

**Government of the District of Columbia**  
Department of Insurance, Securities and Banking



Thomas E. Hampton  
Commissioner

**BEFORE THE  
INSURANCE COMMISSIONER OF  
THE DISTRICT OF COLUMBIA**

Re: Report on Examination - **Fairway Physicians Insurance Company, A Risk Retention Group**, as of December 31, 2007

**ORDER**

An Examination of **Fairway Physicians Insurance Company, A Risk Retention Group**, as of December 31, 2007 has been conducted by the District of Columbia Department of Insurance, Securities and Banking ("the Department").

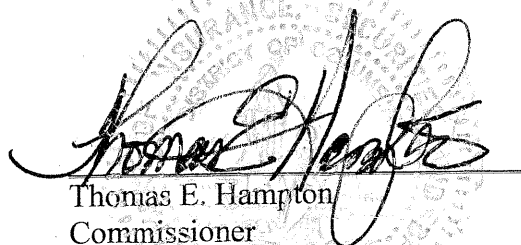
It is hereby ordered on this 30th day of June, 2009, that the attached financial condition examination report be adopted and filed as an official record of this Department.

In addition, it is hereby ordered that the Company comply with the recommendations in the attached financial condition examination report.

Pursuant to Section 31-1404(d)(1) of the D.C. Official Code, this Order is considered a final administrative decision and may be appealed pursuant to Section 31-4332 of the D.C. Official Code.

Pursuant to Section 31-1404(d)(1) of the D.C. Official Code, within 30 days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related order.

Pursuant to Section 31-1404(e)(1) of the D.C. Official Code, the Department will continue to hold the content of the report as private and confidential information for a period of 10 days from the date of this Order.



Thomas E. Hampton  
Commissioner

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF INSURANCE, SECURITIES AND BANKING



REPORT ON EXAMINATION

Fairway Physicians Insurance Company,  
A Risk Retention Group

AS OF

DECEMBER 31, 2007

NAIC NUMBER 11840

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Washington, D.C.  
March 12, 2009

Honorable Thomas E. Hampton  
Commissioner  
Department of Insurance, Securities and Banking  
Government of the District of Columbia  
810 First Street, NE, Suite 701  
Washington, D.C. 20002

Dear Sir:

In accordance with Section 31-3931.14 of the District of Columbia Official Code, we have examined the financial condition and activities of

**Fairway Physicians Insurance Company, A Risk Retention Group**

hereinafter referred to as the “Company” or “Fairway,” at the office of its program manager, Thorson Insurance Services, Inc., located at 30401 Agoura Road, Suite 101, Agoura Hills, California 91301.

**SCOPE OF EXAMINATION**

This full-scope examination, covering the period from November 10, 2003 through December 31, 2007, including any material transactions and/or events noted occurring subsequent to December 31, 2007, was conducted by the District of Columbia Department of Insurance, Securities and Banking (“the Department”).

Our examination was conducted in accordance with examination procedures established by the Department and procedures recommended by the National Association of Insurance Commissioners (“NAIC”) and, accordingly, included such tests of the accounting records and such other examination procedures as we considered necessary in the circumstances.

Our examination included a review of the Company’s business policies and practices, management and corporate matters, a verification and evaluation of assets and a determination of the existence of liabilities. In addition, our examination included tests to provide reasonable assurance that the Company was in compliance with applicable laws, rules and regulations. In planning and conducting our examination, we gave consideration to the concepts of materiality and risk, and our examination efforts were directed accordingly.

The Company was audited annually by an independent public accounting firm. The firm expressed unqualified opinions on the Company's financial statements for the calendar years 2004 through 2007. (No insurance business was written in 2003 and there was no audit of the Company’s financial statements for 2003.) We placed substantial reliance on the audited financial statements for calendar years 2004 through 2006, and consequently performed only

minimal testing for those periods. We concentrated our examination efforts on the year ended December 31, 2007. We obtained and reviewed the working papers prepared by the independent public accounting firm related to the audit for the year ended December 31, 2007. We placed reliance on the work of the auditor and directed our efforts, to the extent practical, to those areas not covered by the firm's workpapers.

### **STATUS OF PRIOR EXAMINATION FINDINGS**

A limited scope financial examination was conducted by the Department as of September 30, 2005 which specifically reviewed the Company's loss reserves and loss adjustment expense ("LAE") reserves. In the Report on this limited scope examination, dated November 30, 2005, the Department concluded that the Company's loss reserves and LAE reserves were reasonable, and there were no exception conditions noted.

### **HISTORY**

#### **General:**

Fairway was incorporated under the captive laws of South Carolina on October 22, 2003 and was authorized to begin business on November 10, 2003, operating as a risk retention group. (No insurance business was written in 2003.) On June 25, 2004 the Company re-domesticated to the District of Columbia under the District's captive insurance laws.

Fairway provides claims made medical professional liability coverage to physicians licensed to practice in the state of California. In 2008, the Company was approved by the Department to write business in eighteen additional states. The Company also offers extended tail liability to insureds that terminate coverage. This coverage is free in the event of death or disability, or if the insured has been with the program for at least five years and is retiring.

#### **Membership:**

The Company is authorized to issue Class A and Class B shares of common stock in accordance with the Company's articles of incorporation. Two of the founding physician policyholders, Michael S. Gurvey and Maurice P. Sherman, are the holders of the Class A common stock and have the right to appoint at least 60 percent of the Company's directors. The holders of Class B common stock, who are also policyholders, can appoint the remaining members of the board. Additionally, for matters submitted to a vote of shareholders, each holder of Class A common shares is entitled to one vote for each common share while the holders of Class B common shares do not have voting rights.

The Company's shareholder subscription agreement obligates policyholders to purchase Class B common stock and contribute capital to the Company equal to 30 percent of the policyholders' first year premium for healthcare professional liability insurance. Payments for shares are due in three annual installments. During 2007 and 2006, the Company issued 765,446

and 460,053 shares of Class B common stock, respectively. The subscription agreement was changed by the Company in 2007 to change the Class B price per share from \$1 to \$2 per share.

Class A and Class B common stock have no par value. 5,000,000 Class A shares were authorized and 1,600,000 were issued and outstanding at December 31, 2007. 15,000,000 Class B shares were authorized and 1,996,949 were issued and outstanding at December 31, 2007. See NOTE 5 in the “Notes to Financial Statements” section of this report for comments regarding the Company’s financial statement reporting for its common stock.

Dividends and Distributions:

The Company did not declare or pay any dividends or other distributions during the period under examination.

**MANAGEMENT**

The following persons were serving as the Company’s directors as of December 31, 2007:

<u>Name and State of Residence</u>	<u>Principal Occupation</u>
Michael Gurvey, MD, Chairman California	Orthopedic Surgeon Michael Gurvey and Associates
Muhammad Anwar, MD California	Internal Medicine/Pulmonary Disease Mid Valley Pulmonary
Brian Bashner, MD California	Orthopedic Surgeon Westlake Orthopedic Group
Maurice Sherman, MD California	Cosmetic Surgeon Del Mar Cosmetic Medical Center
David Thorson California	Chief Executive Officer Thorson Insurance Services, Inc.

The following persons were serving as the Company’s officers as of December 31, 2007:

<u>Name</u>	<u>Title</u>
Michael Gurvey, MD	President
Robert Wiley	Chief Financial Officer
David Thorson	Secretary

### Committees:

The Company's by-laws provide that the board of directors may designate one or more committees of the Board, each committee to consist of at least one or more directors of the Company. As of December 31, 2007, the Company's board of directors has established the following committees:

#### Executive Committee:

Michael Gurvey  
Maurice Sherman  
David Thorson

#### Claims Committee:

Michael Gurvey  
David Thorson  
Robert Wiley

#### Expense Committee:

Michael Gurvey  
Maurice Sherman  
David Thorson

#### Investment Committee:

Michael Gurvey  
David Thorson  
Robert Wiley

#### Underwriting Committee:

Mohammad Anwar  
Michael Gurvey  
David Thorson

### Conflicts of Interest:

The Company has adopted a "Code of Business Conduct and Ethics" which includes guidance for disclosure of conflicts of interest, and requires officers, directors, and service providers of the Company to annually certify their compliance with the code. However, we noted that during the period of examination only one director signed a conflict of interest disclosure statement. This occurred in 2004. See the "Comments and Recommendations" section of this Report, under the caption "Conflicts of Interest," for further comments regarding this condition.

### Corporate Records:

We reviewed the minutes of the meetings of the board of directors and shareholders for the period under examination. Based on our review, it appears that the minutes documented the board's review and approval of the Company's significant transactions and events.

### **CAPTIVE MANAGER**

Camelback Captive Services, Inc. (Camelback) is the Company's captive manager, and provides services including accounting, record retention, regulatory compliance and other management services.

## **AFFILIATED PARTIES AND TRANSACTIONS**

The Company's daily business operations are managed by Thorson Insurance Services, Inc. ("Thorson") who acts as the Company's managing general agent and performs various administrative functions including underwriting, marketing and overall program management services. Thorson's affiliate, Risk Management Services Group, Inc. ("RMSG") provides claims management services. Thorson's chief executive officer, David Thorson, is a member of Fairway's board of directors, but has no ownership interest in Fairway.

Effective July 30, 2004 the Company entered into a program manager agreement with Thorson. The agreement is continuous until terminated. Under the terms of the agreement, Thorson acts as the Company's managing general agent, including solicitation, underwriting, and premium and capital collection. The agreement specifies a provisional commission of 15.5 percent of gross written premium net of return premium, with an increase of ½ percent for each fully developed loss ratio point below 65 percent to a maximum commission of 20.5 percent. On August 1, 2007, Thorson agreed to forfeit this profit sharing commission, including any commission already earned and any commission earned in the future. In addition, the agreement specifies that the Company shall pay Thorson 10 percent of gross written premium net of return premium for general expenses, acquisition costs and unallocated loss expenses.

Effective July 30, 2004 the Company also entered into a claims management agreement with RMSG through Thorson. The agreement is continuous until terminated. Under the terms of the agreement, RMSG is delegated claims adjustment authority for all claims on Fairway's policies. The agreement specifies claims service fees in the amount of 4 percent of gross written premium net of return premium shall be paid by Thorson. However, we noted that the claims management fees were actually paid directly to RMSG by the Company. See the "Comments and Recommendations" section of this Report, under the caption "Service Provider and other Agreements," for further comments regarding this condition. During 2007, the Company paid brokerage commissions of \$1,809,435 to Thorson and claim service fees of \$300,275 to RMSG.

## **FIDELITY BOND AND OTHER INSURANCE**

Fairway maintains Directors and Officers Liability coverage in the amount of \$1,000,000. The Company's program manager, Thorson, maintains fidelity insurance in the amount of \$500,000 which covers both Thorson and RMSG. Thorson maintains Errors and Omissions coverage in the amount of \$2,000,000 and RMSG maintains Errors and Omissions coverage in the amount of \$1,000,000. Thorson also maintains general liability coverage in the amount of \$1,000,000. This provides adequate coverage based on NAIC guidelines.

## **PENSION AND INSURANCE PLANS**

The Company has no employees and therefore has no employee pension or insurance plans.



## **STATUTORY DEPOSITS**

As of December 31, 2007, the Company did not have any statutory deposits in the District of Columbia and was not required to maintain any such deposits. In addition, the Company was not required to maintain statutory deposits with any other jurisdictions.

## **TERRITORY AND PLAN OF OPERATION**

As of December 31, 2007, the Company was licensed in the District of Columbia and was registered as a risk retention group in California. \$8,653,003 (100 percent) of the Company's written premium in 2007 was in California. In 2008, the Company was approved by the Department to expand business to an additional eighteen states. As of the examination report date, the Company has registered to transact business in Arizona, Colorado, Idaho, Maryland, New York and Washington.

The Company provides claims made medical professional liability coverage to physicians who are currently licensed to practice in the State of California. Limits are offered up to \$1,000,000 per claim and \$3,000,000 in the aggregate. The Company also offers extended tail liability to insureds that terminate coverage. This coverage is free in the event of death, disability or if the physician has been with the program for at least five years and is retiring. The Company also offers excess claims made malpractice coverage for limits of \$1,000,000 per occurrence excess of \$1,000,000. As of December 31, 2007, the Company has provided this excess coverage to four insureds. Deductibles of zero to \$25,000 are available.

During the examination, we noted that the Company was using various rates and discount factors that were not included in the Company's original filing. In addition, we noted that the rates in the Company's underwriting system were not always followed. See the "Comments and Recommendations" section of this Report, under the caption "Underwriting Rates" for further comments regarding this condition.

The Company has no employees and its daily business operations are managed by various service providers based on the service agreements. During the examination period and as of the date of this report, the Company's captive manager, Camelback, is managing the Company's accounting and regulatory filings from offices in Phoenix, Arizona. The underwriting, policy issuance, and premium billing and collection are handled by Thorson in Agoura Hills, California. Claim administration, risk management and loss control services are handled by RMSG in Agoura Hills, California.

## **INSURANCE PRODUCTS AND RELATED PRACTICES**

This examination was a financial examination, and generally did not include market conduct procedures. An examination of the market conduct affairs of the Company has never been conducted. A market conduct examination would include detailed reviews of the Company's

sales and advertising, agent licensing, timeliness of claims processing, and complaint handling practices and procedures.

The scope of our examination did not include market conduct procedures, including, but not limited to, market conduct procedures in the following areas:

- Policy Forms
- Fair Underwriting Practices
- Advertising and Sales Materials
- Treatment of Policyholders:
  - Claims Processing (Timeliness)
  - Complaints

## **REINSURANCE**

### **Assumed Reinsurance:**

The Company did not assume any reinsurance during the examination period.

### **Ceded Reinsurance:**

Prior to December 30, 2006, the Company retained \$300,000 of risk per claim and ceded the excess through an excess of loss reinsurance agreement with various reinsurers. The reinsurance agreement called for a deposit premium of 22.5 percent of primary direct written premiums subject to a minimum deposit premium that varied by annual contract period. During 2008, the Department approved the Company's request to commute the 2004-2006 reinsurance treaty years.

Effective December 30, 2006 to January 1, 2009, the Company entered into a new combined reinsurance agreement providing primary excess of loss and first excess coverage. Under this treaty, the Company cedes liabilities in excess of \$300,000 up to \$1,700,000 per claim/per insured. Reinsurance is provided through the BMS Group, a reinsurance intermediary and is underwritten by Lloyd's of London and Aspen Re. All participating reinsurers had financial strength ratings of A (Excellent) by A.M. Best.

The Company retains the first \$300,000 of risk per occurrence and fully reinsures the excess. The reinsurance treaty includes clash coverage in that multiple claims from a single occurrence will only be subject to one retention of \$300,000. The clash coverage has a limit of \$1,500,000. Before ceding any losses under the contracts the Company must also satisfy an inner aggregate deductible under the contract equal to 5 percent of the primary direct written premiums subject to the primary treaty. The final cost of reinsurance is adjusted according to the duration of the contract and the actual losses incurred. The minimum reinsurance premium for the 2007 reinsurance contract is 8.5 percent, and is subject to increases up to a maximum of 38.5 percent of direct premiums based on actual reinsured losses.

As of December 31, 2007, no losses are projected to be ceded under the reinsurance agreements. Therefore, the cost of reinsurance was recorded at the minimum reinsurance premium of 8.5 percent of direct written premiums as of December 31, 2007.

In 2007, the Company ceded net reinsurance premiums totaling \$543,027. As of December 31, 2007, the Company reported “Other amounts receivable under reinsurance contracts” totaling \$2,453,044 for estimated amounts to be returned by the reinsurer due to anticipated favorable loss experience and the lack of losses hitting the reinsurance layer.

Effective January 1, 2009 the combined reinsurance treaty was renewed for another two years with substantially the same terms as the expiring treaty except the minimum and maximum reinsurance premiums were reduced. The minimum reinsurance premium for the 2009 reinsurance contract is 7.5 percent, and increases to a maximum of 36 percent of direct premiums based on actual reinsured losses.

Our review of the Company’s ceded reinsurance contract did not disclose any unusual provisions.

### **ACCOUNTS AND RECORDS**

The primary locations of the Company’s books and records are at the offices of its captive manager, Camelback, in Phoenix, Arizona; and at the offices of its program manager, Thorson, in Agoura Hills, California.

The Company’s general accounting records consisted of an automated general ledger and various subsidiary ledgers. Our examination did not disclose any significant issues with these records.

## **FINANCIAL STATEMENTS**

The following financial statements, prepared in accordance with accounting practices generally accepted in the United States (“GAAP”), except for the condition described in **NOTE 2**, reflect the financial condition of the Company as of December 31, 2007, as determined by this examination:

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The accompanying Notes to Financial Statements are an integral part of these Financial Statements.

# BALANCE SHEET

## ASSETS

	<i>December 31, 2007</i>
Cash (\$7,502,245), cash equivalents (\$0) and short-term investments (\$1,001,367) ( <b>NOTE 1</b> )	\$ 8,503,612
Subtotals, cash and invested assets	\$ 8,503,612
Investment income due and accrued	19,096
Uncollected premiums and agents' balances in the course of collection	770,227
Reinsurance:	
Other amounts receivable under reinsurance contracts	2,453,044
Net deferred tax asset	254,680
Aggregate write-ins for other than invested assets:	
Letter of credit ( <b>NOTE 2</b> )	\$ 1,000,000
Capital receivable	21,827
Unearned premiums ceded	377,271
Prepaid commissions ( <b>NOTE 3</b> )	1,106,210
Deferred acquisition costs ( <b>NOTE 3</b> )	70,894
	\$ 2,576,202
Total	\$ 14,576,861

**LIABILITIES, SURPLUS AND OTHER FUNDS**

	<i>December 31, 2007</i>
Losses ( <b>NOTE 4</b> )	\$ 2,891,264
Loss adjustment expenses ( <b>NOTE 4</b> )	3,233,955
Other expenses (excluding taxes, licenses and fees)	122,662
Unearned premiums	4,551,092
Ceded reinsurance premiums payable (net of ceding commissions)	3,217
 Total Liabilities	 \$ 10,802,190
Common capital stock ( <b>NOTE 5</b> )	\$ 0
Letter of credit	1,000,000
Gross paid in and contributed surplus ( <b>NOTE 5</b> )	2,945,061
Unassigned funds (surplus)	(170,390)
 Surplus as regards policyholders	 \$ 3,774,671
 Total	 <u>\$ 14,576.861</u>

## STATEMENT OF INCOME

	<i>2007</i>
UNDERWRITING INCOME	
Premiums earned	\$ 7,868,114
DEDUCTIONS	
Losses incurred	\$ 2,853,073
Loss expenses incurred	2,834,326
Other underwriting expenses incurred	2,431,090
Total underwriting deductions	\$ 8,118,489
Net underwriting loss	\$ (250,375)
INVESTMENT INCOME	
Net investment gain	\$ 338,852
OTHER INCOME	
Change in net deferred income tax	\$ (4,191)
Net income	\$ 84,286

## **CAPITAL AND SURPLUS ACCOUNT**

Net loss, 2003	\$ (145,717)
Initial capital: Paid in	600,000
Letter of credit	1,000,000
Net change in surplus as regards policyholders, 2003	<u>1,454,283</u>
Surplus as regards policyholders, December 31, 2003	<u>\$ 1,454,283</u>
Net loss, 2004	(904,450)
Change in net deferred income tax	65,228
Capital Changes: Paid in	<u>468,293</u>
Net change in surplus as regards policyholders, 2004	(370,929)
Surplus as regards policyholders, December 31, 2004	<u>\$ 1,083,354</u>
Net income, 2005	283,710
Cumulative effect of changes in accounting principles	529,671
Capital changes: Transferred to surplus	(468,293)
Surplus adjustments: Paid in	303,137
Surplus adjustments: Transferred to capital	468,293
Prior Period Adjustment to Retained Earnings	<u>(61,206)</u>
Net change in surplus as regards policyholders, 2005	1,055,312
Surplus as regards policyholders, December 31, 2005	<u>\$ 2,138,666</u>
Net income, 2006	222,881
Surplus adjustments: Paid in	1,280,995
Prior Period Adjustment to Retained Earnings	<u>(86,503)</u>
Net change in surplus as regards policyholders, 2006	1,417,373
Surplus as regards policyholders, December 31, 2006	<u>\$ 3,556,039</u>
Net income, 2007	84,286
Surplus adjustments: Paid in	292,636
Prior Period Adjustment to Retained Earnings	<u>(158,290)</u>
Net change in surplus as regards policyholders, 2007	218,632
Surplus as regards policyholders, December 31, 2007	<u>\$ 3,774,671</u>



### **ANALYSIS OF EXAMINATION CHANGES TO SURPLUS**

There were no changes to the Company's surplus as a result of our examination.

### **COMPARATIVE FINANCIAL POSITION OF THE COMPANY**

The comparative financial position of the Company for the periods since inception is as follows:

	2007	2006	2005	2004	2003
Assets	\$ 14,576,861	\$ 11,218,871	\$ 5,099,870	\$ 3,078,564	\$ 1,678,585
Liabilities	10,802,190	7,662,832	2,961,204	1,995,210	224,302
Capital and surplus	3,774,671	3,556,039	2,138,666	1,083,354	1,454,283
Gross written premium	8,653,003	7,322,505	2,554,426	2,508,285	0
Net earned premium	7,868,114	4,581,483	1,723,384	962,232	0
Net investment income	338,852	166,079	26,356	7,248	122
Net income (loss)	\$ 84,286	\$ 222,881	\$ 283,710	\$ (904,450)	\$ (145,717)

**Note:**

Amounts in the preceding financial statements for the years ended December 31, 2003 through December 31, 2006 were taken from the Company's Annual Statements as filed with the Department. Amounts for the year ended December 31, 2007 are amounts per examination.

## **NOTES TO FINANCIAL STATEMENTS**

### **NOTE 1 – Cash:**

As of December 31, 2007, the Company reported “Cash” totaling \$7,502,245; \$7,372,902 of which was held in four institutions in amounts greater than \$250,000 in each institution. These balances exceeded the amount insured by the Federal Deposit Insurance Corporation (“FDIC”). During our examination, we discussed with management the potential risk to the Company from maintaining balances in excess of the FDIC insured limit in a single institution. Management indicated that a new program was implemented during 2008 under which cash balances in individual institutions are maintained at or below the FDIC insurance limits.

### **NOTE 2 - Letter of Credit:**

At December 31, 2007, the Company’s surplus as regards policyholders included a \$1,000,000 letter of credit in the possession of the District of Columbia Insurance Commissioner. Under the Laws of the District of Columbia, letters of credit approved by the Department are allowed as admitted assets and surplus as regards policyholders. Inclusion of the letters of credit as assets and surplus as regards policyholders is not in accordance with GAAP.

### **NOTE 3 – Deferred Acquisition Costs:**

The Company’s calculation of deferred acquisition costs (“DAC”) includes 15.5 percent of gross written premiums (GWP) for commissions, 6 percent of GWP for general administrative expenses, and 4 percent of GWP for claims handling fees. These amounts are paid to the Company’s MGU, Thorson, and to the claims administrator, RMSG. During the examination, we questioned the appropriateness of capitalizing all of the above amounts (i.e., commissions, general administrative expenses, and claims handling fees) and we discussed with the Company the accounting treatment for these items. Going forward, the Company indicated the above items will be accounted for as follows:

- The 15.5 percent commission paid to Thorson will be included in the DAC calculation.
- The 6 percent administration fee is refundable from Thorson to the Company in the event of a policy cancellation. 3 percent of this amount relates to policy issuance and underwriting costs and will be included in the DAC calculation. The remaining amounts do not generally relate to policy issuance and underwriting costs and will be capitalized as a separate prepaid expense but not included in the DAC calculation.
- The 4 percent claims handling fee will be capitalized as a separate prepaid expense, but not included in the DAC calculation.

**NOTE 4 – Loss and Loss Adjustment Expense Reserves:**

The Company reported “Losses” and “Loss adjustment expenses” reserves totaling \$2,891,264 and \$3,233,955, respectively. These reserves represent management’s best estimate of the amounts necessary to pay all claims and related expenses that have been incurred but are still unpaid as of December 31, 2007.

The methodologies utilized by the Company to compute reserves, and the adequacy of the loss and loss adjustment expenses reserves as of December 31, 2007, were reviewed as part of our examination. As part of our review, we relied on the Company’s independent actuary, who concluded that the Company’s reserves appeared to be sufficient. In addition, as part of our review of the Company’s reserves, we engaged an independent actuary to review the methods employed, assumptions relied upon, and conclusions reached by the Company’s independent actuary. The independent actuary utilized in our examination concluded that the methodologies and assumptions utilized by the Company’s independent actuary to compute these reserves, and the amount of the reserves as of December 31, 2007, were reasonable and adequate.

**NOTE 5 – Common Capital Stock:**

The Company reported “Common capital stock” totaling \$0. However, the D. C. Official Code requires a minimum of \$100,000 capital. As previously noted in the “Membership” section of this report, the Company issues capital stock to its member/policyholders. However, rather than report amounts paid by members for capital stock as “Common capital stock”, the Company reported these amounts paid as “Gross paid in and contributed surplus”. Beginning in 2008, the Company reclassified amounts paid by members for common capital stock from “Gross paid in and contributed surplus” to “Common capital stock”. As of December 31, 2007, the Company is deemed to be in compliance with the minimum capital and surplus requirements of the D. C. Official Code.

## **COMMENTS AND RECOMMENDATIONS**

### **Service Provider and Other Agreements:**

As indicated in the “Affiliated Parties and Transactions” section of this Report, the Company’s daily business operations are managed by Thorson, who acts as the Company’s managing general agent and performs various administrative functions including underwriting, marketing, claims handling and overall program management services. Thorson subcontracts the claim management function to its affiliate, RMSG. Effective July 30, 2004 the Company entered into a program manager agreement with Thorson. The agreement is continuous until terminated. In addition, Effective July 30, 2004 the Company also entered into a claims management agreement with RMSG, through Thorson. This agreement is also continuous until terminated. Under the terms of this agreement, RMSG is delegated claims adjustment authority for all claims on Fairway’s policies. The agreement specifies claims service fees in the amount of 4 percent of gross written premium net of return premium shall be paid by Thorson. However, we noted that the claims management fees were actually paid directly to RMSG by the Company. **We recommend that the Company revise these agreements to reflect the actual nature of the relationship and transactions between the Company and RMSG. In addition, we recommend that the revised agreements be submitted to the Department.**

### **Conflicts of Interest:**

As indicated in the “Conflicts of Interest” section of this Report, the Company has adopted a “Code of Business Conduct and Ethics” (the “Code”), which requires disclosure of conflicts of interest, and requires officers, directors, and service providers of the Company to annually certify compliance with the code. In addition, the D.C. Municipal Regulations (DCMR), section 26-3712, require annual conflict of interest disclosures from officers, directors and key employees. However, we noted that during the period under examination, only one director signed a conflict of interest disclosure statement. This was done in 2004. **We recommend that the Company ensure compliance with its Code of Business Conduct and Ethics and with the aforementioned D.C. Municipal Regulations.**

### **Underwriting Rates:**

Changes to information filed with the Company's application are required to be submitted to the Department. In addition, substantive changes to information in the application and to the Company's business plan, which would include changes in rates, require prior approval of the Department. As indicated in the “Territory and Plan of Operation” section of this Report, we noted that the Company is using various rates and discount factors that were not included in the Company’s original rate filing and have not been submitted to the Department. In addition, although these rates and discount factors are included in the Company’s current underwriting system, we noted numerous deviations from these rates and guidelines without documented approvals for the deviations. The existing underwriting system has limited controls to prevent

unapproved deviations from the standard rates and discount factors. According to management, a new underwriting system currently under development will not allow deviations from approved rates and factors without supervisory approval. **We recommend that the Company obtain pre-approval from the Department for any future changes to its rates. In addition, we recommend that the Company ensure the new underwriting system under development has proper internal control procedures established to prevent underwriters from deviating from approved rates and factors without appropriate supervisory approval.**

## CONCLUSION

Our examination disclosed that as of December 31, 2007 the Company had:

Admitted Assets	\$ 14,576,861
Liabilities and Reserves	10,802,190
Common Capital Stock ( <b>NOTE 5</b> )	0
Letter of Credit	1,000,000
Gross Paid in and Contributed Surplus	2,945,061
Unassigned Funds (Surplus)	(170,390)
Total Surplus	3,774,671
Total Liabilities, Capital and Surplus	\$ 14,576,861

Based on our examination, the accompanying balance sheet properly presents the financial position of the Company at December 31, 2007, and the accompanying statement of income properly presents the results of operations for the period then ended.

Chapter 39 ("CAPTIVE INSURANCE COMPANIES") of Title 31 ("Insurance and Securities") of the D.C. Official Code specifies the level of capital and surplus required for the Company. We concluded that the Company's capital and surplus funds exceeded the minimum requirements during the period under examination.

## SIGNATURES

In addition to the undersigned, the following examiners representing the District of Columbia Department of Insurance, Securities and Banking participated in certain phases of this examination:

Christina M. Bonney, Collins Consulting, Inc.  
Terry Corlett, CFE, CIE, FLMI, Collins Consulting, Inc.  
John G. Gantz, Collins Consulting, Inc.

The actuarial portion of this examination was completed by N. Terry Godbold, ACAS, MAAA, FCA, President & Senior Actuary, Godbold, Malpere & Co.

Respectfully submitted,



Pamela C. Woodroffe  
Examiner-In-Charge  
Collins Consulting, Inc.

Under the Supervision of,



Xiangchun (Jessie) Li, CFE  
Supervising Examiner  
District of Columbia Department of Insurance,  
Securities and Banking

**Government of the District of Columbia**  
**Department of Insurance, Securities and Banking**



**Thomas E. Hampton**  
**Commissioner**

June 10, 2009

Michael Gurvey, MD  
President  
Fairway Physicians Insurance Company, A Risk Retention Group  
c/o Camelback Captive Services, Inc.  
15255 N. 40<sup>th</sup> Street, Suite 109  
Phoenix, AZ 85032-4638

Dear Dr. Gurvey:

Pursuant to the provisions of Section 31-1404 of the D.C. Official Code, enclosed is a draft copy of the Report on Examination ("Report") of the affairs and financial condition of **Fairway Physicians Insurance Company, A Risk Retention Group**, as of December 31, 2007.

Please submit, to my attention, a written response calling attention to any errors or omissions in the draft Report. In addition, the Company's response shall include responses to each of the recommendations included in the "Comments and Recommendations" section of this Report. These responses should indicate the Company's agreement or disagreement with each recommendation, as well as a summary of the corrective measures which will be taken by the Company for each recommendation. If the Company disagrees with any of these recommendations, the response shall indicate the reason(s) for the disagreement, as well as an explanation of alternative measures to be taken by the Company to address the condition which lead to the recommendation.

The response must be in writing and shall be furnished to this Department by **June 24, 2009**. In addition to a hard-copy response, please also furnish the response electronically via e-mail to me, in a Microsoft "Word" format, to [sean.o'donnell@dc.gov](mailto:sean.o'donnell@dc.gov).

Sincerely,

P. Sean O'Donnell  
Director of Financial Examination,  
Risk Finance Bureau

Enclosure





## **RESPONSE TO COMMENTS AND RECOMMENDATIONS**

Mr. O'Donnell

Below Fairway has responded to the Comments and Recommendations made in the December 31, 2007 draft audit.

### **Service Provider and Other Agreements:**

1. **Comment/ Recommendation**

Changes to information filed with the Company's application are required to be submitted to the Department. As noted in the "Membership" section of this report, the Company changed its subscription agreement in 2007, but the Department was not notified of the change. **We recommend that the Company submit, to the Department, all information and documents which reflect changes to existing information and documents on file with the Department.**

**Response**

Fairway sent the revised subscription agreement (PPM) to Mr. Dana Sheppard on September 6, 2007. (See enclosed email from Dick Marshall to Mr. Sheppard in which the PPM was included).

2. As indicated in the "Affiliated Parties and Transactions" section of this Report, the Company's daily business operations are managed by Thorson, who acts as the Company's managing general agent and performs various administrative functions including underwriting, marketing, claims handling and overall program management services. Thorson subcontracts the claim management function to its affiliate, RMSG. Effective July 30, 2004 the Company entered into a program manager agreement with Thorson. The agreement is continuous until terminated. In addition, Effective July 30, 2004 the Company also entered into a claims management agreement with RMSG, through Thorson. This agreement is also continuous until terminated. Under the terms of this agreement, RMSG is delegated claims adjustment authority for all claims on Fairway's policies. The agreement specifies claims service fees in the amount of 4 percent of gross written premium net of return premium shall be paid by Thorson. However, we noted that the claims management fees were actually paid directly to RMSG by the Company. **We recommend that the Company revise these agreements to reflect the actual nature of the relationship and transactions between the**

**Company and RMSG. In addition, we recommend that the revised agreements be submitted to the Department.**

*Response*

On May 23, 2007 Robert Myers, corporate counsel for Fairway, forwarded correspondence including a new Program Manager Agreement and Claims Agreement, these agreements were an attempt to clarify this exact issue. On June 12, 2007 Mr. Lee Backus wrote to Fairway requesting the new contracts not be used since there were questions the DISB would like answered - to clarify the intent of the contracts. On June 22, 2007 the company responded to Mr. Backus and never heard back from the DISB regarding this issue. The company believed it was approved to move forward with the new agreements.

Conflicts of Interest:

*Comment/ Recommendation*

As indicated in the "Conflicts of Interest" section of this Report, the Company has adopted a "Code of Business Conduct and Ethics" (the "Code"), which requires disclosure of conflicts of interest, and requires officers, directors, and service providers of the Company to annually certify compliance with the code. In addition, the D.C. Municipal Regulations (DCMR), section 26-3712, require annual conflict of interest disclosures from officers, directors and key employees. However, we noted that during the period under examination, only one director signed a conflict of interest disclosure statement. This was done in 2004. **We recommend that the Company ensure compliance with its Code of Business Conduct and Ethics and with the aforementioned D.C. Municipal Regulations.**

*Response*

The company has had all directors and officers sign the Conflict of Interest Statement except for director Dr Maurice Sherman. (see enclosed). Over the last couple of months the company has tried to contact Dr. Sherman by email and by phone to obtain his signature for numerous company documents, but we have not received any signatures or any responses to our attempts to contact him. The Company is currently discussing, with counsel, his ability to continue serving as a director. A conflict of interest statement will be signed by each director and officer every year.

Underwriting Rates:

*Comment Recommendation*

Changes to information filed with the Company's application are required to be submitted to the Department. In addition, substantive changes to information in the application and to the Company's business plan, which would include changes in rates, require prior approval of the Department. As indicated in the "Territory and Plan of Operation" section of this Report, we noted that the Company is using various rates and discount factors that were not included in the

Company's original rate filing and have not been submitted to the Department. In addition, although these rates and discount factors are included in the Company's current underwriting system, we noted numerous deviations from these rates and guidelines without documented approvals for the deviations. The existing underwriting system has limited controls to prevent unapproved deviations from the standard rates and discount factors. According to management, a new underwriting system currently under development will not allow deviations from approved rates and factors without supervisory approval. **We recommend that the Company obtain pre-approval from the Department for any future changes to its rates. In addition, we recommend that the Company ensure the new underwriting system under development has proper internal control procedures established to prevent underwriters from deviating from approved rates and factors without appropriate supervisory approval.**

Response

Fairway will seek approval from the DISB before any changes are made to future Underwriting Rates, just as was done with the rate change that the DISB approved for Fairway in May of 2008.

Fairway had contracted with an IT company to help re-design our current underwriting system that would have included additional security features preventing the use of any unapproved rate. However this was determined by officers of the company to not be cost effective so the company has decided to look to purchase or lease a new system that already has these features. Until a new system is implemented all quotes are being sent to a supervisor for approval and if needed the head of underwriting or an officer of the company will review and approve the rating of a policy.

Please feel free to contact us with any questions.

Sincerely,



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Michael Gurvey, MD  
President

**Government of the District of Columbia**  
**Department of Insurance, Securities and Banking**



**Thomas E. Hampton**  
**Commissioner**

June 30, 2009

Michael Gurvey, MD  
President  
Fairway Physicians Insurance Company, A Risk Retention Group  
c/o Camelback Captive Services, Inc.  
15255 N. 40<sup>th</sup> Street, Suite 109  
Phoenix, AZ 85032-4638

Dear Dr. Gurvey:

We are in receipt of your response for **Fairway Physicians Insurance Company, A Risk Retention Group** ("Fairway" or "Company"), which addresses the corrective actions taken or to be taken by Fairway to comply with the recommendations made in the Report on Examination as of December 31, 2007. The response adequately addresses the recommendations made in the Report, except for the following:

**Service Provider and Other Agreements:**

**We recommended that the Company revise these agreements to reflect the actual nature of the relationship and transactions between the Company and RMSG. In addition, we recommend that the revised agreements be submitted to the Department.**

**Company Response:**

On May 23, 2007 Robert Myers, corporate counsel for Fairway, forwarded correspondence including a new Program Manager Agreement and Claims Agreement, these agreements were an attempt to clarify this exact issue. On June 12, 2007 Mr. Lee Backus wrote to Fairway requesting the new contracts not be used since there were questions the DISB would like answered - to clarify the intent of the contracts. On June 22, 2007 the company responded to Mr. Backus and never heard back from the DISB regarding this issue. The company believed it was approved to move forward with the new agreements.

Michael Gurvey, MD  
Fairway Physicians Insurance Company, A Risk Retention Group  
June 30, 2009  
Page 2 of 2

**Department Response:**

Please submit executed copies of the new agreements referred to in the response to the Department.

For future reference, when submitting agreements or other documents to the Department, please note that any agreements or documents submitted should not be considered approved by Department until such time as the Department has done so in writing back to the Company. If the Company does not hear back from the Department within a reasonable time, please follow-up with the Department.

The adopted Report (which includes a copy of this letter), and the Order evidencing such adoption are enclosed. Pursuant to Section 31-1404(e)(1) of the D.C. Official Code, the adopted Report will be held private and confidential for a period of 10 days from the date of the Order evidencing such adoption. After this 10 day period has passed, the Report will be publicly available, and will be forwarded electronically to each Commissioner whose name is set forth on Page 1 of the Report, as well as to the National Association of Insurance Commissioners, and to each state in which the Company is registered.

Pursuant to Section 31-1404(d)(1) of the D.C. Official Code, within 30 days of the date of the above-mentioned Order, affidavits executed by each Company director stating under oath that he or she has received a copy of the adopted examination Report and related Order shall be filed with this Department. Please send these affidavits to my attention at the Department.

Please contact me at 202-442-7785 if you have any questions.

Sincerely,



P. Sean O'Donnell  
Director of Financial Examination  
Risk Finance Bureau

Enclosures