

**REPORT ON EXAMINATION**  
**OF**  
**COMMERCIAL INSURANCE ALLIANCE,**  
**A RECIPROCAL INSURANCE COMPANY**

**JACKSONVILLE, FLORIDA**

**AS OF**  
**DECEMBER 31, 2007**

**BY THE**  
**OFFICE OF INSURANCE REGULATION**

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Tallahassee, Florida

January 29, 2009

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, 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, 2007, of the financial condition and corporate affairs of:

**COMMERCIAL INSURANCE ALLIANCE,  
A RECIPROCAL INSURANCE COMPANY  
9309 OLD KINGS ROAD SOUTH  
JACKSONVILLE, FLORIDA 32257**

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, 2007, through December 31, 2007. This was the first examination of the Company by representatives of the Florida Office of Insurance Regulation (Office). This examination commenced, with planning at the Office, on November 17, 2008, to November 20, 2008. The fieldwork commenced on December 1, 2008, and was concluded as of January 29, 2009.

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 Company's size and its very limited control environment were taken into consideration as regards the NAIC risk-focused surveillance examination approach. It was determined that a comprehensive assessment of the Company's corporate governance, internal controls and risk management environment would not be an effective use of examination resources. Therefore, a modified risk focused surveillance approach was utilized. A reduced evaluation of the Company's enterprise risk management structure and control environment was performed.

In this examination, emphasis was directed to the quality, value and integrity of the statement of assets and the determination of liabilities, as those balances indicate the financial solvency of the Company as of December 31, 2007. Transactions subsequent to year-end 2007 were reviewed where relevant and deemed significant to the Company's financial condition.

The examination included a review of the reciprocal's records and other selected records deemed pertinent to the Company's operations and practices. In addition, the NAIC IRIS ratio reports, the Company's independent audit reports and certain work papers prepared by the Company's independent certified public accountant (CPA) and other reports as considered necessary were reviewed and utilized where applicable within the scope of this examination.

This report of examination was confined to financial statements and comments on matters that involved departures from laws, regulations or rules, or which were deemed to require special explanation or description.

Based on the review of the Company's control environment and the materiality level set for this examination, reliance was placed on work performed by the Company's CPAs, after verifying the statutory requirements, for the following accounts:

- Other invested assets
- Other expenses
- Taxes, licenses and fees
- Funds held by Company under reinsurance treaties

### **Status of Adverse Findings from Prior Examination**

This was the first examination performed on the Company.

## **HISTORY**

### **General**

Commercial Insurance Alliance (Company) was licensed on May 4, 2006, by the Florida Office of Insurance Regulation (Office) for the purposes of exchanging contracts of indemnity or insurance with individuals, partnerships, corporations and other entities through the facilities of an attorney-in-fact pursuant to Chapter 629, Florida Statute, et al.

The Company was formed to provide commercial property, liability and surety coverage to businesses operating in Florida. The Company is an assessable, unincorporated aggregation of subscribers authorized to issue insurance policies under Florida insurance statutes.

Briarwood Management LLC (AIF), a special purpose Florida limited liability company, serves as the Company's attorney-in-fact and operates as the management company of the Company pursuant to a formal agreement entered into as of May 3, 2006. Management is vested with the powers and authority to exchange insurance contracts among the Company's subscribers and to manage and conduct the business of the Company.

The AIF is a Florida limited liability company which is owned twenty percent (20%) by Larry Haynes and eighty percent (80%) ultimately by Mark Witham. These two principals of Briarwood are members of the Subscribers' Advisory Committee of the Company and Mark Witham is Secretary and Larry Haynes is President of the Company.

During 2006, Briarwood contributed \$1.5 million to the Company in exchange for a surplus note and then assigned rights in the surplus note to Cornerstone Group Florida, LLC (Cornerstone). Cornerstone is a Florida domiciled limited liability company. The ultimate controlling person of Cornerstone, as stated by the Company, is Mark Witham and he serves as the President of Cornerstone.

The Company was party to Consent Order 85640-06-CO filed May 4, 2006, with the Office regarding the application for the issuance of a Certificate of Authority. The Company failed to comply with several provisions of this consent order as described in the following paragraphs.

Consent Order 85640-06-CO Section 14(h) (7) states:

“If the OFFICE issues the Certificate of Authority to APPLICANT, APPLICANT shall further comply with the following:

h.) Any arrangement or agreement with an affiliated party for the provision of administrative services shall be evidenced by a written contract. Any such contract shall comply with the following requirements.

(7) All fees and charges must be specified in the contract and they must be comparable to fees charged to any other insurer for which similar contracted services are provided by the affiliate; or, if the affiliate does not perform such services for other insurers, the fees charged must be reasonable in relation to the services provided;

The Company had two arrangements or agreements with affiliated parties for the provision of administrative services that were not evidenced by a written contract during a substantial period in which the Company was making payments.

- Consulting arrangement with Mark Witham, who serves as the Company Secretary and/or Witham & Associates since the Company's formation:

No disclosure of this arrangement has been filed with the Office and because it was a verbal agreement, no filings with the Office were made. Payments under this arrangement started at the Company's inception.

- Consulting arrangement with Isabella Holdings (Isabella):

It was disclosed by the Company that Joe Cappuccio is the President of Isabella. The Company reported that Mr. Cappuccio is also the business partner of and legal counsel to Mr. Witham, making Isabella a related party under SSAP 25.

Documentation indicated that, after repeated requests by the Company, a copy of a written consulting agreement with Isabella was provided to the Company President on January 11, 2008. The agreement states that it was made February 25, 2007, with an effective date of May 20, 2005. The agreement is signed by Mr. Witham for the Company and Mr. Cappuccio for Isabella. This agreement has never been filed with the Office.

The examiners reviewed the Company's general expense payments and noted that funds have been paid by the Company to these entities for consulting services in relation to these consulting arrangements. The fees and expenses that were paid by the Company since its inception were generally not supported by invoices or receipts disclosing the services provided the Company in return for the payments. In several instances, payments were made without

any invoices.

Payments made under these arrangements were as follows:

Payments made to Mark Witham and/or Witham & Associates from 2006 to January 20, 2009:

- \$21,239 was paid to Mark Witham directly
- \$100,081 was paid to Witham & Associates

Payments totaling \$344,723.56 have been paid to Isabella from 2006 to January 20, 2009.

Consent Order 85640-06-CO, Section 14c states

"APPLICANT shall maintain sufficient and adequate internal controls and supervision of any external contractor(s) providing services in connection with the insurance transactions of the APPLICANT, and shall further assume responsibility for the actions of said contractor(s) as they relate to any performance under the service agreements."

The Company does not maintain sufficient and adequate controls and supervision of the external contractors (Mark Witham, Witham and Associates, Isabella Holdings LLC, and Maple Technologies LLC). This was evidenced by issues such as:

- In 2005, 2006 and 2007, the Company had agreements or arrangements with Mark Witham and Witham and Associates and Isabella that were not approved by the Office or the Subscribers' Advisory Committee.
- Fees and expenses paid by the Company under these agreements since its inception were generally not supported by invoices or receipts disclosing the services provided the Company in return for the payments. In several instances, payments were made with no invoices.
- After the effective date and after funds had been paid for over two years, in January 2008, the Company first received a signed agreement with Isabella. The Isabella agreement states that the agreement was made February 25, 2007, with an effective date of May 20, 2005.
- According to correspondence supplied by the Company, in early January 2008, Mark Witham, without approval from the Subscribers' Advisory Committee and the President of the Company, added Joe Cappuccio as an authorized signatory in regards to the Company's operating account at a bank.

- On January 11, 2008, Mark Witham and Joe Cappuccio withdrew money out the Company by wiring \$40,000 to Isabella without approval from the Subscribers' Advisory Committee or the President of the Company.
- According to correspondence from Mark Witham, the fee charges for the withdrawal and the withdrawal itself were made under an agreement between Isabella and the Company that was not approved by the Company's President or the Subscribers' Advisory Committee.
- The policy administration system installed by Maple Technologies LLC has never been fully operational and the Company states that it plans to replace the entire system in the near future.

Consent Order 85640-06-CO, Sections 8, 12 and 15 of the Consent Order state:

"APPLICANT and AIF affirm that all explanations, representations, and documents provided to the OFFICE in connection with APPLICANT's application for the issuance of a Certificate of Authority, including all attachments and supplements thereto, are material to the issuance of this Consent Order and fully describe all transactions, agreements, and understandings regarding the formation and operation of APPLICANT."

Section 12 of the Consent Order goes on to say that final approval is subject to the Office receiving:

"Executed copies of all other agreements, if any, relating to the operations and management of APPLICANT."

In addition, Section 15 of the Consent Order states:

"All future administrative service contracts, management contracts and contracts between APPLICANT and any affiliated or related entities shall be submitted to the OFFICE for approval prior to the execution and/or consummation or amendment of such contracts."

The Company did not fully describe all transactions, agreements, and understandings regarding the formation and operation of the Company or file executed agreements during their application process for a Certificate of Authority with the Office. The Company had two consulting arrangements in place that were not disclosed to or filed with the Office while applying for a Certificate of Authority or subsequent to that time:

- Consulting agreement with Mark Witham and/or Witham & Associates since the Company's formation
- Consulting agreement with Isabella Holdings. As previously discussed, a copy of the consulting agreement with Isabella Holdings and CIA was provided by Mr. Witham to

the Company President on January 11, 2008.

Consent Order 85640-06-CO, Section 15 states:

“All future administrative service contracts, management contracts and contracts between APPLICANT and any affiliated or related entities shall be submitted to the OFFICE for approval prior to the execution and/or consummation or amendment of such contracts.”

- Initial Claims Administrative Agreement with Allied Adjusters, Inc.  
The Company provided a letter agreement with Allied Adjusters, Inc dated September 13, 2006, regarding claim service for Commercial Insurance Alliance. However, the Company did not have a signed agreement and the agreement had not been submitted to the Office for approval as required by the Consent Order.
- Current Claims Administrative Agreement with Allied American Adjusters Company, LLC.  
The Company provided a Memorandum of Understanding between Allied American Adjusting Company, LLC and the Company. The Memorandum of Understanding set forth the guiding principles by which Allied will assist the Company in the handling of claims. The agreement had not been submitted to the Office for approval as required by the Consent Order.

The Company was authorized to transact the following insurance coverage in Florida on December 31, 2007:

Commercial Multi Peril  
Inland Marine  
Commercial Auto Liability  
Commercial Auto Physical Damage  
Surety  
Other Liability  
Credit

The Company has not written inland marine and credit insurance within the 2007 calendar year. Therefore, in accordance with Section 624.430, Florida Statutes, the Company should have those lines of insurance removed from its Certificate of Authority. **Subsequent event:** The Company submitted a plan for writing Inland Marine and Credit business, both active but previously unwritten lines of business on their Certificate of Authority.

Being organized as a reciprocal, the Company has no articles of incorporation and was subject to and governed by the provisions of the Subscribers' Agreement which designated the Attorney-in-

Fact (AIF). Under the Attorney-in-Fact Agreement, AIF served as the management company of the Company pursuant to a formal agreement entered into as of May 3, 2006. These agreements were submitted to the Office and have not been amended during the period covered by this examination.

### **Capital Stock**

Being organized as a reciprocal, the Company had no capital stock and was owned and controlled by its subscribers.

### **Profitability of Company**

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

	<b>2007</b>	<b>2006</b>
Premiums Earned	396,382	14,580
Net Underwriting Gain/(Loss)	(580,765)	(415,893)
Net Income	(443,606)	(467,032)
Total Assets	1,352,739	1,233,315
Total Liabilities	627,637	193,983
Surplus As Regards Policyholders	725,104	1,039,332

### **Dividends to Subscribers**

The Company has not declared and/or paid dividends or distributions to any of its subscribers since inception.

## Management

In the document entitled “The Powers of the Subscribers’ Advisory Committee” it is stated that “The Committee shall have a regular meeting once during each calendar quarter to review the financial statements of the Reciprocal for such quarter and such other matters as the Committee shall determine”.

Review of the minutes of the Subscribers’ Advisory Committee indicated that the body has held only two meetings since the formation of the Company. Therefore, it is not in accordance with the “Powers of the Subscribers’ Advisory Committee” document filed with the Florida Office of Insurance Regulation.

Subscribers’ Advisory Committee Members serving as of December 31, 2007, were:

### Advisory Committee Members

<b>Name and Location</b>	<b>Principal Occupation</b>
Edward Walter Buttner, IV, Chairman Jacksonville, Florida	Buttner Hammock & Company, P.A.
Larry Eugene Haynes Jacksonville, Florida	President of the Company
Theodore Richard Ostrander, Jr. Leesburg, Florida	Agent, Lassiter-Ware Insurance
William Eugene Duff DeLand, Florida	Agent, Page Insurance Agency
Mark Brewster Witham New York, New York	Witham and Associates
Frank Hays Furman Jr. Pompano Beach, Florida	Insurance Broker, Frank H. Furman, Inc.
Thomas Andrew Hazel Jacksonville, Florida	Agent, Greene-Hazel and Associates

Dane Clark Griffin  
Ocala, Florida

Agent, Griffin Insurance Agency

The Company's senior officers were:

**Senior Officers**

<b>Name</b>	<b>Title</b>
Larry Eugene Haynes	President
Mark Brewster Witham	Secretary
Michael Webb Whatley	Vice President
Bradley Erik Taman	Treasurer

The Company's Subscribers' Advisory Committee has not designated any internal committees, including an audit committee.

Section 629.201, Florida Statutes, requires that the Board of Directors shall procure an audit of the accounts and records of the insurer and of the attorney-in-fact at the expense of the insurer. While the Subscribers' Advisory Committee is not expressly subject to that Section, it is a corporate governance best practice for that committee to act as an oversight and governing body in accordance with that Section. Also, the Company's "Powers of the Subscribers' Advisory Committee" document filed with the Office requires the Subscribers' Advisory Committee to procure the audit of the accounts and records of the Company and of the AIF. It further states that it should recommend to the AIF the selection of independent certified public accountants, and review the scope and results of the annual independent audit and any internal audit of the Reciprocal's financial statements. During interviews with Company officers, it was disclosed that the Company's Subscribers' Advisory Committee Chairman made the selection of the independent certified public accountants.

### **Conflict of Interest Procedure**

The Company has not adopted a policy statement requiring annual disclosure of conflicts of interest in accordance with the NAIC Financial Condition Examiners Handbook and Section 607.0832(2), Florida Statute.

### **Corporate Records**

The recorded minutes of the Subscribers' Advisory Committee were reviewed for the period under examination. Issues noted during that review have been discussed in this report.

### **Acquisitions, Mergers, Disposals, Dissolutions, and Purchase or Sales Through Reinsurance**

There were no acquisitions, mergers, disposals, dissolutions, or purchases or sales through reinsurance during the period under examination

### **Surplus Debentures**

The Company, in relation to its initial surplus requirements, has one surplus debenture in the amount of \$1,500,000 issued by the Company to the AIF, then subsequently assigned to the Cornerstone Group, LLC (Florida). No violations of the surplus note restrictions were noted during the examination.

## **AFFILIATED COMPANIES**

The Company, being a reciprocal owned by its subscribers, was not a member of an insurance holding company system as defined by Rule 69O-143.045(3), Florida Administrative Code. The

AIF is part of a holding company system and also responsible for all management and administrative services required for the operation of the Company. Therefore, under the provisions of Statement on Statutory Accounting Principles 25, Paragraph 2 (i), the AIF and its affiliates were considered related parties to the Company.

The AIF was owned twenty percent (20%) by Larry Haynes and eighty percent (80%) by Cornerstone Group Florida, LLC (Cornerstone). The ultimate parent and controlling person of Cornerstone was Mark Witham and he serves as the President of Cornerstone.

The two principals of the AIF were also officers and members of the Subscribers' Advisory Committee of the Company. Mark Witham is Secretary and Larry Haynes is President of the Company.

As indicated earlier in this report, Mark Witham has received consulting fees from the Company.

Also as indicated earlier in this report, payments have been made under a consulting arrangement with Isabella Holdings (Isabella). Joe Cappuccio, President of Isabella, is also the business partner of and legal counsel to Mark Witham, making Isabella a related party under SSAP 25. These arrangements and payments have been discussed previously in this report.

During 2006, the AIF contributed \$1.5 million to the Company in exchange for a surplus note and then assigned rights in the surplus note to Cornerstone.

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

## **Management Agreement**

As previously discussed, the Company had an attorney-in-fact agreement in place with Briarwood Management LLC (AIF) wherein the AIF agreed, in return for management fees, to provide all necessary and appropriate management services, including the day-to-day administration and management of the Company's insurance business which consists of the underwriting of new business, claims adjustment, appropriate record production and the provision of all senior management.

## **Consulting Agreements**

As discussed earlier in this report, the Company had two consulting agreements with Isabella and Witham and Associates.

## **FIDELITY BOND AND OTHER INSURANCE**

The Company stated that it does not have any fidelity insurance coverage. Rule 690-142.011(11)(b)16, Florida Administrative Code, requires the Company to obtain a fidelity bond in accordance with and in an amount determined by the method provided in the NAIC Financial Examiners Handbook. The examiners determined, using that calculation method, the Company's minimum bond should be \$50,000.

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

The Company had only one employee, and had no pension, stock ownership or insurance plans.

## STATUTORY DEPOSITS

The following securities were deposited with the State of Florida as required by Section 624.411, Florida Statutes:

STATE	Description	Market Value
FL	Cash	<u>\$ 752,883</u>
TOTAL SPECIAL DEPOSITS		<u>\$ 752,883</u>

## INSURANCE PRODUCTS AND RELATED PRACTICES

### Territory

At December 31, 2007, the Company was authorized to transact insurance only in the State of Florida.

### Insurance Products

The Company has developed and marketed commercial insurance and ancillary products to Florida based commercial interests.

### Treatment of Policyholders

During the examination, the Company stated that it has had inquiries but no complaints since the formation of the Company and, therefore, no complaint control log has been initiated. The Company must have in place formalized and documented procedures for handling complaints against the Company in accordance with Section 626.9541 (1) (j), Florida Statutes.

## REINSURANCE

### **Assumed**

The Company did not assume any reinsurance risk for the period covered by this examination.

### **Ceded**

At December 31, 2007, the Company had two reinsurance contracts in effect which resulted in the following:

- Covers Company's General Liability written under Commercial Package Policies and Commercial Auto Liability excess of loss reinsurance for \$900,000 xs \$100,000 per occurrence.
- Covers Company's Commercial Package Policies, Property only, quota share reinsurance of 80%, subject to a maximum recovery of 50% of gross ceded premium, but no less than \$1,250,000 or greater than \$2,500,000 as respects one event. As respects hurricane events, maximum recovery was 100% of gross ceded premium subject to a maximum of \$4,500,000.

It was determined that the Company did not have a formal contract with its reinsurance broker as required by Section 626.7492(4), Florida Administrative Code, which states that..." a transaction between a reinsurance intermediary broker and the insurer it represents in the capacity of a reinsurance intermediary broker may be entered into only pursuant to a written authorization specifying the responsibilities of each party."

### **Subsequent Event:**

Prior to completion of this exam, the Company provided the examiners a copy of a contract enacted between the Company and its reinsurance broker.

## **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 for the year 2007, 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. This work was reviewed and utilized where appropriate by the examiners.

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.

It was determined during examination that general expenses paid in 2008 that were incurred in 2007 were \$40,000 above the \$62,075 reported by the Company. As a result, this liability has been increased by that amount with a corresponding adjustment to surplus as regards policyholders. A substantial amount of the increase in this liability was the result of consultant fees withdrawn in January of 2008 for bills presented the Company during 2007.

The Company and non-affiliates had the following agreements in effect at December 31, 2007:

### **Subscribers Agreements**

The Company maintained an agreement with each subscriber during the period covered by this examination. The subscriber or policyholder agreed to pay their premiums, compensate the AIF for its services and make a one-time surplus contribution to the Company.

## **Claims Agreement**

The Company provided the examiners a Memorandum of Understanding between Allied American Adjusting Company, LLC and the Company. The Memorandum set forth the guiding principles by which Allied will assist the Company in the handling of claims. The agreement had not been submitted to the Office for approval as required in the Consent Order. Further details concerning this agreement have been discussed previously in this report.

## **FINANCIAL STATEMENTS PER EXAMINATION**

The following pages contain financial statements showing the Company's financial position as of December 31, 2007, and the results of its operations for the year then ended as determined by this examination. There was one financial adjustment made as a result of the examination.

**COMMERCIAL INSURANCE ALLIANCE**  
**ASSETS**  
**DECEMBER 31, 2007**

	<u>Per Company</u>	<u>Examination Adjustments</u>	<u>Per Examination</u>
Cash	\$ 1,226,057	\$ -	\$ 1,226,057
Investment income due and accrued	12,062		12,062
Premiums and considerations:			
Uncollected premium	108,306		108,306
Reinsurance:			
Amounts Recoverable	<u>6,315</u>		<u>6,315</u>
Totals	<u>\$ 1,352,740</u>	<u>\$ -</u>	<u>\$ 1,352,740</u>

**COMMERCIAL INSURANCE ALLIANCE  
LIABILITIES, SURPLUS AND OTHER FUNDS  
DECEMBER 31, 2007**

	<u>Per Company</u>	<u>Examination Adjustments</u>	<u>Per Examination</u>
Losses	\$ 68,000		\$ 68,000
Loss adjustment expenses	33,600		33,600
Other expenses	62,075	40,000	102,075
Taxes, licenses and fees	12,412		12,412
Unearned premium	267,835		267,835
Ceded Reinsurance Payable	<u>183,715</u>		<u>183,715</u>
Total Liabilities	<u>\$ 627,637</u>	<u>\$ 40,000</u>	<u>\$ 667,637</u>
Aggregate write-ins for other than special surplus funds:			
Subscriber Surplus Contributions	\$ 152,206		\$ 152,206
Surplus Note	1,500,000		1,500,000
Unassigned funds (surplus)	<u>(927,102)</u>	<u>(40,000)</u>	<u>(967,102)</u>
Surplus as regards policyholders	<u>\$ 725,104</u>	<u>(40,000)</u>	<u>\$ 685,104</u>
Total liabilities, surplus and other funds	<u><u>\$ 1,352,741</u></u>		<u><u>\$ 1,352,741</u></u>

**COMMERCIAL INSURANCE ALLIANCE  
STATEMENT OF INCOME**

**DECEMBER 31, 2007**

**Underwriting Income**

Premiums earned		\$	396,382
	<b>Deductions:</b>		
Losses incurred			56,451
Loss expenses incurred			30,127
Other underwriting expenses incurred			890,569
Total underwriting deductions		<u>\$</u>	<u>977,147</u>
Net underwriting gain or (loss)		\$	(580,765)

**Investment Income**

Net investment income earned		\$	137,082
Net realized capital gains or (losses)			0
Net investment gain or (loss)		<u>\$</u>	<u>137,082</u>

**Other Income**

Finance and service charges not included in premiums		\$	78
Total other income		<u>\$</u>	<u>78</u>
Net income before dividends to policyholders and before federal and foreign income taxes		<u>\$</u>	<u>(443,606)</u>
Net Income, after dividends to policyholders, but before all other federal and foreign income taxes		\$	(443,606)
Federal and foreign income taxes incurred			0
Net Income		<u>\$</u>	<u>(443,606)</u>

**Capital and Surplus Account**

Surplus as regards policyholders, December 31 prior year		\$	1,039,332
Net Income		\$	(443,606)
Change in net deferred income tax			0
Change in non-admitted assets			4,581
Change in surplus notes			0
Aggregate write-ins for gains and losses in surplus			124,796
Change in surplus as regards policyholders for the year			(314,229)
Examination adjustment			(40,000)
Surplus as regards policyholders, December 31 current year		<u>\$</u>	<u>685,103</u>

## COMMENTS ON FINANCIAL STATEMENTS

### Losses and Loss Adjustment Expenses

**\$101,600**

The Company's actuary rendered an opinion that the amounts carried in the balance sheet as of December 31, 2007, made a reasonable provision for all unpaid loss and loss expense obligations of the Company under the terms of its policies and agreements. INS Consultants, Inc. provided the examination actuary, who reviewed work papers provided by the Company and was in concurrence with this opinion.

### Other Expenses

General expenses paid in 2008 that were incurred in 2007 were found to be \$40,000 above the \$62,075 reported by the Company. As a result, this liability has been increased by that amount with a corresponding adjustment to surplus as regards policyholders. A substantial amount of the increase in this liability was the result of consultant fees withdrawn in January, 2008, for bills presented the Company during 2007.

### Capital and Surplus

The amount reported by the Company of \$725,104, which was adjusted to \$685,104, exceeds the minimum of \$250,000 required by Section 624.408, Florida Statutes.

A comparative analysis of changes in surplus follows.

**COMMERCIAL INSURANCE ALLIANCE  
COMPARATIVE ANALYSIS OF CHANGES IN SURPLUS  
DECEMBER 31, 2007**

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, 2007, per Annual Statement	\$725,103
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	<u>PER COMPANY</u>		<u>PER EXAM</u>		<u>INCREASE (DECREASE) IN SURPLUS</u>
<b>ASSETS:</b>					
No Adjustment	\$ 1,352,739	\$	1,352,739	\$	-
<b>LIABILITIES:</b>					
Other Expenses	\$ 627,636	\$	667,636	\$	(40,000)
Net Change in Surplus:					(40,000)
Surplus as Regards Policyholders December 31, 2007, Per Examination					\$ 685,103

## **SUMMARY OF FINDINGS**

### **Compliance with previous directives**

This is the first examination of the Company performed by the Office.

### **Current examination comments and corrective action**

The following is a brief summary of items of interest and corrective action to be taken by the Company regarding findings in the examination as of December 31, 2007.

#### **Subscribers' Advisory Committee – Meetings**

The "Powers of the Subscribers' Advisory Committee" document requires that the Subscribers' Advisory Committee meet quarterly. It was determined that the Company has held only two Subscribers' Advisory Committee meetings since the formation of the Company. **We recommend the Subscribers' Advisory Committee have a regular meeting once during each calendar quarter to review the financial statements of the Reciprocal for such quarter and such other matters as the Committee shall determine as stated in the "Powers of the Subscribers' Advisory Committee" document.**

#### **Selection of and Approval of Findings of Independent Auditor**

It was determined that the Company was not in compliance with Section 629.201, Florida Statutes, which requires that the Subscribers' Advisory Committee shall procure the audit of the accounts and records of the insurer and of the attorney at the expense of the insurer. **We recommend the Company comply with Section 629.201, Florida Statutes, and the "Powers of the Subscribers' Advisory Committee" document and have the Advisory**

**Committee make recommendations concerning the selection of the Company's independent auditor and formally review their findings.**

**Consent Order 85640-06-CO Violation - Fees and Charges**

The Company had two arrangement or agreements with affiliated parties for the provision of administrative services that were not evidenced by a written contract which was a violation of Consent Order 85640-06-CO. **We recommend the Company comply with Consent Order 85640-06-CO and require written contracts with all affiliated parties or related parties for administrative services and, as described in the Consent Order, pay only fees and charges as reasonable in relation to services rendered as specified in the contract.**

**Consent Order 85640-06-CO Violation - Controls and Supervision of External Contractors**

The Company failed to maintain sufficient and adequate internal controls and supervision of its external contractors which was a violation of Consent Order 85640-06-CO. **We recommend that the Company comply with Section 14.c of the Consent Order by maintaining sufficient and adequate controls and supervision of its external contractors.**

**Consent Order 85640-06-CO Violation - Related Party Administrative or Consulting Agreements**

The Company did not fully describe all transactions, agreements, and understandings regarding the formation and operation of the Company or file executed agreements during their application process for a Certificate of Authority with the Office which was a violation of Consent Order 85640-06-CO. **We recommend that the Company comply with Consent Order 85640-06-CO and fully describe all transactions, agreements, and understandings regarding the formation and operation of the Company and make the required filings of agreements.**

### **Consent Order 85640-06-CO Violation - Administrative Agreements**

Consent Order 85640-06-CO required that all future administrative service contracts and management contracts be submitted to the Office for approval prior to the execution and/or consummation or amendment of such contracts. Since 2006, the Company has had two agreements with an unrelated third party regarding claims adjustment services. Those agreements have not been submitted to the Office. **We recommend the Company comply with Section 15 of Consent Order 85640-06-CO and submit the claims administrative contract to the Office for approval prior to the execution and/or consummation or amendment of such contracts.**

### **Fidelity Insurance Coverage**

The Company does not have fidelity insurance coverage to protect against loss due to Company officers or employees acting dishonestly in the Company's name. **We recommend the Company obtain fidelity insurance coverage pursuant to Rule 690-142.011(11) (b) 16, Florida Administrative Code.**

### **Other Expenses**

General expenses paid in 2008 that were incurred in 2007 were found to be \$40,000 above the \$62,075 reported by the Company. As a result, the liability for General Expenses has been increased by that amount. **We recommend the Company establish and report an adequate amount for its other expenses liability.**

### Conflict of Interest Procedure

The company has not adopted a policy requiring annual disclosure of conflicts of interest in accordance with the NAIC Financial Condition Examiners Handbook and Section 607.0832(2), Florida Statutes. **We recommend the company comply with Florida Statutes and NAIC guidelines and establish a policy requiring annual disclosure statements of any potential conflict of interest.**

### Treatment of Policyholders

The Company has no established consumer complaint log in violation of Section 626.9541 (1) (j), Florida Statutes. **We recommend that the Company document policies and procedures for handling complaints against the company in accordance with Section 626.9541 (1) (j), Florida Statutes.**

## SUBSEQUENT EVENTS

During the review of the Company's general expenses, the examiners noted that funds have been paid by the Company to various entities for what was termed consulting services. The examiners determined that, in some cases, the expenses being paid were not just the additional cost of starting a new company, but some questionable consulting fees and expenses.

As requested by the Office, the examiners have reviewed all amounts paid during 2008 and in 2009 up to the completion date of this examination. Also, we have performed additional review on related party expenses to determine the full extent of funds being withdrawn from the Company and the documentation available related to those payments.

The Company has reported and continues to report, extremely high expenses in relation to its premium income and claims activity, so the examiners focused on the Company's payment of funds to related and unrelated parties to determine if the payments were appropriate and the agreements covering the payments were in accordance with Consent Order 85640-06-CO. These agreements or arrangements were not properly disclosed to the Office in accordance with the Consent Order and, therefore, all of the payments made were not proper. These payments have been paid since the inception of the Company under unwritten agreements and continued under an agreement provided to the Company President during 2008.

In addition to the monthly fees being paid by the Company, a substantial amount of travel and entertainment expenses of these consultants was paid out of Company funds. A detailed review by the examiners of these payments indicated that proper authorization and documentation was not filed with the Company regarding these payments. In response to examiner questions, a letter dated February 11, 2009, was provided to the examiners from Briarwood Management LLC (the Attorney-in-Fact) regarding these expenses. Examiner review of explanations provided in the letter indicated that substantially all of the expenses discussed should have been the responsibility of Briarwood Management LLC and not paid out of policyholder funds.

Correspondence was supplied by the Company documenting attempts to obtain proper invoices and justification of charges.

Mark Witham and Isabella Holdings have agreed to repay all funds withdrawn by them or paid to them as consulting fees. The Office was notified of this statement.

Also, in a letter dated February 25, 2009, the Office notified the Company that it had failed to request the Office's approval prior to entering into affiliated agreements with Mark Witham and

Witham Associates. Payments were also made to Isabella Holdings which were not substantiated by the proper documentation of services rendered. The Office further stated that these agreements should be canceled immediately and no further payments made without the Office's prior approval. Additionally, the Company should seek the return of all fees and expenses incurred by the Company associated with the aforementioned agreements and should provide evidence of such to the Office no later than Friday, March 6, 2009. Evidence of repayment on March 6, 2009, was provided to the Office.

## CONCLUSION

The insurance examination practices and procedures as promulgated by the NAIC have been followed in ascertaining the financial condition of **Commercial Insurance Alliance** as of December 31, 2007, consistent with the insurance laws of the State of Florida.

Per examination findings, the Reciprocal's Surplus as Regards Policyholders was \$685,104, in compliance with Section **629.071**, Florida Statutes.

In addition to the undersigned, Patricia Casey Davis, CFE, CPA; Hails W. Taylor, CFE; and Donald Gaskill, CFE of INS Regulatory Insurance Services, Inc. participated in the examination. We also recognize INS Consultants, Inc. and INS Services, Inc.'s participations in this examination.

Respectfully submitted,

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Kethessa Carpenter, CPA  
Financial Examiner/Analyst Supervisor  
Florida Office of Insurance Regulation