BEFORE THE INSURANCE COMMISSIONER
FOR THE STATE OF ARKANSAS

IN THE MATTER OF
THE REPORT OF EXAMINATION OF
IMERICA LIFE AND HEALTH INSURANCE
COMPANY, FORMERLY "THE FIRST
PYRAMID LIFE INSURANCE
COMPANY OF AMERICA"

AID NO. 2005 - 058

ADOPTION ORDER

Now on this day the matter of the Report of Examination ("Report" or "Report of Examination") as of December 31, 2004 of IMERICA LIFE AND HEALTH INSURANCE COMPANY, formerly "The First Pyramid Life Insurance Company of America" ("Imerica" or "Company"), of Little Rock, Arkansas, NAIC #63533, a domestic stock insurance company, is taken under consideration by Julie Benafield Bowman, Insurance Commissioner for the State of Arkansas ("Commissioner"), as presented by the Chief Counsel, Ms. Jean Langford, and the Finance Division of the Arkansas Insurance Department ("Department"). From the facts, the Commissioner finds as follows:

FINDINGS OF FACT

1. That the Commissioner has jurisdiction over the Company and the subject matter involved herein.

2. That the Company is an Arkansas-domiciled stock insurance company authorized to transact life and disability (accident, health, and sickness) insurance in the State of Arkansas.

3. That pursuant to Ark. Code Ann. §23-61-201, et seq., and other applicable laws, the Commissioner authorized and directed the Department to conduct a regular

examination of the affairs, transactions, accounts, records and assets of the Company as of December 31, 2004.

4. That this examination was commenced at the Company's main administrative office in Tampa, Florida, by the Department Examiners on April 18, 2005, and it was completed on August 11, 2005.

5. That the verified Report of Examination was filed with the Department on September 6, 2005; it was then forwarded to the Company via certified mail on September 6, 2005. The Report was received by the Company on September 12, 2005, according to the certified mail receipt returned to the Department.

6. That the Report of Examination contains the following comments on discrepancies or deficiencies concerning the Company's operations:

(a) That the Examiners stated that as of December 31, 2004, in a review of the corporate record book and Jurat page of the 2004 filed annual statement, it was noted that Mr. Rodney Farmer filled the position on the Company's Board of Directors vacated earlier by Mr. Michael Ashker. However, in a review of the minutes of the annual meeting of the sole shareholder held on Thursday, January 27, 2005, Mr. Farmer was listed as being duly elected to the Board, on that date, which is subsequent to year-end 2004;

(b) That the Examiners noted that Ms. Yvonne Fidure was duly appointed as Vice President for Insurance and Distribution at the Board of Directors meeting held on Thursday, January 27, 2005; however, in error, she was not included in the corporate minutes. The Company stated to the Examiners that the minutes for the meeting would be amended to reflect her appointment properly;

(c) That the Examiners noted that, as of December 31, 2004, all officers and directors filed biographical affidavits with the Department in accordance with Arkansas Rule and Regulation 7, with the exception of Ms. Yvonne Fidure. However, the biographical affidavit for Ms. Yvonne Fidure was obtained during the examination fieldwork and was subsequently filed in 2005 with the Department's Legal Division per Department Rule 7;

(d) That the Examiners found, in a review of the "Notes to Financial Statements" in the 2004 Annual Statement, that the Company failed to disclose the loss contingency for the minimum premium provision of the Excess of Loss treaty with Lloyd's of London in the Annual Statement. Pursuant to SSAP No. 5, Paragraph 14, and SSAP No. 62, paragraph 41, Accounting Practices and Procedures Manual ("APPM") (2004 edition), of the National Association of Insurance Commissioners ("NAIC"), the Company should have disclosed the loss contingency in the "Notes to Financial Statements"; as the potential for the loss was more than remote, but less than probable at the time of the filing of the statutory financial statement;

(e) That the Examiners noted that, during the examination, the Company was only able to provide trial balances for 2003 and 2004, due to the change in control of the Company, which was effective on December 31, 2003. Therefore, trial balances taken of the Company's general ledgers as of December 31, 2003 and December 31, 2004 were checked and found to be in agreement with the figures shown in the office copies of the Company's Annual Statements;

(f) That the Examiners found the Company's new management (through the acquisition process) acquired a Guaranty Fund Receivable in the amount of

$23,134, from the period of the Company's prior ownership. However, the Company was not provided any backup or support for the amount listed as an admitted asset. Therefore, the Company does not have any supporting detail for the Guaranty Fund Receivable, and does not have the ability to present this receivable for collection. Due to this fact, and to the fact that the receivable is over ninety (90) days old; the receivable should be non-admitted in accordance with the APPM's SSAP 87, paragraph 3, primarily because the asset is not readily marketable to meet policyholder obligations;

(g) That the Examiners found that, as of December 31, 2004, the Company had included $6,000 in prepaid electronic data processing ("EDP") services as an admitted asset in the 2004-filed annual statement. However, per the APPM's SSAP 29, paragraph 2, this asset should be non-admitted; because the asset is not readily available to satisfy policyholder obligations, as specified in SSAP 4. Therefore, these prepaid expenses shall be reported as non-admitted assets and charged against unassigned funds (surplus);

(h) That the Examiners found that, pursuant to the payroll agreement between Imerica Financial Corporation ("IFC"), the Company's immediate parent, and Automatic Data Processing, Inc., ("ADP") (the TPA for the Company's payroll and the actual employer of the Company's employees), a $70,000 Certificate of Deposit ("CD") is being used as collateral, in the event that IFC does not pay ADP for payroll. This CD was funded equally between IFC and the Company. The Company reported its share of the funding in the 2004-filed annual statement; reporting it as an asset for $35,000 under aggregate write-ins for other than invested assets. The CD is in the name of IFC, and would not be available for the Company's policyholder obligations in the event of liquidation. The asset <u>should</u> be listed as a "receivable from parent" on the annual statement; and should also be non-admitted in accordance with the APPM's SSAP 87, paragraph 3, which states:

"Assets having economic value other than those which can be used to fulfill policyholder obligations, or those assets which are unavailable due to encumbrances or third party interests should not be recognized on the balance sheet and are, therefore, considered non-admitted";

(i) That the Examiners stated that the contract actuary, per a review of the Company's "advance premiums detailed" ("APR") data file, identified that a portion of the Company's APR was not allocated to unearned premium reserves ("UEPR"). This implies that the UEPR is understated, and the APR is overstated. However, it appears the Company's total premium reserve for periods of coverage past the valuation date is adequate. Therefore, the Company's reported APR of $4,187 as of December 31, 2004, compared to the contract actuary's estimate of $4,286, results in an immaterial difference; and no reclassifying adjustment or adjustment to surplus is considered necessary; and

(j) That the Examiners stated that, per a review of the contract actuaries' actuarial report and the "Notes to Financial Statements" in the 2004 Annual Statement, the Company failed to disclose a loss contingency for the minimum premium provision of the excess of loss treaty with Lloyds of London in that Annual Statement. Pursuant to the APPM's SSAP #5, Paragraph 14, the Company should have disclosed the loss contingency in the "Notes to Financial Statements" since the potential for the loss was more than remote but less than probable at the time of issuance of the statutory financial statements.

7. That, in the Subsequent Events section of the Report of Examination, the Examiners stated:

(a) That, in calendar year 2004, the Company had a net loss of $3.1 million. This net loss resulted in the Company, in early 2005, falling below certain licensed states' capital and surplus requirements. The Company received a capital infusion of $3.5 million on March 17, 2005, from its immediate parent, Imerica Financial Corporation, which had itself received the funds from Bain Capital Investors, L.L.C. (the partial owner of Imerica Financial Corporation). The States of Ohio, Virginia, and Washington have refrained from taking regulatory action against the Company due to the 2005 capital infusion; however, the Company's ongoing operations and financial position will be monitored closely;

(b) That, in a review of the 1st quarter 2005 financial statement, the Company had properly reported the aforementioned Guaranty Fund receivable, pre-paid expense, and payroll security deposit as non-admitted assets, in accordance with the NAIC's Accounting Practices and Procedures Manual;

(c) That, as of 2nd Quarter 2005, the Company reported an accrued liability for the annual minimum premium amount of $469,147, payable for the reinsurance agreement with Lloyd's of London;

(d) That, subsequently, IFC assigned the Administrative Services Agreement with Health Plan Services, Inc. ("HPS") to the Company. On March 15, 2005, the Company sent a letter of understanding to HPS in regards to the administrative services agreement between the Company and HPS. The letter states the following:

- Effective with the closing of the $3,500,000 series B preferred stock transaction between Bain Capital entities and IFC, HPS will be issued 688,667 additional shares of IFC common stock, at a purchase price of $0.10 per share. This common stock is consideration for past services rendered in connection with the Administrative Services Agreement between HPS and IFC. Following this issuance of common stock, HPS will hold an ownership percentage of three percent (3%) in IFC;
- All furniture, fixtures and equipment that have heretofore been on loan to and in use by Imerica, at its Suite 300 premises (in Tampa, Florida), shall become the sole property of Imerica;
- HPS shall provide Imerica with sufficient space for Imerica's computer systems within HPS' temperature-controlled computer systems room at no cost to Imerica for the use of and access to such space;
- HPS shall provide Imerica with an additional 100 hours per calendar quarter of technology services. The total technology services budget shall now be 550 hours per calendar quarter. Services provided in excess of 550 hours per calendar quarter shall be billable at $100 per hour;
- The Service Fees payable monthly under the agreement by Imerica to HPS on collected premium (excluding the $20 administrative fee) under the agreement shall be adjusted quarterly; and such adjustment shall be paid on a quarterly basis pursuant to the following schedule:

If average collected premium per policy/certificate for the quarter is:	**Then the collected premium per policy/certificate subject to the service fees shall be adjusted quarterly to:**
≥ $211.00	Monthly Premium + $0 adjustment
$191.00 ≥ - ≤ $210.99	$211.00
≤ $190.99	Monthly Premium + ($20 administrative fee)

- Imerica will continue to pay HPS $1.23 per policy/certificate per month, which is the same amount that it is currently paying under the agreement;
- HPS and Imerica agree to work in good faith to amend and restate the agreement to incorporate the above referenced terms, the Service Guidelines (currently being negotiated), and any other revised terms or conditions which the parties have been following since the last iteration of the agreement. The parties agree to work diligently to complete such revisions and to execute an Amended and Restated Services Agreement no later than April 15, 2005;
- Imerica shall pay the $15,000 in outstanding technology services fees no later than March 18, 2005; and
- As of March 15, 2005, HPS agreed to all items included in the letter of understanding, which was signed by the President/CEO of HPS. However, per the date of this examination report, the Administrative Services Agreement had not been amended to reflect the changes included in the letter of understanding. The Company stated that, once the changes are implemented into the agreement, the amended agreement will be properly filed with the Arkansas Insurance Department.

8. That the Examiners recommended in the Report of Examination that the Company:

(a) Properly and timely file any future officer or director biographical affidavits with the Department's Legal Division for compliance with Department Rule 7; and

(b) Properly allocate a portion of the APR to UEPR in filing subsequent financial statements.

9. That the Company sent the Department a written rebuttal dated October 4, 2005, and it was emailed to and received by the Department on October 4, 2005. The Company's written rebuttal is attached as Exhibit "A" to this Adoption Order.

THEREFORE, pursuant to the provisions of Ark. Code Ann. §23-61-205, the Commissioner hereby orders:

A. That the verified Report of Examination, as filed with the Department and after review and rebuttal by the Company, was modified by Department Examiners to reflect:

---that the APPM in use for the examination was the 2004 version of the NAIC Manual, on Report page 11;

---that Rasco Winter & Associates, LLP has been the Company's auditors for <u>only</u> the years ending December 31, 2003 and December 31, 2004; and that Deloitte & Touche, L.L.P. was the predecessor auditing firm for the Company;

---that under the "Management and Control" section of the Verified Report, Officers Keller and Mason were appointed by the Company subsequent to February, 2004, rather than as initially reported;

---that under the "Affiliated Relationships" section of the Verified Report, Agility Partners, LLC was not the predecessor to Imerica Financial Corporation; rather, "Agility Insurance Enterprises, Inc." was, before its subsequent name change to "Imerica Financial Corporation";

---that under the "Affiliated Relationships" section of the Verified Report, the Administrative Services Agreement fee to be earned by HPS, as a third party administrator, was corrected from $2.25 to $1.23 per enrollee per month; and

---that under the "Affiliated Relationships" section of the Verified Report, Imerica's fee was corrected to $18 per telephone interview (a one-time fee), rather than $15.

B. That the Report of Examination, as modified, is hereby adopted;

C. That the Company shall take the following remedial steps and measures:

(1) Timely and consistently record and maintain, in Company records, accurate minutes for the Company's Board of Directors' meetings, shareholders' meetings, and significant meetings of the officers and/or key managers of the Company; and carefully coordinate Imerica's corporate minute book entries with the preparation of the draft annual statement, before the latter is formally filed with the Department on or before March 1st. The Company is hereby directed to file with the Department a true and accurate copy of the amended Board of Directors' minutes for the meeting of

January 27, 2005, reflecting properly the appointment of Ms. Fidure as Vice President for the Company;

(2) Timely and accurately maintain in the Company's records and file with the Department the biographical affidavits for the members of the Company's Board of Directors, and elected officers and key managers for full compliance with the Department's Rule 7;

(3) Carefully monitor preparation of the Company's financial documents, and more closely adhere to the NAIC's Accounting Practices and Procedures Manual (most recent edition) in the preparation of each successive annual or quarterly or other financial report officially filed with the Department. More specifically, it is necessary for the Company to report accurately:

---"Notes to Financial Statements"; and other balance sheet items, especially as to understatement/overstatement of the UEPR and/or APR (which could result in necessary adjustments to the Company's surplus);

---proper loss contingencies in the "Notes to Financial Statements",

---assets (admitted and non-admitted) under Ark. Code Ann. §§23-63-601, especially EDP assets; and assets or collateral in connection with the Company's receivables from parent companies; and

(4) Complete preparation of and submit to the Department executed copies in duplicate of the Amended Services Agreement between the Company (as successor in the Agreement to IFC) and HPS, after receipt of the Report of Examination, as modified, and this Adoption Order;

D. That the Department shall forward a copy of this Order and the adopted Examination Report, as modified, to the Company, by certified mail. The mailing to the Company shall include specimen affidavit forms for the Company's Directors to use in acknowledgement to the Department that each member of the Board received the adopted Report of Examination, as modified, and this Order;

E. That within thirty (30) days of receipt of this Order and the adopted Examination Report, as modified, the Company shall file with the Department the affidavits executed by each one of its Directors, stating under oath or affirmation that each has received a copy of this Order and adopted Examination Report, as modified, pursuant to Ark. Code Ann. §23-61-205(b)(1), et seq., as amended;

F. That the adopted Examination Report, as modified, shall be open for public inspection upon the expiration of thirty (30) days from the Company's receipt of this Order, according to the certified mail return receipt which is returned to the Department by the U.S. Post Office.

IT IS SO ORDERED THIS 1st DAY OF November, 2005.

Julie Benafield Bowman

JULIE BENAFIELD BOWMAN
INSURANCE COMMISSIONER
STATE OF ARKANSAS

IMERICA
FINANCIAL CORPORATION LIFE AND HEALTH

October 4, 2005

RECEIVED
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FINANCE
ARKANSAS INSURANCE DEPARTMENT

Mr. William J. Woodall, Jr., C.F.E., CGFM
Chief Examiner
Arkansas Insurance Department
1200 West Third Street
Little Rock, AR 72201-1904

Re: Report of Examination as of December 31, 2004
Imerica Life and Health Insurance Company

Dear Mr. Woodall:

Imerica Life and Health Insurance Company ("Imerica") is in receipt of your letter of September 6, 2005 and attached Report of Examination as of December 31, 2004.

Following a review of the Report, Imerica respectfully submits the following comments for clarification in response thereto:

Page 4. Board of Directors - With respect to the listing of Mr. Rodney Farmer as a Director on the jurat page of the 2004 annual statement despite the fact that Mr. Farmer was formally elected as an officer and director at the Board of Directors meeting of January 27, 2005, please be advised that Imerica believes that since it is the responsibility of the then current management and directors to file the annual statement that it is appropriate to list them as of the date of the filing. Mr. Farmer signed the Jurat Page in his capacity as President and CEO, positions he held at the time. We believe it makes sense to list him in his then current positions in the jurat masthead, rather than list Michael Ashker who ceased serving as President, CEO and Director as of November 24, 2004. Mr. Farmer began serving in a consultative role pending final negotiation of his employment offer as CEO, President & Director, as of December 1, 2004.

Page 5. Officers - This section states the name and titles of officers as duly appointed by the Board of Directors on February 10, 2004. Listed therein are Thomas Michael Keller and Robert Alfred Mason. Please note that neither Mr. Keller nor Mason were appointed by the Company as of February 10, 2004. Mr. Keller's appointment did not occur until September 2, 2004 and Mr. Mason's as of January 27, 2005 (which is stated later in the Report). Therefore, their names and titles should be struck from the first list of officers at the top of that page.

Page 7. Affiliated Relationships - In the second paragraph, it states that "*Agility Partners, LLC (now known as Imerica Financial Corporation) had entered into an Administrative Services Agreement...*" Please note that Agility Partners, LLC is not a predecessor business entity to Imerica Financial Corporation. Agility Partners, LLC assigned its rights in the Administrative Services Agreement to Agility Insurance Enterprises, Inc., which changed its name to Imerica Financial Corporation in June 2004. Subsequently the Administrative Services Agreement was assigned to Imerica Life and Health Insurance Company by Imerica Financial Corporation.

Page 7. Administrative Fee - Please note that the Administrative fee to be earned by HPS is $1.23 per enrollee per month, not the $2.25 which is stated in the agreement. HPS and Imerica agreed to a reduced fee in lieu of HPS having to provide case management services as part of the Administrative Services Agreement.

Page 7. Telephone Verification Underwriting Interview - Please note that Imerica currently pays HPS $18 per Telephone Interview. The reason for the increase is attributable to the decision by Imerica to expand the scope of the telephone interview from strict verification of the information on the application to a proactive interview about the applicant's medical conditions, thereby requiring longer, more complex dialogue conducted by a more experienced interviewer with medical underwriting knowledge or experience.

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EXHIBIT
A

<u>Page 11. Auditors</u> - The Report indicates that "*Rasco Winter & Associates, LLP has been the Company's independent auditor for all the years of this examination period and has issued unqualified opinions for those years.*" Please be advised that Rasco Winter & Associates, LLP has been the Company's auditors for the years ending December 31, 2003 and December 31, 2004. Prior to the acquisition of Imerica (f/k/a The First Pyramid Life Insurance Company of America), for the years ending December 31, 2001 and December 31, 2002, based on the best of the Company's knowledge, information and belief, the Company's auditors were Deloitte & Touche.

If you have any questions regarding these comments, please contact me at 813-313-4477. Thank you for your efforts on behalf of our fine company and we also appreciate the assistance and efforts of Messrs. Mel Heaps, Steven Williams and David Dillon in connection with the examination.

Very truly yours,

Michael G. Hankinson
COO, Secretary & General Counsel

cc: Rodney Farmer, CEO & President
Thomas Keller, EVP and Chief Financial Officer
Robert A. Mason, Controller & Treasurer