

STATE OF NEW YORK INSURANCE DEPARTMENT

REPORT ON EXAMINATION

OF THE

PHOENIX LIFE INSURANCE COMPANY

AS OF

DECEMBER 31, 2002

EXAMINER:

MARC A. TSE

REPORT DATED:

JANUARY 9, 2004

REPORT ON ASSOCIATION EXAMINATION

OF THE

PHOENIX LIFE INSURANCE COMPANY

AS OF

DECEMBER 31, 2002

BY

THE INSURANCE DEPARTMENTS

OF THE

STATE OF NEW YORK

STATE OF MISSISSIPPI

DATE OF REPORT:

JANUARY 9, 2004

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STATE OF NEW YORK  
INSURANCE DEPARTMENT  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004

January 9, 2004

Honorable Gergory V. Serio  
Superintendent of Insurance  
State of New York  
Albany, New York

Dear Sir:

In accordance with instructions contained in Appointment Number 21996, dated January 21, 2003, and annexed hereto, an examination has been made of the Phoenix Life Insurance Company, hereinafter referred to as "the Company", at its office, located at One American Row, Hartford, Connecticut 06102.

Wherever the term "the Department" appears in this report, it refers to the State of New York Insurance Department.

The report indicating the results of the examination is respectfully submitted.



STATE OF NEW YORK  
INSURANCE DEPARTMENT  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004

January 9, 2004

Honorable John Oxendine  
Chairman, Southeastern Zone  
Commissioner of Insurance  
State of Georgia  
Atlanta, Georgia

Honorable Gregory V. Serio  
Superintendent of Insurance  
State of New York  
Albany, New York

Dear Sirs:

In accordance with instructions and pursuant to the provisions of statute, we have made an examination of the affairs and condition of Phoenix Life Insurance Company, hereinafter referred to as "the Company", at its statutory home office located at One American Row, Hartford, Connecticut 06102.

Wherever the term "the Department" appears in this report, it refers to the State of New York Insurance Department.

The examination was conducted by the New York Insurance Department with participation from the State of Mississippi representing the Southeastern Zone of the NAIC.

The report on examination is herewith respectfully submitted.

## 1. EXECUTIVE SUMMARY

On June 25, 2001, the Company converted from a mutual life insurance company to a stock life insurance company, changed its name to Phoenix Life Insurance Company, and became a wholly owned subsidiary of The Phoenix Companies, Inc. (“Phoenix”). (See item 3A of this report)

The examiner’s review of a sample of transactions did not reveal any differences which materially affected the Company’s financial condition as presented in its financial statements contained in the December 31, 2002 filed annual statement. (See item 5 of this report)

The examiner recommends that the Company substantially enhance its monitoring and valuation of private equity and venture capital funds, make appropriate write-downs of one of its larger private equity limited partnerships in Schedule BA for December 31 of 2001 and 2002, and other periods as applicable, and thoroughly review its other Schedule BA holdings for other possible impaired holdings. (See item 5D of this report)

The examiner recommends that the Company have sufficient reinsurance contracts, or establish a hedging program, before significantly increasing its variable annuity guaranteed living benefits, guaranteed minimum death benefits, or similar guaranty exposures from the December 31, 2002 level. (See item 5E of this report)

The Company violated Section 3203(a)(15) of the New York Insurance Law by issuing participating cash value policies without the required warning mentioning all of the applicable possibilities (i.e., dividends are not guaranteed). (See item 6B of this report)

The Company violated Section 243.2(b)(4) of Department Regulation No. 152 by failing to maintain all of its death claim files as required by the Regulation. (See item 7 of this report)

## 2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 1997. This examination covers the period from January 1, 1998 through December 31, 2002. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2002 but prior to the date of this report (i.e., the completion date of the examination).

The examination comprised a verification of assets and liabilities as of December 31, 2002 to determine whether the Company's 2002 filed annual statement fairly presents its financial condition. The examiner reviewed the Company's income and disbursements necessary to accomplish such verification and utilized the National Association of Insurance Commissioners' Examiners Handbook or such other examination procedures, as deemed appropriate, in such review and in the review or audit of the following matters:

- Company history
- Management and control
- Corporate records
- Fidelity bond and other insurance
- Officers' and employees' welfare and pension plans
- Territory and plan of operation
- Market conduct activities
- Growth of Company
- Business in force by states
- Mortality and loss experience
- Reinsurance
- Accounts and records
- Financial statements

The examiner reviewed the corrective actions taken by the Company with respect to the violations, recommendations and comment contained in the prior report on examination. The results of the examiner's review are contained in item 9 of this report.

This report on examination is confined to financial statements and comments on those matters which involve departures from laws, regulations, or rules or which require explanation or description.

### 3. DESCRIPTION OF COMPANY

#### A. History

Phoenix Mutual Life Insurance Company, hereinafter referred to as “Phoenix Mutual,” was originally incorporated under the laws of Connecticut in May 1851 as a stock company. Business commenced in May of 1851 under the name of American Temperance Life Insurance Company. The Company’s name was changed to Phoenix Mutual Life Insurance Company in 1861. In 1889, an amendment to the charter authorized the complete mutualization of Phoenix Mutual.

Home Life Insurance Company, hereinafter referred to as “Home Life,” was originally incorporated under the laws of New York on April 30, 1860 as a stock company and commenced business on May 1, 1860. Home Life was subsequently mutualized in 1916.

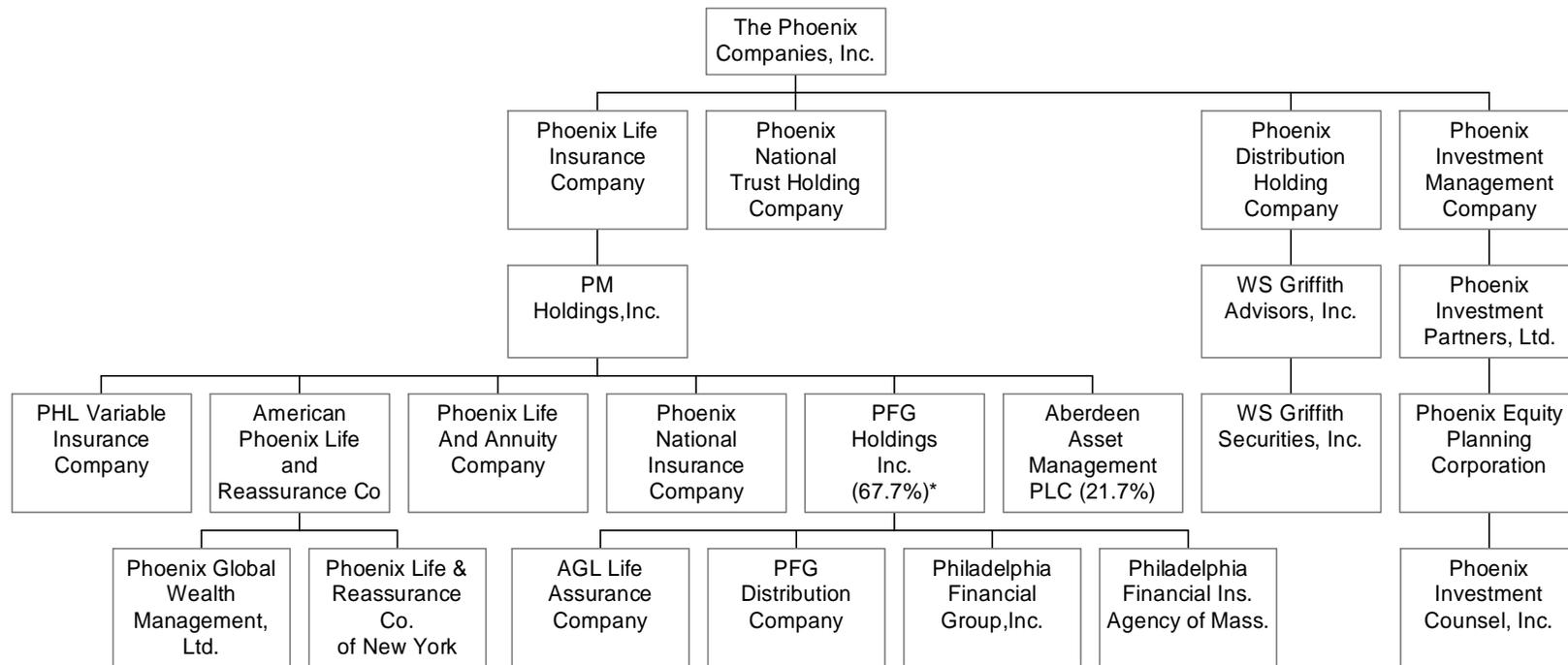
On July 1, 1992, Home Life merged with and into Phoenix Mutual, the surviving company, pursuant to Section 7105 of the New York Insurance Law. Immediately prior to the merger on July 1, 1992, Phoenix Mutual had redomesticated into the state of New York pursuant to Section 7120 of the New York Insurance Law. The merger was approved by the policyholders of both companies on May 21, 1992 and by the Connecticut and New York State Insurance Departments on March 27, 1992 and June 17, 1992, respectively. Concurrently with the merger, the surviving company changed its name to Phoenix Home Life Mutual Insurance Company (“Phoenix Home”).

On November 25, 1996, Phoenix Home issued \$175 million of surplus notes, with a 6.95% interest rate, scheduled to mature on December 1, 2006. There are no sinking fund provisions in the notes, which were issued in accordance with Section 1307 of the New York Insurance Law and, accordingly, interest and principal payments cannot be made without the approval of the Department. The notes were issued pursuant to Rule 144A under the Securities Act of 1933, underwritten by Bear, Stearns & Co. Inc., Chase Securities Inc. and Merrill Lynch & Co., and are administered by the Bank of New York as registrar/paying agent.

On June 25, 2001, Phoenix Home converted from a mutual life insurance company to a stock life insurance company, changed its name to Phoenix Life Insurance Company, and became a wholly owned subsidiary of The Phoenix Companies, Inc. (“Phoenix”). The demutualization was accounted for as a reorganization. The Company’s unassigned surplus was reclassified as common stock and additional paid in capital.

**B. Holding Company**

The Company is a wholly owned, direct subsidiary of Phoenix, a Delaware holding company. An organization chart reflecting the relationship between the Company and significant entities in its holding company system as of December 31, 2002 follows:



\* The Phoenix Companies, Inc. owns the remaining 32.3%

The Company had the following 20 service agreements in effect as of December 31, 2002, as indicated below. Prior to June 25, 2001, the date the Company converted from a mutual company to a stock company and became a wholly owned subsidiary of Phoenix, the Company was not required to file service agreements with the Superintendent in accordance with Section 1505 of the New York Insurance Law.

Type of Agreement	Effective Date	Provider(s) of Service(s)	Recipient(s) of Service(s)	Specific Service(s) Covered	Income/ (Expense)* For Each Year of the Examination or Agreement
Allocation Agreement	Amended and Restated 1/1/01	Phoenix Investment Partners, Ltd. ("PXP")	the Company	Expense allocation agreement for Philp R. McLoughlin's salary and benefits	2002 \$(600,000) 2001 \$(600,000)
Computer Services Agreement	Amended and Restated 1/1/01	the Company	PXP	Certain computer processing, communication and related support services	2002 \$2,319,015 2001 \$1,973,268
Administrative Agreement	Amended and Restated 1/1/01	the Company	PXP	Lease for office space and accounting and legal personnel	2002 \$13,980,222 2001 \$10,281,500
Investment Advisory Agreement	Amended and Restated 1/1/01	Phoenix Investment Counsel, Inc. ("PIC")	the Company	Investment advisory	2002 \$(7,347,462) 2001 \$(8,815,236)
Trademark License Agreement**	1/1/01	the Company	PXP	Use of licensed trademarks in connection with the licensed business	2002 \$0.00 2001 \$0.00
Lease Agreement	6/1/00	the Company	PXP	Lease for land and building located at 56 Prospect Street, Hartford, CT.	2002 \$1,360,399.92 2001 \$1,360,399.92 2000 \$793,567.00
Sublease Agreement	6/1/00	PXP	the Company	Subleases back to the Company for portions of land and building located at 56 Prospect Street, Hartford, CT.	2002 \$43,523.80 2001 \$43,523.80 2000 \$43,523.80
Sublease Agreement	10/9/00	the Company	PXP	Sublease the 8 <sup>th</sup> Floor of One Constitution Plaza. Sublease for a period of 5 years 10/9/00 to 10/31/2005	2002 \$228,000.00 2001 \$228,000.00 2000 \$228,000.00
Master Service and Distribution Compliance Agreement	11/1/00	Phoenix Equity Planning Corporation ("PEPCO").	the Company	Maintenance of the books and records in connection with the sale of contract/policies and other administrative functions.	2002 \$(8,188,082) 2001 \$(9,661,205) 2000 \$(11,435,435)
Administrative Agreement**	6/25/01	the Company	Various Phoenix Distribution Holding Company Subsidiaries.	Provide services, if needed, during the demutualization	2002 \$0.00 2001 \$0.00
Sublease**	12/28/00	the Company	W.S. Griffith Securities, Inc. ("WSG")	Office space	2002 \$0.00 2001 \$0.00
Administrative Agreement	6/25/01	the Company	Phoenix National Trust Holding Co. ("PNTHC") and Subsidiaries.	Provide such services as PNTHC may elect, office space, personnel, accounting etc.	2002 \$2,760,574 2001 \$3,740,772

Type of Agreement	Effective Date	Provider(s) of Service(s)	Recipient(s) of Service(s)	Specific Service(s) Covered	Income/ (Expense)* For Each Year of the Examination
Lease Agreement	5/21/98	the Company	PNTCH	Lease of the first floor of 38 Prospect Street, Hartford, CT.	2002 \$165,744 2001 \$109,896 2000 \$205,392 1999 \$223,750 1998 \$218,551
Administrative Agreement	Amended and Restated 1/1/01	Phoenix	the Company	Use of office space and personnel	2002 \$35,834,741 2001 \$38,203,547
Administrative Agreement	Amended and Restated 6/25/01	the Company	Phoenix Life and Reassurance Company of New York	Use of office space and personnel	2002 \$ 50,596 2001 \$ 26,559 2000 \$ 59,361 1999 \$ 94,475 1998 \$169,625
Common Paymaster Agreement**	1/1/95	the Company	PM Holdings Inc. ("PMH") PIC, and PEPCO.	Common paymaster agreement with respect to any individual who is concurrently employed by each of the parties to the Agreement	2002 \$0.00 2001 \$0.00 2000 \$0.00 1999 \$0.00 1998 \$0.00
Payroll Agency Agreement**	1/1/95	the Company	PMH and PEPCO	Services related to the Common Paymaster Agreement	2002 \$0.00 2001 \$0.00 2000 \$0.00 1999 \$0.00 1998 \$0.00
Trademark License Agreement**	6/25/01	the Company	PNTCH	License to use the Company's licensed trademarks	2002 \$0.00 2001 \$0.00
Common Paymaster Agreement**	1/1/01	the Company	W.S. Griffith Advisors, Inc. and WSG	Common Paymaster Agreement	2002 \$0.00 2001 \$0.00
Commission Paying Agent Agreement	8/29/97	the Company	WSG	Administrative agent for WSG	2002 \$15,891,377 2001 \$21,095,970 2000 \$30,446,532 1999 \$20,743,208 1998 \$18,297,199

\* Amount of Income or (Expense) Incurred by the Company

\*\* No services have been performed under these agreements

The Company is also party to a tax allocation agreement with its parent and subsidiaries.

It was noted that no payments were made under several of the service agreements shown in the above table. The examiner recommends that the Company terminate all service agreements where no payments have been made under the agreements and the services are not being rendered on a regular basis.

### C. Management

The Company's by-laws provide that the board of directors shall be comprised of not less than 13 and not more than 30 directors. Directors are elected for a period of 1 year at the annual meeting of the stockholders held on the third Monday of April of each year or within 60 days thereafter. As of December 31, 2002, the board of directors consisted of 17 members. Meetings of the board are held at least four times each year.

The 17 board members and their principal business affiliation and residence, as of December 31, 2002, were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Sal H. Alfiero* Amherst, NY	Chairman and Chief Executive Officer Protective Industries, LLC	1988
J. Carter Bacot* Montclair, NJ	Retired	1974
Peter C. Browning* Charlotte, NC	Dean McColl School of Business Queens University of Charlotte	1989
Arthur P. Byrne* Avon, CT	Retired	1997
Sanford Cloud, Jr*. Farmington, CT	President and Chief Executive Officer The National Conference for Community and Justice	2001
Richard N. Cooper* Cambridge, MA	Professor of International Economics Harvard University	1974
Gordon J. Davis* New York, NY	Partner LeBoeuf, Lamb, Greene & MacRae	1986
Robert W. Fiondella Bristol, CT	Chairman of the Board and Chief Executive Officer Phoenix Life Insurance Company	1987
Ann Maynard Gray* Stamford, CT	Retired	2002
John E. Haire* Darien, CT	Executive Vice President Time, Inc	1999

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Jerry J. Jasinowski* Washington, DC	President National Association of Manufacturers	1995
Thomas S. Johnson* New York, NY	Chairman and Chief Executive Officer Greenpoint Financial Corp.	2000
John W. Johnstone, Jr.* New Canaan, CT	Retired	1986
Marilyn E. LaMarche* New York, NY	Limited Managing Director Lazard Freres & Co. L.L.C.	1989
Robert F. Vizza* Old Brookville, NY	Retired	1991
Robert G. Wilson* Key Biscayne, FL	Retired	1976
Dona D. Young West Hartford, CT	President and Chief Operating Officer Phoenix Life Insurance Company	1998

\* Not affiliated with the Company or any other company in the holding company system

In January 2003, Robert W. Fiondella retired from the board and Dona D. Young replaced him as chairman. In April 2003, J. Carter Bacot, John W. Johnstone, Jr. and Robert F. Vizza retired from the board.

The examiner's review of the minutes of the meetings of the board of directors and its committees indicated that meetings were well attended and that each director attended a majority of meetings.

The following is a listing of the principal officers of the Company as of December 31, 2002:

<u>Name</u>	<u>Title</u>
Robert W. Fiondella	Chairman of the Board and Chief Executive Officer
Dona D. Young	President and Chief Operating Officer
Katherine P. Cody	Treasurer
John H. Beers	Secretary
Robert J. Lombardi	Actuary
Michael J. Gilotti	Executive Vice President of Wholesaling, Distribution and Marketing
Tracy L. Rich	Executive Vice President and General Counsel
Coleman D. Ross	Executive Vice President and Chief Financial Officer
Simon Y. Tan	Executive Vice President of Life and Annuity Products and Operations
Moira C. Lowe*	Second Vice President and Chief Compliance Officer

\* Designated consumer services officer per Section 216.4(c) of Department Regulation No. 64

In January 2003, Robert W. Fiondella retired from the position of Chief Executive Officer and was replaced by Dona D. Young. In December 2003, Nancy Enberg replaced Moira C. Lowe as Second Vice President and Chief Compliance Officer. Ms. Enberg also replaced Ms. Lowe as the designated consumer services officer per Section 216.4 (c) of Department Regulation No. 64.

#### D. Territory and Plan of Operation

The Company is authorized to write life insurance, annuities and accident and health insurance as defined in paragraphs 1, 2 and 3 of Section 1113(a) of the New York Insurance Law.

The Company is licensed to transact business in all 50 states, the District of Columbia, Puerto Rico, the US Virgin Islands, and Canada. In 2002, 12.8% of life premiums, 77.9% of annuity considerations and 21.5% of accident and health premiums were received from New York. Policies are written on a participating and non-participating basis.

The Company markets wealth management products including individual participating life insurance, term life insurance, universal and variable life insurance and annuities. Variable universal life insurance represented approximately half of the total face amount of insurance issued by the Company during the period under examination.

The plan of reorganization relating to the Company's demutualization in June 2001 required the Company to establish a closed block of business for the participating individual life policies and participating individual annuity contracts for which the Company had a dividend scale payable in 2000. The purpose of the closed block is to ensure that the reasonable dividend expectations of policyholders that own these particular policies and contracts are met and that the benefits under such policies are paid. The Company must retain within the closed block the cash flows produced by the closed block assets, net of certain expenses, in order to pay the policy benefits and dividends pertaining to closed block policy and contract holders. These cash flows are not available to the Company to meet the cash needs of the other segments of the Company's operations.

The Company's agency operations are conducted on a general agency basis.

#### E. Reinsurance

As of December 31, 2002, the Company had reinsurance treaties in effect with 195 companies, of which 32 were authorized or accredited. Reinsurance of the Company's individual life policies is ceded on a coinsurance or yearly renewable term basis. The Company cedes and retrocedes individual life risks on an automatic and facultative basis.

The maximum retention limit for individual life contracts is \$10,000,000. The total face amount of life insurance ceded, as of December 31, 2002, was \$53,181,588,000 which represents 60.25% of the total face amount of life insurance in force. Reserve credit taken for reinsurance ceded to unauthorized companies and reinsurance recoverable from unauthorized companies, totaling \$156,347,688, was supported by letters of credit, trust agreements and funds withheld.

Effective January 1, 2000, the Company novated certain reinsurance business to Employers Reinsurance Company ("Employers Re"). The agreement novated all of the Company's reinsurance involving individual life business assumed from other companies.

On April 1, 2000, the Company entered into a 100% indemnity reinsurance agreement with Phoenix American Life Insurance Company ("PAL"), now known as GE Group Life Assurance Company ("GEGGLAC"), whereby the Company ceded its group life and group accident and health lines of business, with the exception of policies on its own employees. The terms of the agreement required PAL to re-write the Company's business, as it came up for renewal, by March 31, 2002.

The total face amount of life insurance assumed, as of December 31, 2002, was \$1,717,033,935. The Company also reported premiums totaling \$25,961,446 on accident and health insurance assumed for 2002.

Section 127.3(a) of Department Regulation No. 102 states, in part:

"No reinsurance agreement . . . may be used to take reserve credit by reducing a liability . . . unless the agreement, amendment or binding letter of intent has been duly executed by both parties no later than the 'as of date' of the financial statement."

The Company entered into a reinsurance treaty with AUSA Life Insurance Company, currently known as Transamerica Financial Life Insurance Company. The effective date of this agreement is February 25, 2002. The terms of this treaty allow the Company to cede 80% of each risk, on a first dollar quota share basis, on the Company's Phoenix Term Choice policies. There are currently 20 Phoenix Term Choice policies. The Company signed this treaty on May 28, 2003. At December 31, 2002, the Company reported a reserve credit associated with this treaty in the amount of \$199,314.

The Company violated Section 127.3(a) of Department Regulation No. 102 by reporting a reserve credit in the amount of \$199,314 for a reinsurance contract that was not fully executed within 90 days after the date of the annual statement.

In its 2003 Management Discussion and Analysis, the Company reported that certain discontinued group accident and health reinsurance business had become the subject of disputes concerning the placement of the business with reinsurers and the recovery of reinsurance.

A first set of disputes arises from the activities of Unicover Managers, Inc. ("Unicover"). Unicover organized and managed a group, or pool, of insurance companies ("Unicover pool") and certain other facilities, which reinsured the life and health insurance components of workers' compensation insurance policies issued by various property and casualty insurance companies. The Company was a member of the Unicover pool. The Company terminated its participation in the Unicover pool effective March 1, 1999.

Under Unicover's underwriting authority, the Unicover pool and Unicover facilities wrote a dollar amount of reinsurance coverage that was many times greater than originally estimated. As a member of the Unicover pool, the Company was involved in several proceedings in which the Unicover pool members asserted that they can deny coverage to certain insurers which claimed that they purchased reinsurance coverage from the pool. Those matters

were settled. Also, the Unicover pool members are currently involved in proceedings arising from business ceded to the London market. Those proceedings are in the preliminary stages.

Further, the Company was, along with Sun Life Assurance of Canada (“Sun Life”) and Cologne Life Reinsurance Company (“Cologne Life”), a retrocessionaire (meaning a reinsurer of other reinsurers) of the Unicover pool and two other Unicover facilities, providing the pool and facility members with reinsurance of the risks that the pool and facility members had assumed. In September 1999, the Company joined an arbitration proceeding that Sun Life had begun against the members of the Unicover pool and the Unicover facilities. In this arbitration, the Company and Sun Life sought to cancel their retrocession agreement on the grounds that material misstatements and nondisclosures were made to them about, among other things, the amount of risks they would be reinsuring. The arbitration proceeded only with respect to the Unicover pool, because the Company, Sun Life and Cologne Life reached settlement with the two Unicover facilities in the first quarter of 2000. In October 2002, the arbitration panel issued its decision that the agreement by which the Company provided retrocessional reinsurance to the Unicover pool was valid only to the extent of business bound or renewed to that agreement on or before August 31, 1998. In a clarification dated January 4, 2003, the arbitration panel confirmed its decision. A significant portion of the Company’s remaining potential liabilities as a retrocessionaire of the Unicover pool may be recovered from its retrocessionaires.

The amounts paid and the results achieved in the above settlements and arbitration decision are reflected in the financial statements. As the amounts previously reserved for these matters were sufficient, the Company established no additional reserves with respect to these settlements and arbitration decision.

In its capacity as a retrocessionaire of the Unicover business, the Company had an extensive program of its own reinsurance in place to protect it from financial exposure to the risks it had assumed. As of the date of this report, the Company was involved in separate arbitration proceedings with three of its own retrocessionaires, which were seeking, on various grounds, to avoid paying any amounts to the Company or have reserved rights. Because the same retrocession program that covers the Company’s Unicover business covers a significant portion of its other remaining group accident and health reinsurance business, the Company could have additional material losses if one or more of its retrocessionaires successfully avoids its obligations.

A second set of disputes involves personal accident business that was reinsured in the London reinsurance market in the mid-1990s in which the Company participated. The disputes involve multiple layers of reinsurance, and allegations that the reinsurance program created by the brokers involved in placing those layers was interrelated and devised to disproportionately pass losses to a top layer of reinsurers. Many companies who participated in this business are involved in arbitration in which those top layer companies are attempting to avoid their obligations on the basis of misrepresentation. Because of the complexity of the disputes and the reinsurance arrangements, many of these companies are currently participating in negotiations of the disputes for certain contract years, and the Company believes that similar discussions will follow for the remaining years (Settlements for the LMX Person Accident 1994 and 1995 years of account were reached in 2000 and 2003 respectively). Although the Company is vigorously defending its contractual rights, the Company is actively involved in the attempt to reach negotiated business solutions.

Given the uncertainty associated with litigation and other dispute resolution proceedings, and the expected long term development of net claims payments, the estimated amount of the loss on the group accident and health reinsurance discontinued business may differ from actual results. However, it is management's opinion, after consideration of the provisions made in the Company's financial statements, that future developments will not have a material effect on the Company's financial position.

#### 4. SIGNIFICANT OPERATING RESULTS

Indicated below is significant information concerning the operations of the Company during the period under examination as extracted from its filed annual statements. Failure of items to add to the totals shown in any table in this report is due to rounding.

The following table indicates the Company's financial growth during the period under review:

	December 31, <u>1997</u>	December 31, <u>2002</u>	Increase (Decrease)
Admitted assets	<u>\$15,985,026,414</u>	<u>\$16,103,186,398</u>	<u>\$118,159,984</u>
Liabilities	<u>\$15,140,996,684</u>	<u>\$15,242,171,637</u>	<u>\$101,174,953</u>
Common capital stock	\$ 0	\$ 10,000,000	\$ 10,000,000
Surplus notes	175,000,000	175,000,000	0
Gross paid in and contributed surplus	0	996,649,048	996,649,048
Group contingency life reserves	36,468,955	0	(36,468,955)
Aviation reinsurance contingency reserve	2,500,000	2,500,000	0
Unassigned funds (surplus)	<u>630,060,775</u>	<u>(323,134,287)</u>	<u>(953,195,062)</u>
Total capital and surplus	<u>\$ 844,029,730</u>	<u>\$ 861,014,761</u>	<u>\$ 16,985,031</u>
Total liabilities, capital and surplus	<u>\$15,985,026,414</u>	<u>\$16,103,186,398</u>	<u>\$118,159,984</u>

As noted earlier in this report, the Company converted from a mutual insurer to a stock insurer in 2001. Due to this reorganization, the Company's unassigned surplus was converted to common stock and gross paid in and contributed surplus.

The Company's invested assets as of December 31, 2002, exclusive of Separate Accounts, were mainly comprised of bonds (66.3%), policy loans (16.6%), stocks (5.1%), other invested assets (3.7%) and mortgage loans on real estate (3.6%). The majority (89.2%) of the Company's bond portfolio as of December 31, 2002 was comprised of investment grade obligations.

The following indicates, for each of the years listed below, the amount of individual term insurance and group life insurance issued and in force by type (in thousands of dollars):

<u>Year</u>	<u>Individual Term</u>		<u>Group Life</u>	
	<u>Issued</u>	<u>In Force</u>	<u>Issued &amp; Increases</u>	<u>In Force</u>
1998	\$2,611,576	\$65,522,775	\$1,410,373	\$16,153,096
1999	\$1,698,036	\$68,462,283	\$ 997,796	\$11,943,095
2000	\$1,659,072	\$12,416,380	\$ 540,790	\$ 8,568,614
2001	\$2,284,226	\$12,639,817	\$ 546,542	\$ 7,360,271
2002	\$2,887,452	\$13,061,811	\$ 95,198	\$ 1,241,234

The significant decrease in the individual term and group life lines of business is the result of the Company exiting these businesses. As noted earlier in the report, the Company novated certain reinsurance business to Employers Re. The agreement novated all of the Company's reinsurance involving individual life business assumed from other companies. This resulted in a decrease of the Company's individual term business in force.

The Company's group life business in force decreased during the period under examination due to the Company ceding 100% of the group life business to GEGLAC and not renewing its group life policies. GEGLAC re-wrote the bulk of these policies on January 1, 2002.

The following has been extracted from the Exhibits of Annuities in the filed annual statements for each of the years under review:

	<u>Ordinary Annuities</u>				
	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>
Outstanding, end of previous year	93,934	83,839	81,223	58,576	46,817
Issued during the year	1,911	795	786	786	2,402
Other net changes during the year	<u>(12,006)</u>	<u>(3,411)</u>	<u>(23,433)</u>	<u>(12,545)</u>	<u>(5,752)</u>
Outstanding, end of current year	<u>83,839</u>	<u>81,223</u>	<u>58,576</u>	<u>46,817</u>	<u>43,467</u>

The number of ordinary annuities decreased by 53.7% during the examination period. The stock market decline over the past few years adversely affected variable annuity sales. Also, surrenders increased as more policies reached the end of their surrender charge period. In particular, there were very heavy terminations in 2000 from a block of several thousand single

premium deferred annuity policies that had been acquired from Confederation Life Insurance Company (an unaffiliated company which had been under rehabilitation).

The following is the net gain (loss) from operations by line of business after federal income taxes but before realized capital gains (losses) reported for each of the years under examination in the Company's filed annual statements:

	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>
Ordinary:					
Life insurance	\$ 75,309,672	\$ 291,123,189	\$310,246,317	\$ 88,795,449	\$ 6,226,203
Individual annuities	43,832,819	16,408,107	(9,371,199)	15,824,856	17,704,102
Supplementary contracts	<u>2,864,679</u>	<u>6,703,833</u>	<u>6,555,850</u>	<u>3,275,442</u>	<u>(1,067,725)</u>
Total ordinary	<u>\$122,007,170</u>	<u>\$ 314,235,129</u>	<u>\$307,430,968</u>	<u>\$107,885,747</u>	<u>\$ 22,862,580</u>
Group:					
Life Annuities	\$ 7,204,872	\$ 12,157,649	\$ 15,322,993	\$ 10,951,662	\$ 13,174,116
	<u>(6,875,796)</u>	<u>(2,355,897)</u>	<u>(8,420,467)</u>	<u>(24,906,548)</u>	<u>(38,808,620)</u>
Total group	<u>\$ 329,076</u>	<u>\$ 9,801,752</u>	<u>\$ 6,902,526</u>	<u>\$ (13,954,886)</u>	<u>\$(25,634,504)</u>
Accident and health:					
Group	\$ 3,499,423	\$(175,581,361)	\$(42,469,095)	\$ 26,529,075	\$ 47,484,475
Other	<u>475,810</u>	<u>646,011</u>	<u>(50,381)</u>	<u>(601,246)</u>	<u>(186,920)</u>
Total accident and health	<u>\$ 3,975,233</u>	<u>\$(174,935,350)</u>	<u>\$(42,519,476)</u>	<u>\$ 25,927,829</u>	<u>\$ 47,297,555</u>
All other lines	<u>\$ 770,221</u>	<u>\$ 1,095,709</u>	<u>\$ (5,443,142)</u>	<u>\$ 0</u>	<u>\$ 0</u>
Total	<u>\$127,081,700</u>	<u>\$ 150,197,240</u>	<u>\$266,370,877</u>	<u>\$119,868,692</u>	<u>\$ 44,525,631</u>

The Company's total net gains from operations increased each year in 1998, 1999 and 2000. The total net gains from operations decreased during 2001 and 2002. These fluctuations were primarily due to the changes in net investment income in those years. The changes in net investment income were mainly due to the increases and decreases in the Company's earnings from venture capital partnerships.

Net gain from operations for the ordinary life line of business increased from \$75.3 million in 1998 to \$291.1 million in 1999. This \$215.8 million increase was largely due to an

increase of \$165.0 million in investment income. The net gain from operations for the ordinary life line of business then decreased from \$310.2 million in 2000 to \$88.8 million in 2001, and then to \$6.2 million in 2002. The \$221.4 million decrease between 2000 and 2001 was mainly due to a decrease of \$279.9 in net investment income. The Company's sale of a portion of its reinsurance business in 2000 also contributed to the reductions in gains from operations.

The loss in the individual annuity line of business in 2000 was primarily due to increased expenses allocated to that line. The individual annuity line of business absorbed additional overhead expenses that were no longer allocated to the individual term life business and group lines of business. Also, total general expenses for 2000 increased approximately \$48 million, which affected the amount allocated to the individual annuity line. In 2001 and 2002, the gains reported in the individual annuity line of business were due to an overall reduction in general expenses, and a reduction in the percentage of expenses allocated to this line of business. The reduction in the percentage of expenses allocated was caused by the significant decrease in annuities during the exam period.

The Company's gain from supplementary contracts decreased each year from 1999 to 2001, and a loss was incurred in 2002. The Company also attributes these declines to the decline in investment income.

The losses in the group annuity line of business are attributed to the decreases in investment income and an increase in the number of surrenders. The group annuity line of business is much smaller than it had been in the past.

The losses in the group accident and health ("A&H") line in 1999 and 2000 were mainly a result of large increases in the amount of claims incurred. The Company entered into a 100% indemnity reinsurance agreement in April 2000. The agreement required the reinsurer to re-write the group business by March 31, 2002. The Company reported gains in 2001 and 2002 due to much lower claim activity as the business continued to be transferred to the reinsurer. The Company did not write any new group A&H business in 2002.

## 5. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital, surplus and other funds as of December 31, 2002, as contained in the Company's 2002 filed annual statement, a condensed summary of operations and a reconciliation of the capital and surplus account for each of the years under review. The examiner's review of a sample of transactions did not reveal any differences which materially affected the Company's financial condition as presented in its financial statements contained in the December 31, 2002 filed annual statement.

A. ASSETS, LIABILITIES, CAPITAL, SURPLUS AND OTHER FUNDSAS OF DECEMBER 31, 2002Admitted Assets

Bonds	\$8,744,587,154
Stocks:	
Preferred stocks	96,663,796
Common stocks	570,060,922
Mortgage loans:	
First liens	468,787,773
Real estate:	
Properties occupied by the company	72,760,141
Properties held for sale	10,621,004
Policy loans	2,194,553,782
Cash and short term investments	463,630,932
Other invested assets	487,187,637
Receivable for Securities	71,841,932
Derivative market value adjustment	5,040,827
Reinsurance ceded:	
Amounts recoverable from reinsurers	8,114,118
Experience rating and other refunds due	217,828
Electronic data processing equipment	1,984,417
Federal income tax recoverable	116,934,567
Guarantee funds receivable or on deposit	2,459,096
Life insurance premiums and annuity considerations	
deferred and uncollected on in force business	176,576,410
Accident and health premiums due and unpaid	(24,759,297)
Investment income due and accrued	172,391,316
Net adjustment in assets and liabilities due to foreign exchange rates	(71,742)
Receivable from parent, subsidiaries and affiliates	21,892,647
Administration and management fees receivable	2,009,530
Other Assets	12,675,499
Pool Deposits	54,640,302
Amounts due from reinsurers	<u>1,357,321</u>
From Separate Accounts Statement	<u>2,371,028,486</u>
Total admitted assets	<u>\$16,103,186,398</u>

Liabilities, Capital, Surplus and Other Funds

Aggregate reserve for life policies and contracts	\$11,849,415,209
Aggregate reserve for accident and health policies	3,404,022
Liability for deposit type contracts	356,648,858
Policy and contract claims:	
Life	37,807,758
Accident and health	(29,298,793)
Policyholders' dividends and coupons due and unpaid	6,906,639
Provision for policyholders' dividends and coupons payable in following calendar year - estimated amounts:	
Dividends apportioned for payment	403,044,975
Premiums and annuity considerations received in advance	9,021,764
Policy and contract liabilities:	
Provision for experience rating refunds	260,976
Other amounts payable on reinsurance assumed	14,158,667
Commissions to agents due or accrued	624,776
Commissions and expense allowances payable on reinsurance assumed	530,172
General expenses due or accrued	91,294,238
Transfers to Separate Accounts due or accrued	(155,260,984)
Taxes, licenses and fees due or accrued	6,491,655
Federal income taxes due or accrued	41,630,578
Unearned investment income	11,906,879
Amounts withheld or retained by company as agent or trustee	27,011,673
Amounts held for agents' account	7,574,640
Remittances and items not allocated	6,588,333
Liability for benefits for employees and agents	39,607,116
Miscellaneous liabilities:	
Asset valuation reserve	147,024,855
Reinsurance in unauthorized companies	4,935,999
Funds held under reinsurance treaties with unauthorized reinsurers	4,979,561
Payable to parent, subsidiaries and affiliates	11,535,786
Payable for securities	505,053
Aviation claims liability and reserves	20,265
Liability for non qualified pension plans	1,813,354
Other liabilities	1,243,375
Escheat liability	4,815,807
Group stabilization premium reserve	75,652
TAMRA liability	818,380
From Separate Accounts Statement	<u>2,335,034,399</u>
Total liabilities	<u>\$15,242,171,637</u>
Common capital stock	\$ 10,000,000
Surplus notes	175,000,000
Gross paid in and contributed surplus	996,649,048
Aviation reinsurance contingency reserve	2,500,000
Unassigned funds (surplus)	<u>(323,134,287)</u>
Total capital, surplus and other funds	<u>\$ 861,014,761</u>
Total liabilities, capital, surplus and other funds	<u>\$16,103,186,398</u>

## B. CONDENSED SUMMARY OF OPERATIONS

	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>
Premiums and considerations	\$1,701,539,303	\$1,506,228,580	\$1,515,746,355	\$1,388,699,469	\$1,427,634,074
Investment income	867,536,896	1,053,084,412	1,207,928,055	919,904,169	903,133,794
Net gain from operations from Separate Accounts	3,505,606	3,482,862	(1,939,316)	(1,893,379)	(6,232,152)
Commissions and expense allowance on reinsurance ceded	44,208,257	58,047,050	32,475,613	17,543,902	2,926,090
Miscellaneous income	<u>125,474,798</u>	<u>263,474,916</u>	<u>130,458,040</u>	<u>207,805,868</u>	<u>114,686,126</u>
Total income	<u>\$2,742,264,860</u>	<u>\$2,884,317,820</u>	<u>\$2,884,668,747</u>	<u>\$2,532,060,029</u>	<u>\$2,442,147,932</u>
Benefit payments	\$1,698,451,028	\$1,828,184,972	\$1,568,830,613	\$1,190,336,103	\$1,157,373,103
Increase in reserves	326,978,395	267,593,486	378,139,453	438,932,884	532,852,849
Commissions	179,875,743	199,330,686	147,181,219	94,666,442	90,932,247
General expenses and taxes	273,845,768	306,895,071	359,344,253	349,455,798	303,617,458
Increase in loading and cost of collection	(689,468)	(2,403,887)	(210,303)	(1,401,512)	(859,682)
Net transfers to (from) Separate Accounts	(263,531,276)	(354,889,639)	(240,972,141)	(67,023,967)	(72,922,930)
Miscellaneous deductions	<u>26,173,247</u>	<u>105,778,482</u>	<u>37,635,571</u>	<u>43,472,695</u>	<u>1,504,037</u>
Total deductions	<u>\$2,241,103,437</u>	<u>\$2,350,489,171</u>	<u>\$2,249,948,665</u>	<u>\$2,048,438,443</u>	<u>\$2,012,497,081</u>
Net gain (loss)	\$ 501,161,423	\$ 533,828,649	\$ 634,720,082	\$ 483,621,586	\$ 429,650,851
Dividends	345,574,343	362,068,259	373,444,307	386,032,116	391,567,457
Federal income taxes	<u>28,505,380</u>	<u>21,563,150</u>	<u>(5,095,101)</u>	<u>(22,279,222)</u>	<u>(6,442,239)</u>
Net gain (loss) from operations before net realized capital gains	<u>\$ 127,081,700</u>	<u>\$ 150,197,240</u>	<u>\$ 266,370,876</u>	<u>\$ 119,868,692</u>	<u>\$ 44,525,633</u>
Net realized capital gains (losses)	<u>(18,429,789)</u>	<u>(18,901,403)</u>	<u>(288,596)</u>	<u>(133,257,804)</u>	<u>(37,035,081)</u>
Net income	<u>\$ 108,651,911</u>	<u>\$ 131,295,837</u>	<u>\$ 266,082,280</u>	<u>\$ (13,389,112)</u>	<u>\$ 7,490,552</u>

C. CAPITAL AND SURPLUS ACCOUNT

	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>
Capital and surplus, December 31, prior year	\$844,029,729	\$905,316,924	\$1,054,095,607	\$1,322,771,787	\$1,149,803,534
Net income	\$108,651,911	\$131,295,837	\$ 266,082,280	\$ (13,389,112)	\$ 7,490,552
Change in net unrealized Capital gains (losses)	(32,425,690)	44,735,151	201,251,367	(337,245,772)	(411,671,553)
Change in net deferred income tax	0	0	0	0	32,575,394
Change in non-admitted assets and related items	106,522,256	(20,602,642)	(9,566,314)	10,035,145	(57,901,708)
Change in liability for reinsurance in unauthorized companies	(166,257)	296,789	16,059	(5,683,384)	1,668,758
Change in reserve valuation basis	222,421	253,680	0	0	0
Change in asset valuation reserve	8,954,442	(73,015,420)	(191,051,212)	338,179,780	74,505,479
Surplus (contributed to) withdrawn from separate accounts during period	0	0	0	(13,500,000)	(9,471,318)
Other changes in surplus in Separate Accounts statement	0	0	0	13,500,000	9,471,318
Cumulative effect of changes in accounting principle	0	0	0	(115,988,109)	135,813,011
Capital changes:					
Paid in	0	0	0	1,006,648,530	0
Surplus adjustments:					
Paid in	0	0	0	(918,017,913)	0
Dividends to stockholders	0	0	0	(132,300,000)	(113,756,706)
Prior year adjustment – goodwill	835,150	0	0	0	0
Prior year adjustment – ceding Commission	(135,307,038)	0	0	0	0

	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>
Dividend received from subsidiaries	\$ 4,000,000	\$ 31,000,000	\$ 0	\$ 0	\$ 0
Surplus note – New York indemnity Reserve	0	1,944,000	1,944,000	1,944,000	11,668,000
Prior year federal income tax Adjustment	0	0	0	(7,776,418)	0
Prior year adjustment net of federal income tax				625,000	
Prior year pension adjustment	0	0	0	0	30,820,000
Prior year adjustment on venture capital investments	<u>0</u>	<u>32,871,287</u>	<u>0</u>	<u>0</u>	<u>0</u>
Net change in capital and surplus	\$ <u>61,287,195</u>	\$ <u>148,778,682</u>	\$ <u>268,676,180</u>	\$ <u>(172,968,253)</u>	\$ <u>(288,788,773)</u>
Capital and surplus, December 31, current year	<u>\$905,316,924</u>	<u>\$1,054,095,607</u>	<u>\$1,322,771,787</u>	<u>\$1,149,803,534</u>	<u>\$ 861,014,761</u>

The Company reported changes in unrealized capital losses of \$337,245,772 and \$411,671,553 in 2001 and 2002, respectively. These losses were primarily due to the decline in the value of its subsidiaries, as well as declines in the value of venture capital investments. The Company's subsidiaries that were most responsible for these losses were Aberdeen Asset Management, PLC ("Aberdeen") and PHL Variable Insurance Company ("PHL"). In 2001, the changes in unrealized capital losses of Aberdeen and PHL were \$118,336,202 (42.3%) and \$63,094,873 (22.5%), respectively. In 2002, the amounts were \$189,225,957 (46%) and 144,915,799 (35%), respectively.

D. VALUATION OF SCHEDULE BA PRIVATE EQUITY  
AND VENTURE CAPITAL ASSETS

Schedule BA investments, principally private equity and venture capital limited partnership investments, represent about 40% of the Company's surplus. The Company invests in over 100 private equity and venture capital funds with, collectively, approximately 1500 underlying investments. In one of the Company's larger private equity limited partnership funds (Thomas H. Lee Equity Fund IV, L.P.) the examiner found mis-valuations by the funds general partner of three of this fund's largest investments, which were significant with respect to that fund, despite an unqualified audit opinion from the funds certified public accounting firm.

The Company's private equity oversight is generally comparable to other large institutional investors with whom we are familiar, and their benchmarking approach to venture capital<sup>1</sup> is worthy of emulation. It is therefore the examiner's opinion that private equity oversight practices generally, not just at the Company, are insufficiently robust for the degree of difficulty posed by this asset class. Passively investing in approximately 1500 companies via an index fund may be generally accepted investment practice but private equity cannot and should not be passive. Those factors that make public markets "efficient" – and thereby make index funds a viable strategy -- do not exist in private equity.

The Company transferred interests in several of its private equity and venture capital funds to the closed block and simultaneously to third party investors, the latter in part to establish the fairness of the transfer to the closed block. In that transaction the Company realized a 20% discount, loss, on the sale and transfer of those funds. From other research by the Capital Markets Bureau it appears that discounts on secondary transfers of limited partnerships of 20% or more are not uncommon. This implies the value of the remaining funds may have received equal or larger discounts. These discounts result from a combination of market-driven reduced investment value and the illiquid nature of this asset class.

The examiner recommends the Company substantially enhance its monitoring and valuation of private equity and venture capital funds, make appropriate write-downs of one of its larger private equity limited partnerships (Thomas H. Lee Equity Fund IV, L.P.) in Schedule BA

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<sup>1</sup> 2002 annual report and 10-K page F-22.

for December 31 of 2001 and 2002, and other periods as applicable, and thoroughly review its other Schedule BA holdings for other possible impaired holdings.

E. VARIABLE ANNUITIES WITH “GUARANTEED MINIMUM DEATH BENEFITS”  
AND/OR GUARANTEED LIVING BENEFITS

While the Company’s guaranteed minimum death benefit (“GMDB”) exposure was only \$175 million net of reinsurance at mid-year 2003, their gross exposures are more significant. The Department has reason to believe that reinsurance for such annuity guarantees is becoming both expensive and difficult to place. The Department has serious concerns about the industry’s overall exposure on such guarantees, including variable annuity guaranteed living benefits (“VAGLB”). The Company’s 2002 net exposure is manageable in relation to its surplus.

The examiner recommends that the Company have sufficient reinsurance contracts, or establish a hedging program, before significantly increasing its VAGLB, GMDB, or similar guaranty exposures from the December 31, 2002 level.

## 6. MARKET CONDUCT ACTIVITIES

The examiner reviewed various elements of the Company's market conduct activities affecting policyholders, claimants, and beneficiaries to determine compliance with applicable statutes and regulations and the operating rules of the Company.

### A. Advertising and Sales Activities

The examiner reviewed a sample of the Company's advertising files and the sales activities of the agency force including trade practices, solicitation and the replacement of insurance policies.

Based upon the sample reviewed, no significant findings were noted.

### B. Underwriting and Policy Forms

The examiner reviewed a sample of new underwriting files, both issued and declined, and the applicable policy forms.

Section 3203(a) of the New York Insurance Law states, in part:

“All life insurance policies . . . delivered or issued for delivery in this state, shall contain in substance the following provisions, or provisions which the superintendent deems to be more favorable to policyholders . . .

(15) that states on the policy data or policy specifications page of a participating cash value policy that dividends are not guaranteed and the insurer has the right to change the amount of dividend to be credited to the policy which may result in lower dividend cash values than were illustrated, or, if applicable, require more premiums to be paid than were illustrated. . . .”

The Company issued participating policies (form number 2626V and three other forms), that did not include the warning on the policy specification pages as required by Section 3203(a)(15) of the New York Insurance Law (i.e., that dividends are not guaranteed).

The Company violated Section 3203(a)(15) of the New York Insurance Law by issuing participating cash value policies without the required warning mentioning all of the applicable possibilities.

The examiner reviewed a sample of 96 new life insurance policies to determine whether proper rating and underwriting guidelines were followed. The examiner's review revealed that the Company waived certain underwriting requirements that were specified in the Company's guidelines for 14 policies. The requirements that were waived are as follows: in nine instances an attending physician statement was not required; in five instances, the Company did not obtain an inspection report and; in one case the Company did not obtain a motor vehicle report. The Company explained that the requirements were waived at the underwriter's discretion, given the expertise and experience of the underwriter.

The guidelines do not state that underwriting requirements can be waived. The guidelines were created in order to document and standardize the underwriting requirements and process. Adherence to the guidelines is necessary to ensure that all applicants in the same risk class are treated fairly.

The examiner recommends that the Company conform to its current underwriting guidelines, or change the guidelines to reflect the actual practices of the Company's underwriting department.

### C. Treatment of Policyholders

The examiner reviewed a sample of various types of claims, surrenders, changes and lapses. The examiner also reviewed the various controls involved, checked the accuracy of the computations and traced the accounting data to the books of account.

Section 3211(a)(1) of the New York Insurance Law states, in part:

"No policy of life insurance . . . delivered or issued for delivery in this state . . . shall terminate or lapse by reason of default in payment of any premium . . . in less than one year after such default, unless a notice shall have been duly mailed at least fifteen and not more than forty-five days prior to the day when such payment becomes due. . . ."

Based on the examiner's review of lapsed policy files it appears that the lapse notices for all variable life policies were dated 60 days before the policy lapse date. The Company responded that they allowed an extra 15 days to compensate for possible mail delays.

The Company violated Section 3211(a)(1) of the New York Insurance Law by lapsing

variable life policies when the policy lapse notices were mailed more than 45 days before the payment due dates.

The Company uses a retained asset account in the settlement of its claims; the account is named the Preferred Client Account (“PCA”). The PCA is a money market account that a beneficiary can write checks against. The examiner reviewed an inventory of inactive PCA’s. During the review, the examiner noted that 1,366 accounts were dormant for periods between three and five years. These accounts totaled \$30,874,265. There were also 110 accounts with a combined balance of \$2,637,797 that had been dormant for more than five years. The Company does not have any procedures in place to contact the owners of such accounts.

The examiner recommends that the Company investigate all dormant PCA accounts that have been dormant a minimum of three years in order to determine if any account(s) should be reported as unclaimed funds and eventually remitted to the appropriate state(s).

The review of death claims revealed that when the Company is notified of a death claim, the Company provides the beneficiaries with a form, “Individual Benefits Beneficiary Statement”, and a booklet, “Options for Life – A Payment Options Guide for Beneficiaries.” In order to initiate a claim, the beneficiary must complete the Individual Benefits Beneficiary Statement. This statement indicates that for beneficiaries receiving \$7,500 or more, the cash settlement option is the Preferred Client Account checkbook. The beneficiary is not offered the option to receive the full death benefit proceeds as a lump sum payment.

The examiner recommends that the Company include as part of its Individual Benefits Beneficiary Statement form, or through some other method of disclosure, the option of a settlement check for the full death benefit amount when proceeds are \$7,500 or greater.

## 7. MAINTENANCE OF RECORDS AND DATA

Section 243.2(b) of Department Regulation No. 152 states, in part:

“Except as otherwise required by law or regulation, an insurer shall maintain: . . .  
(4) A claim file for six calendar years after all elements of the claim are resolved and the file is closed or until after the filing of the report on examination in which the claim file was subject to review, whichever is longer. . . .”

The examiner requested an initial sample of 20 death claims files. The Company could not locate four (20%) of the files. The examiner then requested an additional sample of 50 death claim files. The Company could not locate five (10%) files from the additional sample. Altogether, the Company failed to provide nine (12.9%) out of 70 death claim files requested.

The Company violated Section 243.2(b)(4) of Department Regulation No. 152 by failing to maintain all of its death claim files as required by the Regulation.

Prior to the commencement of the onsite examination, the examiner requested data files containing specific policy level detail for all policies that were issued, inforce or terminated during the period under examination. Upon review of the data files provided, the examiner determined that the data did not support the amounts reported in the Exhibits of Life Insurance as reported in the Company’s filed annual statements for the period under examination. In addition, the Company did not maintain the date of death for each death claim on all administration systems.

The examiner recommends that the Company implement procedures such that, in the future, it can produce in a timely manner, policy level data that can be reconciled to the filed annual statements, and in particular to the Exhibit of Life Insurance, for the period under examination. The examiner also recommends that the Company maintain the date of death for all death claims on all of their administration systems in order to facilitate the examination.

## 8. INTERNAL CONTROL PROCEDURES

The review of the Company's death claim procedures revealed that an individual who approved the payment of claims was also responsible for mailing the checks to the beneficiaries. This represents a weakness in internal controls due to inadequate separation of duties. The individual that approves the transaction should not also have control of the asset pertaining to that transaction.

The examiner recommends that the Company modify its claim payment procedures to ensure that the individuals that approve the payment of death claims do not also gain possession of the claim checks.

## 9. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violations, recommendations and the comment contained in the prior report on examination and the subsequent actions taken by the Company in response to each citation:

<u>Item</u>	<u>Description</u>
A	<p>The examiner recommended that the Company report all ceding commissions arising from reinsurance transactions as an expense in the Summary of Operations.</p> <p>The Company did not receive any ceding commissions during the examination period.</p>
B	<p>The Company failed to properly file all securities in accordance with the Securities Valuation Office's requirements.</p> <p>The examiner's review did not reveal any deviations or lack of compliance with the Securities Valuation Office's filing requirements.</p>
C	<p>The Company violated Section 215.5(b) of Department Regulation No. 34 by using an advertisement that stated "Phoenix Home Life is a step ahead of the rest in offering stop loss protection," without being able to substantiate that such was the fact.</p> <p>The examiner's review of a sample of advertisements did not reveal violations of Section 215.5(b) of Department Regulation No. 34.</p>
D	<p>The Company violated Section 219.4(e) of Department Regulation No. 34-A by using advertisements that included the phrases "no cost," "at no charge," "no additional cost," "no additional premium charge," and "no extra out-of-pocket expense."</p> <p>The examiner's review of advertisements did not reveal violations of Section 219.4(e) of Department Regulation No. 34-A.</p>
E	<p>The Company violated Section 219.4(f) of Department Regulation No. 34-A by using advertisements that exaggerated benefits beyond the terms of the policies or implied that ownership of the policies will solve financial problems.</p> <p>The examiner's review of a sample of advertisements did not reveal violations of Section 219.4(f) of Department Regulation No. 34-A.</p>

<u>Item</u>	<u>Description</u>
F	<p>The Company violated Section 219.4(o) of Department Regulation No. 34-A by using an advertisement that included the term “best buys in New York” without being able to prove that such statement was the fact.</p> <p>The examiner’s review of a sample of advertisements did not reveal violations of Section 219.4(o) of Department Regulation No. 34-A.</p>
G	<p>The Company violated Section 219.4(s) of Department Regulation No. 34-A by using an advertisement that included the term “discounted” without being able to prove that such statement was the fact.</p> <p>The examiner’s review of a sample of advertisements did not reveal violations of Section 219.4(s) of Department Regulation No. 34-A.</p>
H	<p>The Company violated Section 219.4(u) of Department Regulation No. 34-A by using an advertisement that described an enrollment period as a “limited offer,” when the Company uses successive enrollment periods as its usual method of marketing its policies.</p> <p>The examiner’s review of a sample of advertisements did not reveal violations of Section 219.4(u) of Department Regulation No. 34-A.</p>
I	<p>The Company violated Section 4228(g)(1) of the New York Insurance Law and failed to comply with a March 26, 1982 Department directive to all authorized life insurance companies by awarding prizes in excess of \$50 to agents.</p> <p>The examiner’s review did not reveal excessive prizes to agents.</p>
J	<p>The Company violated Section 3201(b)(1) of the New York Insurance Law by using policy forms that were not filed with and approved by the Superintendent.</p> <p>The examiner’s review of policy forms revealed that all sampled policy forms were filed with and approved by the Superintendent.</p>
K	<p>The Company violated Section 51.4(d)(2) of Department Regulation No. 60 by failing to properly provide proposed insureds with a completed disclosure statement for the replacement of existing insurance policies.</p> <p>The examiner’s review of a sample of replacement policies indicated that the proper disclosure forms were used.</p>

<u>Item</u>	<u>Description</u>
L	<p>The examiner recommended that the Company add an additional five days of interest when a death claim benefit check is sent to an agent for delivery.</p> <p>The examiner's sample of death claim payments did not contain a payment that was sent to the agent for delivery. All checks were mailed directly to the beneficiary. Currently, agent delivery of checks is rarely done.</p>
M	<p>The Company violated Section 3214(c) of the New York Insurance Law by not paying interest on matured endowment contracts.</p> <p>The examiner's sample of matured endowments revealed that the proper interest was paid on matured endowment contracts.</p>
N	<p>The examiner recommended that the Company uniformly calculate the number of days of interest due and apply the correct interest rate in its calculation of interest due on matured endowment contracts.</p> <p>The examiner's review of matured endowments revealed that the number of days of interest were uniformly calculated and the proper interest rate was used.</p>
O	<p>The examiner recommended that the Company pay mature endowment proceeds in a prompt manner.</p> <p>The examiner's review of matured endowments revealed that mature endowment proceeds were paid in a prompt manner.</p>

## 10. SUMMARY AND CONCLUSIONS

Following are the violations and recommendations contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The examiner recommends that the Company terminate all service agreements where no payments have been made under the agreements and the services are not being rendered on a regular basis.	8
B	The Company violated Section 127.3(a) of Department Regulation No. 102 by reporting a reserve credit in the amount of \$199,314 for a reinsurance contract that was not fully executed within 90 days after the date of the annual statement.	13
C	The examiner recommends the Company substantially enhance its monitoring and valuation of private equity and venture capital funds, make appropriate write-downs of one of its larger private equity limited partnerships in Schedule BA for December 31 of 2001 and 2002, and other periods as applicable, and thoroughly review its other Schedule BA holdings for other possible impaired holdings.	26-27
D	The examiner recommends that the Company have sufficient reinsurance contracts, or establish a hedging program, before significantly increasing its VAGLB, GMDB, or similar guaranty exposures from the December 31, 2002 level.	27
E	The Company violated Section 3203(a)(15) of the New York Insurance Law by issuing participating cash value policies without the required warning mentioning all of the applicable possibilities (i.e., that dividends are not guaranteed).	28
F	The examiner recommends that the Company conform to its current underwriting guidelines or change the guidelines to reflect the actual practices of the Company's underwriting department.	29
G	The Company violated Section 3211(a)(1) of the New York Insurance Law by lapsing variable life policies when the policy lapse notices were mailed more than 45 days before the payment due dates.	29-30
H	The examiner recommends that the Company investigate all dormant PCA accounts that have been dormant a minimum of three years in order to determine if any account(s) should be reported as unclaimed funds and eventually remitted to the appropriate state(s).	30

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
I	The examiner recommends that the Company include as part of its Individual Benefits Beneficiary Statement form, or through some other method of disclosure, the option of a settlement check for the full death benefit amount when proceeds are \$7,500 or greater.	30
J	The Company violated Section 243.2(b)(4) of Department Regulation No. 152 by failing to maintain all of its death claim files as required by the Regulation.	31
K	The examiner recommends that the Company implement procedures such that, in the future, it can produce in a timely manner, policy level data that can be reconciled to the filed annual statements, and in particular to the Exhibit of Life Insurance, for the period under examination.	31
L	The examiner recommends that the Company maintain the date of death for all death claims on all of their administration systems in order to facilitate the examination.	31
M	The examiner recommends that the Company modify its claim payment procedures to ensure that the individuals that approve the payment of death claims do not also gain possession of the claim checks.	32







APPOINTMENT NO. 21996

**STATE OF NEW YORK**  
**INSURANCE DEPARTMENT**

I, GREGORY V. SERIO, Superintendent of Insurance of the State of New York, pursuant to the provisions of the Insurance Law, do hereby appoint:

**MARC TSE**

as a proper person to examine into the affairs of the

**PHOENIX LIFE INSURANCE COMPANY**

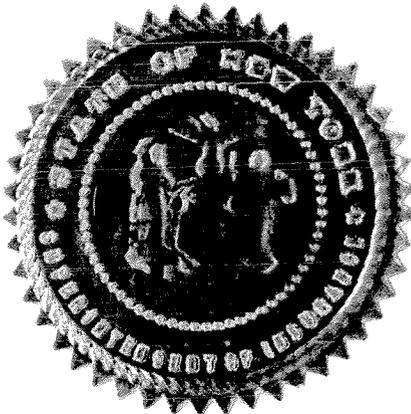
and to make a report to me in writing of the condition of the said

**COMPANY**

with such other information as he shall deem requisite.

In Witness Whereof, I have hereunto subscribed by name  
and affixed the official Seal of the Department  
at the City of New York

this 21<sup>st</sup> day of January, 2003



**GREGORY V. SERIO**

Superintendent of Insurance

  
Superintendent