

STATE OF NEW YORK INSURANCE DEPARTMENT  
REPORT ON EXAMINATION  
OF THE  
HIGHMARK LIFE INSURANCE COMPANY OF NEW YORK  
AS OF  
DECEMBER 31, 2000

DATE OF REPORT:

MAY 11, 2001

EXAMINER:

SHARON MA

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

May 11, 2001

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

Sir:

In accordance with instructions contained in Appointment No. 21673, dated January 10, 2001 and annexed hereto, an examination has been made into the condition and affairs of Highmark Life Insurance Company of New York, hereinafter referred to as "the Company," at its home office located at 420 Fifth Avenue, New York, New York.

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

The Company is authorized to write life insurance, annuities, and accident and health insurance. As of December 31, 2000, 82% of the Company's premium income was received from the group accident and health line of business.

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, 2000 filed annual statement. (See item 5 of this report)

The Company violated Section 1505(d)(3) of the New York Insurance Law by receiving services on a regular basis from its parent and affiliates without notifying the superintendent in writing at least thirty days prior to its intention to enter into such transactions. (See item 3B of this report)

The Company violated Section 1202(b)(2) of the New York Insurance Law for failing to have the audit/nominating/evaluation committee fulfill all of its responsibilities as stated in the Law. (See item 3C of this report)

The Company violated Section 2122(a)(2) of the New York Insurance Law by calling attention to unauthorized insurers in its advertisements. (See item 6A of this report)

The Company violated Section 215.17(a) of Department Regulation No. 34 and Section 219.5(a) of Department Regulation No. 34-A by not maintaining its advertising file at its home office. (See item 6A of this report)

The Company violated Section 91.4(a) of the Department Regulation No. 33 by not maintaining records with sufficient detail to show fully the actual bases of allocation. (See item 7 of this report)

## 2. SCOPE OF EXAMINATION

This is the first regular examination of the Company since it was licensed on March 26, 1997. This examination covers the period from March 26, 1997 through December 31, 2000. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2000 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, 2000 to determine whether the Company's 2000 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
- 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

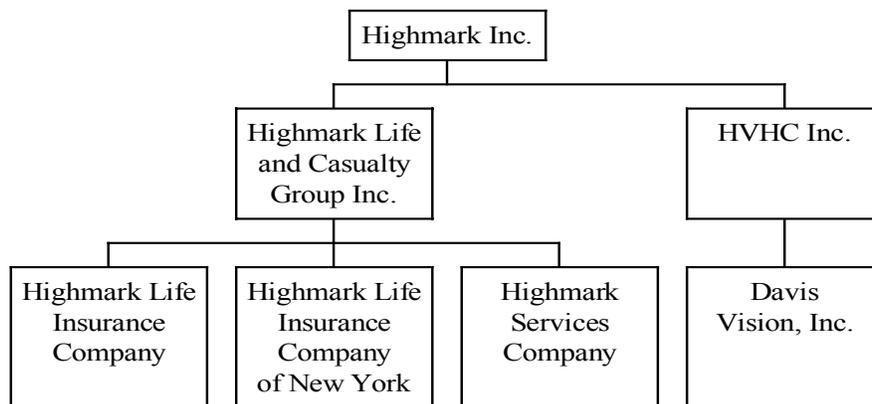
The Company was incorporated as a stock life insurance company under the laws of New York on October 16, 1996, under the name of Trans-General Life Insurance Company of New York. The Company was licensed and commenced business on March 26, 1997. Initial resources of \$10,000,000 consisted of common capital stock of \$2,000,000 and paid in and contributed surplus of \$8,000,000. The capital stock was provided through the sale of 200,000 shares of common stock (with a par value of \$10 each) for \$10 per share.

Effective April 1, 1999, the Company changed its name to Highmark Life Insurance Company of New York.

#### B. Holding Company

The Company is a wholly owned subsidiary of Highmark Life and Casualty Group, Inc. (“Highmark Group”), a Pennsylvania business corporation. Highmark Group is in turn a wholly owned subsidiary of Highmark Inc., the ultimate parent. Highmark Inc. is a Pennsylvania non-profit corporation licensed as a hospital plan and professional health service plan that was formed as a result of the consolidation of Veritus Inc. (doing business as Blue Cross of Western Pennsylvania) and Medical Service Association of Pennsylvania (doing business as Pennsylvania Blue Shield). Prior to April 1, 1999, Highmark Life and Casualty Group, Inc. was known as Trans-General Life and Casualty Group, Inc.

An organization chart reflecting the relationship between the Company and significant entities in its holding company system as of December 31, 2000 follows:



The Company had seven service agreements in effect as of December 31, 2000 with its parent and affiliates. The service agreements are described below:

1. A service agreement, effective February 6, 1997, with Highmark Life Insurance Company (“HLIC”), an affiliate, whereby HLIC processes claims on the life, accidental death and dismemberment, stop-loss, long-term and short-term disability lines of business and provides underwriting on the statutory disability line of business. In addition, HLIC also provides accounting, actuarial, and electronic data processing services to the Company;
2. An investment advisory agreement, effective March, 26 1997, with Highmark Inc. whereby Highmark Inc. supervises and directs the Company in its investments;
3. A third party administrator (“TPA”) agreement, effective January 1, 1998, with Davis Vision, Inc. (“Davis”), an affiliate, whereby Davis provides billing, premium collection, accounting, customer service, distribution and claims processing services for the Company’s group vision policies;
4. In conjunction with the Davis TPA agreement, the Company also entered into an optical laboratory agreement with Davis, effective January 1, 1998, whereby Davis supplies vision care products to the Company’s group vision participants;
5. In conjunction with the Davis TPA agreement, the Company also entered into a preferred provider (“PPO”) network agreement with Davis, effective January, 1 1998, whereby Davis provides a PPO network of optometrists, ophthalmologists and other providers to the Company’s group vision participants;
6. A service agreement, effective January 1, 1999, with Highmark Services Company (“HSC”), an affiliate, this agreement supercedes the agreement with HLIC for certain services. In this agreement HSC provides employee benefit plan administration, financial, human resources, legal, network access, development services and system support to the Company; and
7. A tax allocation agreement, effective April 29, 1999, with Highmark Inc., the ultimate parent, whereby Highmark Inc. prepares and files a consolidated federal income tax return that includes all of its affiliates.

Section 1505(d) of the New York Insurance Law states, in part:

“The following transactions between a domestic controlled insurer and any person in its holding company system may not be entered into unless the insurer has notified the superintendent in writing of its intention to enter into any such transaction at least thirty days prior thereto, or such shorter period as he may permit, and he has not disapproved it within such period . . .

(3) rendering of services on a regular or systematic basis . . .”

The Company’s three service agreements with Davis, the investment advisory agreement with Highmark Inc., and the service agreement with HSC were all entered into during the examination period, however, they were not filed with the Department until November 29, 2000, February 16, 2001, and February 19, 2001, respectively. As of the date of this report, the Department is still in the process of reviewing these agreements.

In addition, the Company’s advertisements are being initiated, approved, and disseminated through HLIC’s marketing department. The service agreement with HLIC, however, does not include a provision to perform marketing or advertising services.

The Company violated Section 1505(d)(3) of the New York Insurance Law by receiving services on a regular basis from its parent and affiliates without notifying the superintendent in writing at least thirty days prior to its intention to enter into such transactions.

### C. Management

The Company’s by-laws provide that the board of directors shall be comprised of not less than 9 and not more than 17 directors. However, within one year following the end of the calendar year in which the admitted assets of the Company equals or exceeds \$500 million, the number of directors shall be increased to not less than 13. Directors are elected for a period of one year at the annual meeting of the stockholders held in April of each year. As of December 31, 2000, the board of directors consisted of 11 members. Meetings of the board are held in January, April, July, and November of each year.

The 11 board members and their principal business affiliation, as of December 31, 2000, were as follows:

| <u>Name and Residence</u>               | <u>Principal Business Affiliation</u>  | <u>Year First Elected</u> |
|---|--|---------------------------|
| James Colker*<br>Pittsburgh, PA         | Managing Director<br>Chief Executive Officer Venture Fund                            | 1996                      |
| George F. Grode<br>Camp Hill, PA        | Executive Vice President<br>Highmark Inc.  | 2000                      |
| Dennis M. Kubit<br>Gibsonia, PA         | President and Chief Executive Officer<br>Highmark Life Insurance Company of New York | 1996                      |
| Roseann J. LaRosa*<br>Valley Stream, NY | General Counsel<br>LifeBank  | 1996                      |
| Walter J. Laughery*<br>New York, NY     | Account Executive<br>Employee Management, Inc.                                       | 1996                      |
| William M. Lowry<br>Sewickley, PA       | Chairman<br>Highmark Life Insurance Company of New York                              | 1996                      |
| James S. Moore*<br>Pittsburgh, PA       | Retired  | 2000                      |
| John N. Shaffer<br>Meadville, PA        | Chairman<br>Highmark Inc.  | 1996                      |
| Richard A. Travers*<br>New York, NY     | President<br>Travers O'Keefe   | 1996                      |
| Warren G. Weber*<br>Erie, PA            | Retired  | 1999                      |
| Thomas White*<br>New Castle, PA         | President and Chief Executive Officer<br>Jameson Health Systems, Inc.                | 1996                      |

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

On April 17, 2001, Walter J. Laughery was replaced by Donald P. Napier.

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

Section 1202(b)(2) of the New York Insurance Law states, in part:

“The board of directors of a domestic life insurance company shall establish one or more committees comprised solely of directors who are not officers or employees of the company or of any entity controlling, controlled by, or under common control with the company . . . Such committee or committees shall have responsibility for recommending the selection of independent certified public accountants, reviewing the company’s financial condition, the scope and results of the independent audit and any internal audit, nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed by such committee or committees to be principal officers of the company and recommending to the board of directors the selection and compensation of such principal officers . . . ”

The Company established an audit/nominating/evaluation committee that is comprised solely of directors who are unaffiliated with the Company, its parent or affiliates. However, during the examination period, this committee did not meet or take any actions by written consent. The responsibilities as stated in the Law were carried out during meetings of the full board of directors which included directors that were either employees or officers of the Company, its parent or affiliates.

The Company violated Section 1202(b)(2) of the New York Insurance Law for failing to have the audit/nominating/evaluation committee fulfill all of its responsibilities as stated in the Law.

The following is a listing of the principal officers of the Company as of December 31, 2000:

| <u>Name</u>            | <u>Title</u>                          |
|------------------------|---------------------------------------|
| Dennis M. Kubit        | President and Chief Executive Officer |
| Charles Klein          | Chief Information Officer             |
| W. Dennis Cronin*      | Senior Vice President and Treasurer   |
| Catherine L. Blanchard | Senior Vice President                 |
| Eugene A. Susi         | Senior Vice President                 |
| John Cordiano          | Vice President                        |
| Paul A. Robb           | Secretary                             |

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

The annual board of directors meeting was held on April 26, 2001. At the meeting, the board elected Daniel J. Carlton to replace John Cordiano as Vice President. In addition, Beata A. Madey was elected Senior Vice President and Pamela R. Brown was elected Vice President.

#### 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, however, the Company has not written any annuities.

The Company is licensed to transact business in two states, namely New York and Rhode Island, and the District of Columbia. In 2000, life premiums were received from New York (69%), and the District of Columbia (31%). All accident and health premiums were received from New York. All policies are written on a non-participating basis.

The Company's principal lines of business are group life and group accident and health. As of December 31, 2000, 82% of the Company's premium income was received from the group accident and health line of business. Within group accident and health, the Company offers the following products: long-term disability, short-term disability, disability benefit law (statutory disability), accidental death and dismemberment ("AD&D"), stop-loss, and vision care. The vision care products were introduced during 1998.

The Company utilizes several distribution systems depending upon the type of products offered. For the group life, group AD&D, and group disability lines of business, the Company markets its products on a general agency basis. For stop-loss products, the Company had a marketing agreement with CFE Management LLC ("CFE"), an unaffiliated managing general underwriter. However, effective January 1, 2001, the Company terminated the agreement with CFE and intends to sell the products on a general agency basis going forward. The Company has a third party administrator agreement with its affiliate, Davis Vision, Inc. to distribute its vision products; the products are sold solely through licensed brokers and/or agents employed by Davis Vision, Inc.

The Company launched its e-commerce products on November 22, 2000, but as of the date of this report had not sold any e-commerce policies. The e-commerce products currently available include group term life insurance and group long term disability insurance.

#### E. Reinsurance

As of December 31, 2000, the Company had reinsurance treaties in effect with five companies, of which four were authorized or accredited. Reinsurance of the Company's group life, group AD&D, group long term disability, and group stop-loss policies are ceded on a coinsurance and/or catastrophe basis. Reinsurance is provided on an automatic and facultative basis.

The maximum retention limit for group life and group AD&D contracts is \$250,000. The total face amount of life insurance ceded as of December 31, 2000, was \$37,311,430, which represents 2% of the total face amount of life insurance in force. The maximum retention limit for group long term disability is \$2,500 gross monthly benefit. The maximum retention limit for stop-loss is 50% quota share participation of up to \$1,000,000. The total amount of accident and health premiums ceded as of December 31, 2000, was \$2,352,858, which represents 11% of the total accident and health premiums in force. Reserve credit taken for reinsurance ceded to unauthorized companies, totaling \$13,146,184, was supported by a trust agreement and is solely for accident and health insurance.

Effective June 1, 1999, the Company retroceded to Scottish Annuity & Life Insurance Company ("Scottish"), an unauthorized insurer domiciled in the Cayman Islands, 100% of the liability for existing long-term disability ("LTD") claims under terminated group policies. The majority of claims retroceded under this agreement were assumed business under an existing coinsurance agreement, effective April 1, 1997, between Massachusetts Mutual Life Insurance Company ("MassMutual") and the Company. The closed LTD block consisted of 204 claims (173 assumed from MassMutual and 31 directly written), with statutory reserves at May 31, 1999 approximating \$20.5 million. The after-tax gain for the Company as result of this transaction was \$2.1 million. This transaction was filed with and approved by the Department. In addition, a trust agreement has been executed between the Bank of New York (trustee) and Scottish (grantor) designating the Company as the beneficiary of the trust, so that reserve credits could be taken. Consequently, the Company's aggregate reserves for this business decreased from \$19.5 million in 1998 to \$7.2 million in 1999. In connection with the coinsurance agreement, the Company and Scottish have also retained NATLSCO, Inc., a non-affiliated third party administrator to administer the claims.

#### 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>March 6,</u><br><u>1997</u> | <u>December 31,</u><br><u>2000</u> | <u>Increase</u><br><u>(Decrease)</u> |
|--|--------------------------------|------------------------------------|--------------------------------------|
| Admitted assets                        | <u>\$10,000,000</u>            | <u>\$25,983,899</u>                | <u>\$15,983,899</u>                  |
| Liabilities                            | <u>\$ 0</u>                    | <u>\$17,649,737</u>                | <u>\$17,649,737</u>                  |
| Common capital stock                   | \$ 2,000,000                   | \$ 2,000,000                       | \$ 0                                 |
| Gross paid in and contributed surplus  | 8,000,000                      | 8,000,000                          | 0                                    |
| Unassigned funds (surplus)             | <u>0</u>                       | <u>(1,665,838)</u>                 | <u>(1,665,838)</u>                   |
| Total capital and surplus              | <u>\$10,000,000</u>            | <u>\$ 8,334,162</u>                | <u>\$(1,665,838)</u>                 |
| Total liabilities, capital and surplus | <u>\$10,000,000</u>            | <u>\$25,983,899</u>                | <u>\$15,983,899</u>                  |

The Company's invested assets as of December 31, 2000, were comprised of bonds (76%), and cash and short term investments (24%). The Company's entire bond portfolio, as of December 31, 2000, 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>1997</u>          | <u>1998</u>      | <u>1999</u>        | <u>2000</u>        |
|---------------------|----------------------|------------------|--------------------|--------------------|
| Group               |                      |                  |                    |                    |
| Life                | \$(1,611,760)        | \$ 469,249       | \$ 35,385          | \$ (740,325)       |
| Accident and health | <u>(74,282)</u>      | <u>(427,660)</u> | <u>(890,366)</u>   | <u>1,911,199</u>   |
| Total               | <u>\$(1,686,042)</u> | <u>\$ 41,589</u> | <u>\$(854,981)</u> | <u>\$1,170,874</u> |

The net loss from operations in 1997 was due to a large amount of death and disability benefit payments. In 1998, the net gain from operations for group life was due to the decrease in death benefit payments, and the net loss for group accident and health was due to increases in benefit payments, commissions and other expenses for the disability and vision products. In 1999, the decrease in net gain from operations for group life was due to a large number of lapses, including three large groups with a total of 4,103 certificates, and the net loss for group accident and health was due to a decrease in the loss carryforward for federal income taxes on all products. In 2000, the net loss from operations for group life was due to an increase in death benefits and aggregate reserves, and the net gain for group accident and health was due to an increase in premium income for stop-loss and vision products combined with a decrease in aggregate reserves for the long term disability products.

The following ratios, applicable to the accident and health business of the Company, have been extracted from Schedule H for each of the indicated years:

|                      | <u>1997</u>    | <u>1998</u>    | <u>1999</u>   | <u>2000</u>    |
|----------------------|----------------|----------------|---------------|----------------|
| Premiums earned      | <u>100.0%</u>  | <u>100.0%</u>  | <u>100.0%</u> | <u>100.0%</u>  |
| Incurred losses      | 124.5%         | 86.8%          | 13.2%         | 70.3%          |
| Commissions          | 13.1           | 13.3           | 12.0          | 13.5           |
| Expenses             | <u>19.2</u>    | <u>24.7</u>    | <u>19.9</u>   | <u>20.1</u>    |
|                      | <u>156.8%</u>  | <u>124.8%</u>  | <u>45.1%</u>  | <u>103.9%</u>  |
| Underwriting results | <u>(56.8)%</u> | <u>(24.8)%</u> | <u>54.9%</u>  | <u>( 3.9)%</u> |

The negative underwriting results in 1997 were due to a large amount of disability benefit payments. In 1998, the Company improved its underwriting results but they were still negative. This was due to the introduction of the new vision products during the year resulting in an increase in premium income, however, the benefit payments, commissions and expenses for the disability product were higher than the previous year. In 1999, the positive underwriting results were primarily due to the impact of the reinsurance transaction whereby the Company retroceded 100% of the liability for existing long-term disability claims under terminated group policies. Without the reinsurance, the incurred losses as a percentage of premiums earned would have been 77.0% resulting in an underwriting loss of 8.9%. Aside from the reinsurance transaction, 1999 underwriting results also improved due to a significant increase in premium income from the vision products.

## 5. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital, surplus and other funds as of December 31, 2000, as contained in the Company's 2000 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, 2000 filed annual statement.

### A. ASSETS, LIABILITIES, CAPITAL, SURPLUS AND OTHER FUNDS AS OF DECEMBER 31, 2000

#### Admitted Assets

|   |                         |
|---|-------------------------|
| Bonds   | \$18,194,904            |
| Cash and short term investments   | 5,816,185               |
| Reinsurance ceded:  |                         |
| Amounts recoverable from reinsurers   | 27,993                  |
| Commissions and expense allowances due  | 116,033                 |
| Life insurance premiums and annuity considerations<br>deferred and uncollected on in force business | 43,611                  |
| Accident and health premiums due and unpaid   | 1,541,966               |
| Investment income due and accrued   | 239,016                 |
| Other receivables   | 4,015                   |
| Claim refund receivables  | <u>176</u>              |
| <br>Total admitted assets   | <br><u>\$25,983,899</u> |

Liabilities, Capital, Surplus and Other Funds

|   |                         |
|---|-------------------------|
| Aggregate reserve for life policies and contracts           | \$ 3,437,683            |
| Aggregate reserve for accident and health policies          | 4,506,117               |
| Policy and contract claims:                                 |                         |
| Life  | 948,739                 |
| Accident and health   | 3,530,369               |
| Policy and contract liabilities                             |                         |
| Provision for experience rating refunds                     | 84,000                  |
| Commissions to agents due or accrued                        | 328,503                 |
| General expenses due or accrued                             | 996,081                 |
| Taxes, licenses and fees due or accrued                     | 14,304                  |
| Federal income taxes due or accrued                         | 438,841                 |
| Amounts withheld or retained by company as agent or trustee | 28,957                  |
| Remittances and items not allocated                         | 5,112                   |
| Miscellaneous liabilities:                                  |                         |
| Asset valuation reserve                                     | 16,132                  |
| Payable to parent, subsidiaries and affiliates              | 3,247,962               |
| Unclaimed property  | <u>66,937</u>           |
| <br>Total liabilities                                       | <br><u>\$17,649,737</u> |
| <br>Common capital stock                                    | <br>\$2,000,000         |
| Gross paid in and contributed surplus                       | 8,000,000               |
| Unassigned funds (surplus)                                  | <u>(1,665,838)</u>      |
| <br>Total capital, surplus and other funds                  | <br><u>\$ 8,334,162</u> |
| <br>Total liabilities, capital, surplus and other funds     | <br><u>\$25,983,899</u> |

B. CONDENSED SUMMARY OF OPERATIONS

|  | <u>1997</u>           | <u>1998</u>          | <u>1999</u>          | <u>2000</u>         |
|--|-----------------------|----------------------|----------------------|---------------------|
| Premiums and considerations                              | \$ 14,860,956         | \$ 19,864,143        | \$ 22,302,670        | \$23,704,502        |
| Investment income  | 974,426               | 1,921,179            | 1,391,279            | 1,182,199           |
| Commissions and reserve adjustments on reinsurance ceded | 84,720                | 89,595               | 298,286              | 2,402,042           |
| Miscellaneous income                                     | <u>541,046</u>        | <u>403,286</u>       | <u>503,628</u>       | <u>10,033</u>       |
| Total income   | <u>\$ 16,461,148</u>  | <u>\$ 22,278,203</u> | <u>\$ 24,495,863</u> | <u>\$27,298,776</u> |
| Benefit payments   | \$ 13,973,191         | \$ 15,390,819        | \$ 17,698,826        | \$17,039,944        |
| Increase in reserves                                     | 26,236                | (219,018)            | 716,051              | 663,972             |
| Commissions  | 1,504,006             | 2,150,052            | 2,494,446            | 3,511,221           |
| General expenses and taxes                               | <u>2,996,435</u>      | <u>4,683,205</u>     | <u>5,055,025</u>     | <u>5,193,336</u>    |
| Total deductions   | <u>\$ 18,499,868</u>  | <u>\$ 22,005,058</u> | <u>\$ 25,964,348</u> | <u>\$26,408,473</u> |
| Net gain (loss)  | \$ (2,038,720)        | \$ 273,145           | \$ (1,468,485)       | \$ 890,303          |
| Federal income taxes                                     | <u>(352,679)</u>      | <u>231,557</u>       | <u>(613,506)</u>     | <u>(280,570)</u>    |
| Net income   | <u>\$ (1,686,041)</u> | <u>\$ 41,588</u>     | <u>\$ (854,979)</u>  | <u>\$ 1,170,873</u> |

C. CAPITAL AND SURPLUS ACCOUNT

|  | <u>1997</u>         | <u>1998</u>         | <u>1999</u>         | <u>2000</u>         |
|--|---------------------|---------------------|---------------------|---------------------|
| Capital and surplus, December 31, prior year           | \$ <u>0</u>         | \$ <u>8,308,650</u> | \$ <u>8,338,244</u> | \$ <u>9,264,626</u> |
| Net income   | \$ (1,686,041)      | \$ 41,588           | (854,979)           | \$ 1,170,873        |
| Change in nonadmitted assets and related items         | 0                   | (83,831)            | (18,572)            | (218,745)           |
| Change in asset valuation reserve                      | (5,309)             | (2,532)             | (4,094)             | (4,197)             |
| Capital changes  |                     |                     |                     |                     |
| Transferred to surplus                                 | 2,000,000           | 0                   | 0                   | 0                   |
| Surplus adjustments                                    |                     |                     |                     |                     |
| Paid in  | 8,000,000           | 0                   | 0                   | 0                   |
| Change in allowance for doubtful accounts presentation | 0                   | 74,369              | (74,369)            |                     |
| Deferred gain on reinsurance transaction               | <u>0</u>            | <u>0</u>            | <u>1,878,396</u>    | <u>(1,878,395)</u>  |
| Net change in capital and surplus                      | \$ <u>8,308,650</u> | \$ <u>29,594</u>    | \$ <u>926,382</u>   | \$ <u>(930,464)</u> |
| Capital and surplus, December 31, current year         | \$ <u>8,308,650</u> | \$ <u>8,338,244</u> | \$ <u>9,264,626</u> | \$ <u>8,334,162</u> |

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

Section 2122(a)(2) of the New York Insurance Law states:

“No insurance agent, insurance broker or other person, shall by any advertisement or public announcement in this state, call attention to any unauthorized insurer or insurers.”

The Company distributed the following advertisements during the examination period: Group Supplemental Life Insurance [form #36463 (11-00)], Highmark Life & Casualty Approach to Loss of Time Management [form #36835 (R8/00)], Managed Care Excess of Loss [form #36606 R4/99] and Voluntary Group Life [form #HG302248 (R11/99) and form #36611 (R11/99)]. All of these advertisements contain references to the Company's affiliate, HLIC, and the parent, Highmark Group, which are unauthorized insurers.

The Company violated Section 2122(a)(2) of the New York Insurance Law by calling attention to unauthorized insurers in its advertisements.

Section 215.17(a) of Department Regulation No. 34 states, in part:

“Each insurer shall maintain at its home or principal office a complete file containing every printed, published or prepared advertisement . . . of its blanket, franchise and group policies hereafter disseminated in this or any other State whether or not licensed in such other State, with a notation . . . which shall indicate the manner and extent of distribution and the form number of any policy advertised . . . ”

Section 219.5(a) of Department Regulation No. 34-A states, in part:

“Each insurer shall maintain at its home office a complete file containing a specimen copy of every printed, published or prepared advertisement hereafter disseminated in this state, with a notation indicating the manner and extent of distribution and the form number of any policy advertised. In order to be complete, the file must contain all advertisements whether used by the company, its agents or solicitors or other persons . . . .”

The Company maintains all advertising files (for both group life and group accident and health policies) in Pittsburgh, Pennsylvania. In addition, the Company did not institute any procedures to track the manner and extent of distribution of advertisements until early 2001.

The Company violated Section 215.17(a) of Department Regulation No. 34 and Section 219.5(a) of Department Regulation No. 34-A by not maintaining its advertising file at its home office. In addition, the file did not include the manner and extent of distribution.

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 . . . . An advertisement shall not use a trade name, an insurance group designation, name of the parent company or affiliate of the insurer . . . if such use would have the tendency to mislead or deceive as to the true identity of the insurer . . . .”

During the examination period, the Company did not provide the name of the city, town or village in which it has its home office in any of its advertisements. Instead, some of the advertisements contain the city and town of the parent’s home office in Pittsburgh, Pennsylvania.

The Company violated Section 219.4(p) of Department Regulation No. 34-A by not identifying the name of the city, town or village of its home office in its advertisements.

The examiner recommends that the Company establish procedures to ensure its advertisements are in compliance with Department Regulation No. 34 and No. 34-A.

## B. Underwriting and Policy Forms

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

Section 3201(b)(1) of the New York Insurance Law states, in part:

“No policy form shall be delivered or issued for delivery in this state unless it has been filed with and approved by the superintendent as conforming to the requirements of this chapter and not inconsistent with law. . . .”

The Company used policy form “GP-198-SL” to issue a total of 28 stop-loss policies during the period under examination. This policy form was filed but was not approved until April 11, 2001.

The Company violated Section 3201(b)(1) of the New York Insurance Law by using a policy form before it was approved by the superintendent.

In addition, the Company issued group life policies during the examination period using policy form GP292-LIFE that was modified from its approved version. The modified version was never submitted for approval to the Department. The Department’s Albany office has investigated this form and has additional concerns. Therefore, the examiner recommends that the Company resubmit modified policy form GP292-LIFE to the Department for approval.

## 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.

D. Response to Supplement No. 1 to Department Circular Letter No. 19 (2000)

Supplement No. 1 to Circular Letter No. 19 (2000) (the “Supplement”), issued by the Department on June 22, 2000, notified all licensed life insurers that the Department was investigating allegations of race-based underwriting of life insurance by its licensees. The Supplement directed, pursuant to Section 308 of the New York Insurance Law, each domestic and foreign life insurer to review its past and present underwriting practices regarding race-based underwriting and to report its findings to the Department, no later than August 15, 2000.

Pursuant to Section 308 of the New York Insurance Law, the Company submitted a report of the findings of its review of past and present underwriting practices regarding race-based underwriting made in accordance with the requirements of the Supplement. The Company was granted an extension and responded within the time specified by the Department.

The Company reported that it examined all rate and form filings since its incorporation, reviewed all marketing and advertising materials, interviewed the director of underwriting responsible for establishing the underwriting practices and procedures, and reviewed the underwriting guidelines manual to determine whether or not the Company engaged in, or practiced, race-based underwriting. Based on its review, the Company concluded that it had not engaged in, or practiced, race-based underwriting.

An analysis of the Company’s response to the Supplement indicated that the Company’s review of its past and present underwriting practices complied with the requirements of the Supplement.

## 7. EXPENSE ALLOCATION

Section 91.4(a) of Department Regulation No. 33 states, in part:

“(1) It is the responsibility of each life insurer to use only such methods of allocation as will produce a suitable and equitable distribution of income and expenses by lines of business . . .

(2) Each life insurer shall maintain records with sufficient detail to show fully . . .

(ii) the actual bases of allocation . . .”

The Company’s method of allocation is based upon cost center allocation worksheets developed by managers of its parent company, Highmark Group. The worksheets provide the allocation percentages for various cost centers and lines of business. The worksheets are used in allocating expenses within the Company, as well as for inter-company income and expenses. However, the Company did not have any documentation to support the allocation percentages developed by the managers. Consequently, the examiner cannot determine whether such bases of allocation are fair and equitable.

The Company violated Section 91.4(a) of Department Regulation No. 33 by not maintaining records with sufficient detail to show fully the actual bases of allocation.

8. 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 Company violated Section 1505(d)(3) of the New York Insurance Law by receiving services on a regular basis from its parent and affiliates without notifying the superintendent in writing at least thirty days prior to its intention to enter into such transactions. | 6                  |
| B           | The Company violated Section 1202(b)(2) of the New York Insurance Law for failing to have the audit/nominating/evaluation committee fulfill all of its responsibilities as stated in the Law.  | 8                  |
| C           | The Company violated Section 2122(a)(2) of the New York Insurance Law by calling attention to unauthorized insurers in its advertisements.   | 18                 |
| D           | The Company violated Section 215.17(a) of Department Regulation No. 34 and Section 219.5(a) of Department Regulation No. 34-A by not maintaining its advertising file at its home office.  | 18 - 19            |
| E           | The Company violated Section 219.4(p) of Department Regulation No. 34-A by not identifying the name of the city, town or village in which it has its home office in its advertisements.  | 19                 |
| F           | The examiner recommends that the Company establish procedures to ensure its advertisements are in compliance with Department Regulation No. 34 and No. 34-A.   | 19                 |
| G           | The Company violated Section 3201(b)(1) of the New York Insurance Law by using a policy form that was not approved by the superintendent.  | 20                 |
| H           | The examiner recommends that the Company resubmit modified policy form GP292-LIFE to the Department for approval.  | 20                 |
| I           | The Company violated Section 91.4(a) of the Department Regulation No. 33 by not maintaining records with sufficient detail to show fully the actual bases of allocation.   | 22                 |



APPOINTMENT NO. 21673

STATE OF NEW YORK  
**INSURANCE DEPARTMENT**

I, NEIL D. LEVIN, Superintendent of Insurance of the State of New York,  
pursuant to the provisions of the Insurance Law, do hereby appoint:

**SHARON MA**

as a proper person to examine into the affairs of the

**HIGHMARK 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 she 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 10th day of January, 2001



NEIL D. LEVIN

Superintendent of Insurance

by GREGORY V. SERIO

First Deputy Superintendent