

STATE OF NEW YORK INSURANCE DEPARTMENT  
REPORT ON EXAMINATION  
OF THE  
ZURICH LIFE INSURANCE COMPANY OF NEW YORK  
AS OF  
DECEMBER 31, 2003

DATE OF REPORT:

SEPTEMBER 14, 2004

EXAMINER:

VIJAY GOSWAMI

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

George E. Pataki  
Governor

Gregory V. Serio  
Superintendent

September 14, 2004

Honorable Gregory V. Serio  
Superintendent of Insurance  
Albany, New York 12257

Sir:

In accordance with instructions contained in Appointment No. 22221, dated May 3, 2004 and annexed hereto, an examination has been made into the condition and affairs of Zurich Life Insurance Company of New York, hereinafter referred to as "the Company," at its home office located at 153 West 51<sup>st</sup> Street, New York, New York 10019.

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

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

## 1. EXECUTIVE SUMMARY

On September 1, 2003 the capital stock of the Company was sold by Kemper Investors Life Insurance Company (“KILICO”) to Banc One Insurance Holdings, Inc. (“BOIH”), a subsidiary of Bank One Corporation (“Bank One”). On July 1, 2004, Bank One merged into J.P. Morgan Chase and Company (“JPM”), a Delaware global financial services company, making JPM the ultimate parent of the Company. On November 1, 2004, subsequent to the date of this report, the Company’s name was changed to Chase Insurance Life Company of New York. (See item of 3A this report)

The Company violated Department Regulation No. 102 by taking reserve credits totaling \$2,533,543 under reinsurance contracts that were not duly executed by both parties by the “as of date” of the Company’s filed annual statements and which did not transfer all of the significant risks to the reinsurer. Such reserve credits are disallowed as of December 31, 2003. (See item of 3E this report)

The Company reported general account deferred annuity reserves on the December 31, 2003 statement that were deficient by \$1.2 million because the return of premium provision was not recognized in the reserve. (See item of 5D this report)

The examiner recommends that the Company strengthen controls over their reinsurance treaty procurement and reinsurance reporting processes so that reserve credits are only taken for reinsurance agreements that have been duly executed by both parties no later than the “as of date” of the financial statement and where there has been an appropriate transfer of risk under the treaty. The examiner also recommends that the Company properly report reinsurance contracts with unauthorized insurers in accordance with the annual statement instructions and report the appropriate liability related to such contracts as reinsurance in unauthorized companies in future annual statements. Further, the examiner recommends that only persons authorized by the board of directors execute reinsurance agreements for the Company. (See item of 3E this report)

The Company violated Section 1411(a) of the New York Insurance Law by making investments without having the investments authorized or approved by the board of directors or a committee thereof. (See item of 3C this report)

The examiner recommends that the Company expand the role of the current internal audit function to adequately assess the Company's specific risk management processes and the accompanying system of internal control. (See item 7 of this report)

The examiner recommends that the Company take steps to remove in a timely manner any director who is unable or unwilling to perform the duties required of directors. (See item of 3C this report)

The examiner recommends that the Company: 1) comply with their charter by holding an annual meeting or special meeting of shareholders in May of each year, in order to elect their directors; and 2) comply with their by-laws by having a board of director's meeting as soon as practical following the annual meeting of the shareholders. (See item of 3C this report)

The Company violated Section 219.4(a)(1) of Department Regulation No. 34-A by incorrectly identifying an affiliate as the insurer on the website, instead of the Company, in cases where a New York quote was generated, and by using the designation of an insurance standards association when the Company was not a member of such association. (See item of 6A this report)

The Company violated Section 420.18(b) of Department Regulation No. 169 by obtaining authorizations to disclose nonpublic personal health information for more than 24 months, which is the maximum length of time permitted by the Regulation. (See item of 6B this report)

## 2. SCOPE OF EXAMINATION

This is the first regular examination of the Company since its inception. This examination covers the period from January 8, 2001, the date of licensure, through December 31, 2003. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2003 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, 2003 to determine whether the Company's 2003 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

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

### 3. DESCRIPTION OF COMPANY

#### A. History

The Company was incorporated as a stock life insurance company under the laws of New York on October 25, 1999 with the name Zurich Kemper Life Insurance Company of New York. The Company was licensed and commenced business on January 8, 2001.

On April 5, 2002 the Company's name was changed to Zurich Life Insurance Company of New York.

Prior to September 1, 2003 the Company was a subsidiary of Kemper Investors Life Insurance Company ("KILICO"). KILICO was a wholly owned subsidiary of Kemper Corporation ("KEMPER"), a non-operating holding company which was ultimately owned by Zurich Financial Services. Federal Kemper Life Assurance Company ("FKLA") was also a subsidiary of KEMPER. Effective September 1, 2003, KILICO transferred 100% of the capital stock of the Company to FKLA. Also on September 1, 2003 KEMPER sold the capital stock of FKLA and Zurich Direct, Inc. to Banc One Insurance Holdings, Inc. ("BOIH"), a subsidiary of Bank One Corporation ("Bank One").

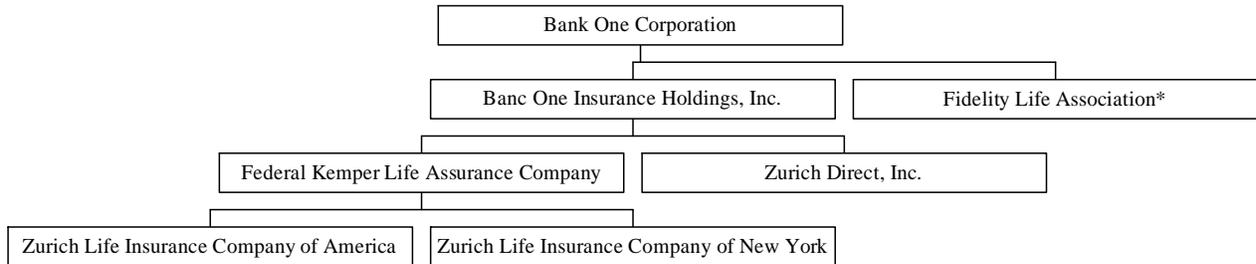
On July 1, 2004, Bank One merged into J.P. Morgan Chase and Company ("JPM"), a Delaware global financial services company, making JPM the ultimate parent of the Company. On November 1, 2004, the Company's name was changed to Chase Insurance Life Company of New York.

Initial resources of \$64,153,006 consisting of common capital stock of \$2,000,000 and paid in and contributed surplus of \$62,153,006, were provided through the sale of 2,000 shares of common stock for \$1,000 per share. In July 2003, the Company received a capital contribution of \$53,966 from FKLA.

#### B. Holding Company

As of the date of this report the Company was a wholly owned subsidiary of FKLA, an Illinois insurance company. FKLA was a wholly owned subsidiary of BOIH, an Arizona holding company. The ultimate parent of the Company was Bank One, a Delaware banking Corporation.

An organization chart reflecting the relationship between the Company and significant entities in its holding company system as of December 31, 2003 follows:



\* Fidelity Life Association (“FLA”) is 100% owned by policyholders, however it is under the common management of the group.

The Company had 3 service agreements in effect during the examination period.

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
Administrative Services Agreement	8/16/99	FKLA	The Company	Day-to-day operations of the Company and maintenance of certain property, equipment and facilities.	2001 \$(1,298,310) 2002 \$(1,010,166) 2003 \$(1,817,282)
General Agent’s Agreement	1/1/98	Zurich Direct, Inc. (“Direct”)	The Company	Marketing and sales	2001 \$(357,261) 2002 \$(52,389) 2003 \$(25,101)
Data Processing Agreement	5/27/01	Farmers Group, Inc.	The Company and other affiliates	Data processing services, telecommunication services, consulting and other related services	2001 \$0 2002 \$0 2003 \$(5,497)

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

As the table above indicates, the Company has a service agreement with FKLA, which provides that FKLA will provide all of the day-to-day administrative services required for the operation of the Company. The Company does not have any other service agreements with affiliates for these services. Although the service agreement with FKLA permits FKLA to subcontract the performance of services to other affiliates, the agreement provides that all

expenses for these services are to be processed through FKLA. A review of inter-company transactions between affiliates indicated that the Company made payments to KILICO, Zurich Life Insurance Company of America (“ZLICA”) and FLA on a regular and systematic basis during the examination period. Expenses related to commissions were processed through FLA, expenses related to premiums were processed through KILICO and policyholder adjustments were processed through ZLICA. The Company explained that this occurred due to system limitations that would not allow the expenses to be properly processed through FKLA. The Company is not complying with the terms of its filed service agreement.

The examiner recommends that the Company abide by the terms of its filed service agreement and process all expenses incurred under the administrative service agreement through FKLA.

### C. Management

The Company’s by-laws provide that the board of directors shall be comprised of not less than nine and not more than 21 directors. As of December 31, 2003, the board of directors consisted of nine members.

The nine board members and their principal business affiliation, as of December 31, 2003, were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
James L. Harlin Oklahoma City, OK	President and Chief Executives Officer Zurich Life Insurance Company of New York	2003
Donald B. Henderson* Bronxville, NY	Partner LeBoeuf, Lamb, Greene & Mac Rae LLP	2000
Reginald M. Jamieson* Leawood, KS	Retired	1999
David S. Jorgenson* Crystal Lake, IL	Senior Vice President, Controller and Treasurer Zurich Life Insurance Company of New York	2003
Irwin Lerner * North Caldwell, NJ	Director V.I. Technologies, Inc.	1999

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Fred J. Meyer* Old Greenwich, CT	Special Advisor Omnicom Group Inc.	1999
Clifford H. Schoenberg* Miami, FL	Partner Cadwalader, Wickersham & Taft LLP	1999
Jeffrey S. Schlinsog Milwaukee, WI	Chief Actuary Zurich Life Insurance Company of New York	2003
William H. Wilton Lake Zurich, IL	Vice President Zurich Life Insurance Company of New York	2003

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

In January 2004, David Scott Jorgenson resigned from the board; he was replaced by Jamie Riesterer on February 27, 2004.

Section 1201(a)(5)(B) of the New York Insurance Law states:

“The corporation's proposed charter shall contain . . .  
(vi) the times and manner of electing directors and officers, the manner of filling vacancies, and provision that each director shall be at least eighteen years of age and that at all times a majority shall be citizens and residents of the United States, and that not less than two shall be residents of this state . . .”

The Company's board of directors only includes one director from the State of New York.

The Company violated Section 1201(a)(5)(B)(vi) of the New York Insurance Law by having less than the minimum number of directors from the State of New York.

The Company's charter states, in part:

“ ARTICLE I  
SHAREHOLDERS MEETING

SECTION 1. Annual Meeting. The Annual Meeting of the shareholders for the election of the Directors and for the transaction of such other business as may come before such meeting shall be held on the second Tuesday in May of each year, beginning in 2000, or if such day is a holiday, on the next succeeding business day. If no Annual Meeting is held on the date fixed, or by adjournment there from, a special meeting of the shareholders may be held in lieu thereof . . .”

The Company's by-laws state, in part:

"ARTICLE 11  
BOARD OF DIRECTORS

SECTION 5. Regular Meetings. Regular meetings of the Board of Directors shall be held as soon as practicable following the Annual Meeting of the shareholders. . . ."

The Company's charter calls for directors to be elected for a period of one year at the annual meeting of the shareholders which is to be held in May of each year. If no annual meeting is held, a special meeting of shareholders may be held in lieu thereof. The Company's by-laws call for meetings of the board to be held as soon as practical following the annual meeting of the shareholders. The Company did not have an annual meeting of the shareholders nor a board of directors meeting in May of 2004 as required by their charter and by-laws, respectively.

The examiner recommends that the Company: 1) comply with their charter by holding an annual meeting or special meeting of shareholders in May of each year, in order to elect their directors; and 2) comply with their by-laws by having a board of director's meeting as soon as practical following the annual meeting of the shareholders.

Attendance of the board of directors meetings was generally acceptable with the exception of one board member that did not attend any meetings during the examination period. Ultimately, upon his retirement in May of 2003, this member was not reelected to the board.

The examiner recommends that the Company take steps to remove in a timely manner any director who is unable or unwilling to perform the duties required of directors.

Section 1411(a) of the New York Insurance Law states, in part:

"No domestic insurer shall make any loan or investment . . . unless authorized or approved by its board of directors or a committee thereof responsible for supervising or making such investment or loan. The committee's minutes shall be recorded and a report submitted to the board of directors at its next meeting."

The investment transactions made by the Company during the period July 1, 2003 through June 30, 2004 were not authorized or approved by the board of directors or a committee thereof. After this was brought to the Company's attention by the examiner, the Company had the investments approved at the board of directors meeting held in December of 2004.

The Company violated Section 1411(a) of the New York Insurance Law by making investments without having the investments authorized or approved by the board of directors or a committee thereof.

The following is a listing of the principal officers of the Company as of December 31, 2003:

<u>Name</u>	<u>Title</u>
James L. Harlin	President and Chief Executives Officer
Jeffrey B. Tilley	Treasurer
Jeffrey A. Worf*	Secretary and Senior Compliance Director
Gregory J. Roemelt	Actuary
Thomas Stavropoulos	Assistant General Counsel and Director of Government Relations

\* 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 only in New York State. In 2003, the percentage of life premiums and annuity considerations received from New York State was 92.49%. Policies are written on a non-participating basis. In 2001 and 2002 the Company only marketed ordinary life insurance. In 2003 the Company began issuing individual annuity contracts.

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

#### E. Reinsurance

As of December 31, 2003, the Company had reinsurance treaties in effect with 17 companies, of which 13 were authorized or accredited. The Company's life insurance business is reinsured on a coinsurance and yearly renewable term basis. Reinsurance is provided on an automatic or facultative basis.

The maximum retention limit for individual life contracts is \$300,000. The Company also cedes 90% of all term business on a first dollar coinsured basis. The total face amount of life insurance ceded as of December 31, 2003, was \$2,404,140,998, which represents 89.35% of the total face amount of life insurance in force. Reserve credit taken for reinsurance ceded to unauthorized companies, totaling \$1,199,250, was supported by letters of credit.

Section 127.2(a) of Department Regulation No. 102 states, in part:

“No insurer subject to this Part shall, for reinsurance ceded, take reserve credit by reducing a liability or establishing an asset in any financial statement filed with the superintendent if, by the terms of the reinsurance agreement, in substance or effect, any of the following conditions exists . . .

(7) The ceding insurer does not transfer to the assuming insurer all of the significant risks inherent in the insurance policies or contracts reinsured. The following . . . identifies . . . the risks which are considered to be significant . . .

(b) Mortality . . .”

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

“No reinsurance agreement or amendment to an agreement may be used to take reserve credit by reducing a liability or by establishing an asset in any financial statement filed with the superintendent, unless the agreement, amendment or binder letter of intent has been duly executed by both parties no later than the “as of date” of the financial statement.”

A review of the reinsurance agreements in effect during the examination period revealed the following:

1. The reinsurance treaties between the Company and AUSA Life Insurance Company Inc. (“AUSA”), RGA Reinsurance Company (“RGA”), Swiss Re Life & Health America Inc. (“Swiss Re”) and Transamerica International Re (“Transamerica International”) were not signed by a representative of the assuming reinsurance company. Therefore, these agreements were not duly executed by both parties by the “as of date” of the Company’s filed annual statements. The Company took the following reserve credits for these agreements during the examination period:

	<u>2003</u>	<u>2002</u>	<u>2001</u>
a) AUSA	\$ 140,091	\$110,147	\$ 34,850
b) RGA	\$ 356,400	\$125,355	\$169,566
c) Swiss Re	\$ 835,173	\$269,723	\$ 73,278
d) Transamerica International	\$1,196,009	\$156,474	\$ 37,537

2. The Company ceded their term life insurance business to Transamerica International under the same treaty that is discussed in the prior paragraph. It is the Department's interpretation that the treaty contains language that directly or indirectly gives the reinsurer the ability to raise reinsurance premiums or decrease reinsurance allowances thereby not adequately transferring all significant risks (i.e., mortality risk) to the assuming insurer.
3. The Company was not a named party in the reinsurance treaties among Annuity & Life Reassurance Ltd. ("Annuity & Life"), ERC Life Reinsurance Corporation ("ERC"), Gerling Global Life Insurance Company ("Gerling"), RGA Reinsurance Company ("RGA-YRT") and Transamerica Occidental Life Insurance Company ("Transamerica Occidental"). The life insurance policies covered by these reinsurance agreements involve term life policies that were originally written by affiliates of the Company. Each of these reinsurance agreements is between the reinsuring company and the affiliate of the Company who originally wrote the policies. Due to policy exchanges and conversions some of the policies covered by these reinsurance agreements converted to New York policies, which are now insured by the Company. Although these policies were converted to policies of the Company they remained reinsured under the original reinsurance agreements. The Company was never named as a participant in the reinsurance agreements and therefore none of the agreements were executed by the Company by the "as of date" of the Company's filed annual statements. The Company took the following reserve credits for these agreements during the examination period:

	<u>2003</u>	<u>2002</u>	<u>2001</u>
a) Annuity & Life	\$3,241	\$156,474	\$37,537
b) ERC	\$1,340	\$ 954	\$ 61
c) Gerling	\$ 0	\$ 63	\$ 61

	<u>2003</u>	<u>2002</u>	<u>2001</u>
d) RGA – YRT	\$ 622	\$ 4,185	\$ 0
e) Transamerica Occidental	\$ 667	\$ 0	\$ 15

4. The effective date of the treaties with Munich American Reassurance Company (“Munich”) and Employers Reinsurance Corporation (“Employers Re”) is January 17, 2003. The Company took a reserve credit in the amount of \$462 for the Munich agreement in the 2002 filed annual statement and a reserve credit in the amount of \$61 for the Employers Re agreement in the 2001 filed annual statement.
5. Gerling and Transamerica Occidental are not authorized or accredited in New York State. The Company failed to report these agreements on Schedule S Part 4 of their filed annual statements during the examination period. The Company also took the following reserve credits during the examination period but failed to report the liability on page 3, line 24.2 “Reinsurance in unauthorized companies” in their filed annual statement:

	<u>2003</u>	<u>2002</u>	<u>2001</u>
a) Gerling	\$ 0	\$63	\$61
b) Transamerica Occidental	\$667	\$ 0	\$15

6. The board of directors of the Company approved certain persons to be jointly and severally authorized to execute reinsurance agreements with and for the Company. Certain agreements were executed by someone other than those persons approved by the board.

The Company violated Section 127.3(a) of Department Regulation No. 102 by taking reserve credits under reinsurance contracts that were not duly executed by both parties by the “as of date” of the Company’s filed annual statements. The total amount of reserve credit taken for 2003 under the aforementioned reinsurance contracts was \$2,533,543, which is hereby disallowed as of December 31, 2003.

In addition, the reinsurance reserve credit of \$1,196,009 taken for the Transamerica International treaty in the 2003 filed annual statement is also disallowed because the credit is not in compliance with Section 127.2(a)(7)(b) of Department Regulation No. 102 in that mortality risk has not been adequately transferred under the treaty. The Company agreed not to take reserve credit under this treaty for the December 31, 2004 annual statement and the Company

will submit additional information to the Department for its review prior to taking reserve credit in future annual statements.

The examiner recommends that the Company strengthen controls over their reinsurance treaty procurement and reinsurance reporting processes so that reserve credits are only taken for reinsurance agreements that have been duly executed by both parties no later than the “as of date” of the financial statement and where there has been an appropriate transfer of risk under the treaty. The examiner also recommends that the Company properly report reinsurance contracts with unauthorized insurers in accordance with the annual statement instructions and report the appropriate liability related to such contracts as reinsurance in unauthorized companies in future annual statements. Further, the examiner recommends that only persons authorized by the board of directors execute reinsurance agreements for the Company.

#### 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:

	<u>January 8, 2001</u>	<u>December 31, 2003</u>	<u>Increase</u>
Admitted assets	<u>\$65,852,391</u>	<u>\$102,253,253</u>	<u>\$36,400,862</u>
Liabilities	<u>\$ 481,916</u>	<u>\$ 33,517,287</u>	<u>\$33,035,371</u>
Common capital stock	\$ 2,000,000	\$ 2,000,000	\$ 0
Gross paid in and contributed surplus	62,153,006	62,206,972	53,966
Unassigned funds (surplus)	<u>1,217,469</u>	<u>4,528,994</u>	<u>3,311,525</u>
Total capital and surplus	<u>\$65,370,475</u>	<u>\$ 68,735,966</u>	<u>\$ 3,365,491</u>
Total liabilities, capital and surplus	<u>\$65,852,391</u>	<u>\$102,253,253</u>	<u>\$36,400,862</u>

The Company's invested assets as of December 31, 2003, were mainly comprised of bonds (97.7%). The Company's entire bond portfolio, as of December 31, 2003, was comprised of investment grade obligations.

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>2001</u>	<u>2002</u>	<u>2003</u>
Ordinary:			
Life insurance	\$952,064	\$1,524,481	\$(434,931)
Individual annuities	<u>0</u>	<u>0</u>	<u>857,505</u>
Total ordinary	<u>\$952,064</u>	<u>\$1,524,481</u>	<u>\$ 422,574</u>
Total	<u>\$952,064</u>	<u>\$1,524,481</u>	<u>\$ 422,574</u>

The Company reported a loss in the ordinary life line of business in 2003 primarily due to the volume of new business written which caused a corresponding increase in commission and other related acquisition expenses.

## 5. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital, and surplus as of December 31, 2003, as contained in the Company's 2003 filed annual statement, a condensed summary of operations and a reconciliation of the capital and surplus account for each of the years under review.

### A. ASSETS, LIABILITIES, CAPITAL, AND SURPLUS AS OF DECEMBER 31, 2003

#### Admitted Assets

Bonds	\$ 96,217,631
Cash and short term investments	2,315,193
Investment income due and accrued	1,202,539
Premiums and considerations:	
Uncollected premiums and agents' balances in the course collection	59,548
Deferred premiums, agents' balances and installments booked but not deferred and not yet due	1,586,385
Reinsurance	
Other amounts receivable under reinsurance plans	19,450
Current federal and foreign income tax recoverable and interest thereon	261,319
Net deferred tax asset	219,250
Other receivables	<u>371,938</u>
 Total admitted assets	 <u>\$102,253,253</u>

Liabilities, Capital, and Surplus

Aggregate reserve for life policies and contracts	\$ 31,052,541
Contract claims:	
Life	93,488
Premiums and annuity considerations for life and accident and health policies and contracts received in advance	35,406
Contract liabilities not included elsewhere:	
Interest maintenance reserve	1,288,891
General expense due or accrued	348,563
Taxes, licenses and fees due or accrued	41,619
Remittances and items not allocated	191,049
Miscellaneous liabilities:	
Asset valuation reserve	240,628
Reinsurance in unauthorized companies	3,241
Payable to parent, subsidiaries and affiliates	219,083
Drafts outstanding	<u>2,778</u>
 Total liabilities	 \$ <u>33,517,287</u>
 Common capital stock	 \$ 2,000,000
Gross paid in and contributed surplus	62,206,972
Unassigned funds (surplus)	<u>4,528,994</u>
 Total capital and surplus	 \$ <u>68,735,966</u>
 Total liabilities, capital, and surplus	 \$ <u>102,253,253</u>

The Company's securities are held by a bank as custodian. Department Circular Letter No. 1976-13 indicates that certain language is to be included in security custodian agreements as follows:

“That the bank as custodian is obligated to indemnify the insurance company for any loss of securities of the insurance company in the bank's custody occasioned by the dishonesty of the bank's officers or employees, burglary, robbery, holdup, theft, or mysterious disappearance, including loss by damage or destruction;

That in the event that there is a loss of the securities in the custody of the bank that same shall be promptly replaced or the value thereof and the value of any loss of rights or privileges resulting from said loss of securities and that the bank shall make available to the insurance company any and all securities or value amounts so replaced. . . .”

The paragraphs quoted above do not appear in the Company's custodian agreement.

The examiner recommends that the Company include the language required by Circular Letter No. 1976-13 in their custodian agreement.

B. CONDENSED SUMMARY OF OPERATIONS

	<u>2001</u>	<u>2002</u>	<u>2003</u>
Premiums and considerations	\$ 166,258	\$ 550,898	\$31,948,546
Investment income	4,825,483	4,714,528	4,677,047
Commissions and reserve adjustments on reinsurance ceded	620,836	1,531,670	2,724,365
Miscellaneous income	<u>0</u>	<u>0</u>	<u>30,988</u>
Total income	<u>\$5,612,577</u>	<u>\$6,797,096</u>	<u>\$39,380,946</u>
Benefit payments	\$ 35,348	\$ 45,476	\$ 582,990
Increase in reserves	86,460	547,543	30,418,538
Commissions	791,426	1,939,269	4,231,045
General expenses and taxes	3,056,908	1,741,438	2,332,780
Increase in loading on deferred and uncollected premium	147,047	(420,427)	(1,412)
Miscellaneous deductions	<u>419</u>	<u>2,716</u>	<u>0</u>
Total deductions	<u>\$4,117,608</u>	<u>\$3,856,015</u>	<u>\$37,563,941</u>
Net gain (loss)	\$1,494,969	\$2,941,081	\$ 1,817,005
Federal and foreign income taxes incurred	<u>542,905</u>	<u>1,416,600</u>	<u>1,394,431</u>
Net gain (loss) from operations before net realized capital gains	\$ 952,064	\$1,524,481	\$ 422,574
Net realized capital gains (losses)	<u>159,991</u>	<u>293,956</u>	<u>7,199</u>
Net income	<u>\$1,112,055</u>	<u>\$1,818,437</u>	<u>\$ 429,773</u>

C. CAPITAL AND SURPLUS ACCOUNT

	<u>2001</u>	<u>2002</u>	<u>2003</u>
Capital and surplus, December 31, prior year	\$ <u>65,370,475</u>	\$ <u>66,386,618</u>	\$ <u>68,061,363</u>
Net income	\$ 1,112,055	\$ 1,818,437	\$ 429,773
Change in net deferred income tax	0	0	1,179,323
Change in non-admitted assets and related items	(10,993)	(1,120,102)	(1,062,125)
Change in liability for reinsurance in unauthorized companies	0	(162,948)	159,707
Change in asset valuation reserve	(84,919)	(69,669)	(86,041)
Cumulative effect of changes in accounting principles	0	1,209,027	0
Capital changes: Paid in	<u>0</u>	<u>0</u>	<u>53,966</u>
Net change in capital and surplus	\$ <u>1,016,143</u>	\$ <u>1,674,745</u>	\$ <u>674,603</u>
Capital and surplus, December 31, current year	\$ <u>66,386,618</u>	\$ <u>68,061,363</u>	\$ <u>68,735,966</u>

D. RESERVES

The Company reported general account deferred annuity reserves on the December 31, 2003 statement that were deficient by \$1.2 million because the return of premium provision was not recognized in the reserve. The Company corrected this reserve deficiency on the December 31, 2004 statement.

## 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.

Section 219.4(a)(1) of Department Regulation No. 34-A states, in part:

“Advertisements shall be truthful and not misleading in fact or in implication. The format and content of an advertisement of a life insurance policy or annuity contract shall be sufficiently complete and clear so that it is neither misleading nor deceptive, nor has the capacity or tendency to mislead or deceive. Statements made should not cloud or mislead the consideration of the purchaser. . . .”

Section 219.4(p) of Department Regulation No. 34-A states, in part:

“In all advertisements made by an insurer, or on its behalf, the name of the insurer shall be clearly identified, together with the name of the city, town or village in which it has its home office in the United States . . .”

During the period under examination a website was used to solicit business based on zip code. When a New York State zip code was entered on the website it incorrectly generated a quote indicating that the insurance policy would be issued by ZLICA. The website had not been programmed to indicate that the Company was the insurer issuing policies in New York State.

In addition, on certain hardcopy advertisements, the Company used the Insurance Marketplace Standards Association (“IMSA”) logo; however, the Company is not and has never been a member of IMSA.

Further, in many of the Company's hardcopy advertisements the name of the city, town or village in which the Company has its home office is not correctly identified.

Instead, the Company incorrectly used the address of the administrative office located in Schaumburg, Illinois.

The Company violated Section 219.4(a)(1) of Department Regulation No. 34-A by incorrectly identifying an affiliate as the insurer on the website instead of the Company, in cases where a New York quote was generated. The website has been changed to correctly inform consumers that the Company, not ZLICA, issues policies in New York. The Company also violated Section 219.4(a)(1) of Department Regulation No. 34-A by using the IMSA designation when the Company is not an IMSA member.

The Company violated Section 219.4(p) of Department Regulation No. 34-A by not correctly identifying the city in which the Company's home office in the United States is located.

#### B. Underwriting and Policy Forms

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

Section 420.18(b) of Department Regulation No. 169 states:

"An authorization shall specify a length of time, for which the authorization shall remain valid, which in no event shall be for more than 24 months."

The Company's life insurance application forms include an authorization to disclose nonpublic personal health information. The authorization states, "This authorization is valid for two and one-half years from the date this form is signed." These application forms were used for all life policies issued during the examination period.

The Company violated Section 420.18(b) of Department Regulation No. 169 by obtaining an authorization to disclose nonpublic personal health information for more than 24 months which is the maximum length of time permitted by the Regulation.

Section 2611(a) of the New York Insurance Law states, in part:

“No insurer or its designee shall request or require an individual proposed for insurance coverage to be the subject of an HIV related test without receiving the written informed consent of such individual prior to such testing . . .”

The examiner reviewed a sample of 50 underwriting policy files which required an individual proposed for insurance coverage to be the subject of an HIV test. The examiner reviewed the files for the inclusion of the required written HIV consent forms. The Company was not able to provide written consent forms for five of the policies.

The Company violated Section 2611(a) of the New York Insurance Law by requiring an individual proposed for insurance coverage to be the subject of an HIV related test without receiving the written informed consent of such individual prior to such testing.

#### 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.

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

## 7. INTERNAL AUDIT

The Company's parent has an internal audit department; however, the examiner noted that during the examination period only one audit was performed that specifically related to the operations of the Company. Internal audit is an integral part of corporate governance that also includes the audit committee, the board of directors, senior management and the external auditors. In particular, internal auditors and audit committees are mutually supportive. Consideration of the work of internal auditors is essential for the audit committee to gain a complete understanding of the Company's operations. Internal audit identifies strategic, operational and financial risks facing the organization and assesses controls put in place by management to mitigate those risks. The internal audit department should be an independent, adequately resourced, and competently staffed internal audit function in order to provide management and the audit committee with ongoing assessments of the Company's risk management processes and the accompanying system of internal control.

The examiner recommends that the Company expand the role of the current internal audit function to adequately assess the Company's specific risk management processes and the accompanying system of internal control.

## 8. SUMMARY AND CONCLUSIONS

Following are the violations, recommendations and comments contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The examiner recommends that the Company abide by the terms of its filed service agreement and process all expenses incurred under the administrative service agreement through FKLA.	6 – 7
B	The Company violated Section 1201(a)(5)(B)(vi) of the New York Insurance Law by having less than the minimum number of directors from the State of New York.	8
C	The examiner recommends that the Company: 1) comply with their charter by holding an annual meeting or special meeting of shareholders in May of each year, in order to elect their directors; and 2) comply with their by-laws by having a board of director's meeting as soon as practical following the annual meeting of the shareholders.	9
D	The examiner recommends that the Company take steps to remove in a timely manner any director who is unable or unwilling to perform the duties required of directors.	9
E	The Company violated Section 1411(a) of the New York Insurance Law by making investments without having the investments authorized or approved by the board of directors or a committee thereof.	9 – 10
F	The Company violated Section 127.3(a) of Department Regulation No. 102 by taking reserve credits under reinsurance contracts that were not duly executed by both parties by the "as of date" of the Company's filed annual statements. The total amount of reserve credit taken for 2003 under such reinsurance contracts was \$2,533,543, which is hereby disallowed as of December 31, 2003.	11 – 13
G	The reinsurance reserve credit of \$1,196,009 taken for the Transamerica International Re treaty in the 2003 filed annual statement is also disallowed because the credit is not in compliance with Section 127.2(a)(7)(b) of Department Regulation No. 102 in that mortality risk has not been adequately transferred under the treaty.	13 – 14

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
H	The examiner recommends that the Company strengthen controls over their reinsurance treaty procurement and reinsurance reporting processes so that reserve credits are only taken for reinsurance agreements that have been duly executed by both parties no later than the “as of date” of the financial statement and where there has been an appropriate transfer of risk under the treaty. The examiner also recommends that the Company properly report reinsurance contracts with unauthorized insurers in accordance with the annual statement instructions and report the appropriate liability related to such contracts as reinsurance in unauthorized companies in future annual statements. Further, the examiner recommends that only persons authorized by the board of directors execute reinsurance agreements for the Company.	13 – 14
I	The examiner recommends that the Company include the language required by Circular Letter No. 1976-13 in their custodian agreement.	18
J	The Company reported general account deferred annuity reserves on the December 31, 2003 statement that were deficient by \$1.2 million because the return of premium provision was not recognized in the reserve.	20
K	The Company violated Section 219.4(a)(1) of Department Regulation No. 34-A by incorrectly identifying an affiliate as the insurer on the website, instead of the Company, in cases where a New York quote was generated, and by using the IMSA designation when the Company is not an IMSA member.	21 – 22
L	The Company violated Section 219.4(p) of Department Regulation No. 34-A by not correctly identifying the city in which the Company’s home office in the United States is located.	21 – 22
M	The Company violated Section 420.18(b) of Department Regulation No. 169 by obtaining an authorization to disclose nonpublic personal health information for more than 24 months, which is the maximum length of time permitted by the Regulation.	22
N	The Company violated Section 2611(a) of the New York Insurance Law by requiring an individual proposed for insurance coverage to be the subject of an HIV related test without receiving the written informed consent of such individual prior to such testing.	23

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
O	The examiner recommends that the Company expand the role of the current internal audit function to adequately assess the Company's specific risk management processes and the accompanying system of internal control.	24



**APPOINTMENT NO. 22221**

**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:

**VIJAY GOSWAMI**

*as a proper person to examine into the affairs of the*

**ZURICH LIFE INSURANCE COMPANY OF NEW YORK**

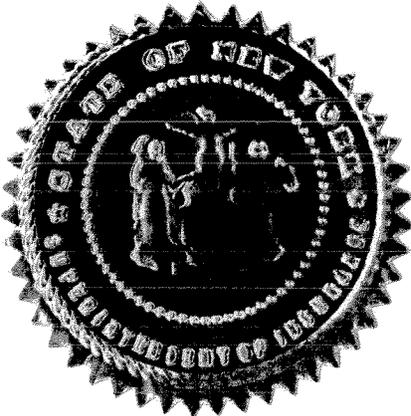
*and to make a report to me in writing of the condition of the said*

**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 3rd day of May, 2004*



**GREGORY V. SERIO**

*Superintendent of Insurance*

*[Handwritten Signature]*  
*Superintendent*