 resulted in increased assessment of members for projected losses allocated to the most recent policy years, which were essentially undeveloped. As shown above, the 2006 policy year and prior showed positive loss development compared to original projections and \$6 million dollars was returned to members in the first quarter of 2007. Subsequently, this trend continued, as the 2007 policy year and prior again showed positive loss development versus projections and the Plan is expected to return an additional \$8 million to members in the first quarter of 2008.

Note 3 – Unassigned Funds and Surplus as Regards Policyholders – Member Deficit

The enabling legislation provides that any deficit sustained by the Plan in any one policy year shall be recouped by an assessment upon the members. Said assessments shall be apportioned in the proportion that the net direct premiums written by each member during the preceding calendar year bears to the aggregate net direct premiums written in the Commonwealth of Massachusetts by all medical malpractice insurers during the preceding calendar year. The Governing Committee shall determine each year if an assessment is necessary to recoup the deficit and shall determine the timing and amount of such recoupment. The deficit principally represents reserves for unpaid losses and loss adjustment expenses. These outstanding liabilities are guaranteed by the enabling legislation which created the Plan and ultimately, the members are financially responsible for any deficit incurred by the Plan.

COMMENTS AND RECOMMENDATIONS

Corporate Governance

As detailed earlier in this report, the Plan was created by statute of the Massachusetts Legislature in 1994. The enabling legislation called for the Plan to be administered by a Governing Committee appointed by the Governor that shall consist of five members representing medical malpractice insurers. At least three members of the Governing Committee shall be representatives of any domestic medical malpractice insurer(s). At least one member shall be a representative of a non-domestic medical malpractice insurer. This same requirement was carried forward and echoed in the Plan of Operation. The current Governing Committee does not meet the established criteria. The Division recommends that the appropriate and necessary steps be taken to comply with the statute and provision of the Plan of Operation.

Plan Secretary

Article VI of the Plan of Operation requires the Governing Committee to elect a Secretary from among its members. The original Secretary of the Governing Committee resigned his position in 1996, and no replacement has ever been elected to fill this position. The Division recommended that the Governing Committee elect a member to fill the Secretary position to assume the duties associated with this position, and at its March 20, 2008 meeting, the Governing Committee elected Mr. Peter T. Robinson Plan Secretary.

Subcommittee Secretary

Article VIII of the Plan of Operation require that minutes of the proceedings of each subcommittee shall be maintained by a Secretary appointed from the membership of the subcommittee. Although minutes appear to be kept, a Secretary does not appear to have been appointed in accordance with the above provision for any of the subcommittees. The Division recommends that each subcommittee appoint a Secretary from its membership to assume the duty of maintaining the minutes of each proceeding of the subcommittee.

Conflict of Interest

As a result of observations from the previous examination, the Plan was advised by the Division that a formal conflict of interest policy and disclosure statement should be developed and implemented. In September of 2005, the Governing Committee acted upon this recommendation and approved and adopted a new "Conflicts of Interest Policy". This newly adopted policy requires all members of the Governing Committee, subcommittees, officers, and key employees to annually sign a "Conflict of Interest Disclosure Statement". The Division has noted that this policy has not been adhered to as disclosure statements were submitted only by Governing Committee members for 2005 and 2007. For 2006, the policy was not followed, as disclosure statements were not submitted by any committee members, officers, or key employee. Management is aware of this situation and has advised that appropriate steps will be taken to correct this oversight. Subsequently, and as a result of the current examination, the Conflict of Interest Policy has been complied with and conflict of interest disclosures statements have been

executed by all effected persons. The Division recommends that the Plan implement adequate operating procedures to assure compliance with its Conflicts of Interest Policy on a going forward basis.

Segregation of Duties

Due primarily to the size and day to day operations of the Plan, it has a limited number of employees. Although the President and Governing Committee member Mr. Peter Robinson are authorized signatories for Plan disbursements, the situation exists whereby the President is the only authorized signatory for all day-to-day Plan disbursements, including reimbursement for expenses incurred by the President relating to the day to day operations of the Plan. The Division noted during our review that certain transactions for expense reimbursement did not have the appropriate supporting documentation and/or third party approval, while one other was misclassified. Subsequent requests for missing documentation could not be provided. The exceptions noted in this examination procedure have been identified as due to "human error". The Division feels this situation indicates a need to strengthen internal controls surrounding the process of disbursing Plan funds. The Division recommends that procedures be documented and implemented to allow for all accounting transactions and disbursements of Plan funds to be reviewed, verified, and approved by an individual unrelated to the transaction before distribution of Plan funds are executed.

The Division also recommends that the Plan develop procedures that require all accounting calculations and estimates to be verified and/or confirmed by someone other than the originator of such calculations and estimates. Such a procedure should promote the accuracy of accounting transactions and enhance the integrity of all financial transactions, reporting, and supporting data.

401K Plan

MMMRP sponsors a 401K Plan for its employees. A review of the 401K Plan documents revealed that listed as a Trustee of the 401K Plan is a former member of the Governing Committee, who resigned his position on the Governing Committee in 1996 and is no longer affiliated with the MMMRP. Effective in February of 2003, this individual was removed as a Plan Trustee. Additionally, the 401K Plan Administrator listed in 401K Plan documents is also no longer affiliated with the MMMRP. The Division recommends that all Plan documents be updated to properly reflect the fiduciary responsibility of all Plan Trustees and the Plan Administrator to assure appropriate management, administration and oversight of the 401K Plan and Plan assets.

Reserve Methodology, Assessment Calculation (Rule 4) and Investment Activity

Prior to 2004, the Plan held its available assets in cash and short-term investments. During 2004, the Plan began investing excess cash in various fixed securities, most of which had short duration maturities. During 2005, after the Plan changed its loss reserving and assessment methodology, the Plan was faced with a significant increase in new funds available for investment. At this point, the Plan retained the services of an investment advisor and selected several asset managers

to manage its investment portfolio. The Plan also adopted a new Statement of Investment Policy, Objectives and Guidelines (the "Investment Policy"). Under these guidelines, specific investment goals and objectives were outlined as well as specific limitations. The Investment Policy allows the investment/asset managers full discretion to make all investment decision for the assets placed under its jurisdiction, while observing and operating within all policies, guidelines, constraints, and philosophies outlined in the Investment Policy.

The Plan has voted to establish an over-all asset allocation of 80% fixed income and 20% equity for the total investment portfolio. Such an allocation can easily be achieved and maintained as the investment portfolio appreciates or the total investment base increases. However, as the Plan experiences a downward trend in premium income and a reversal of assessment income, the 80/20 ratio may be difficult to maintain without liquidating portfolio assets. This can result in the unplanned and untimely disposal of investments and can result in unplanned capital gains or losses, all so as to bring the overall investment portfolio into compliance with its established guidelines and objectives. The Division recommends that the Plan review its Investment Policy, Rule 4 assessment calculation, and reserving methodology in consideration of its current operations and the impact all three variables have on its financial statements and ongoing operations.

Sub-contracting Servicing Agreement

Effective January 1, 2005 the Plan amended its Facility and Services License Agreement with the Liquor Liability Joint Underwriting Association (LLJUA) covering primarily rent and accounting and administrative services. Under the original Facility and Services Agreement, the Plan obtained certain finance and accounting services from the LLJUA as provided by the CFO of the LLJUA. This arrangement was terminated upon the LLJUA's CFO's ascension to the position of President of the LLJUA, also effective 1/1/2005.

The Plan subsequently filled the position of CFO and now sub-contracts various accounting and financial related services to the LLJUA. Under the current arrangement, the new CFO is an employee of the Plan, but because of the Plan's benefit structure, the CFO participates in certain benefit plans offered by the Plan, while participating in other benefit plans offered by the LLJUA. Essentially, the Plan and the LLJUA share the services and cost of the Plan's CFO. Under the new and current Facilities and Services License Agreement, this arrangement is not included. The Division recommends that an agreement be structured between the Plan and the LLJUA to formalize this arrangement and the equitable allocation of the associated costs. The agreement should be approved by the Governing Committee as well as the Board of Directors of the LLJUA.

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