

STATE OF NEW YORK INSURANCE DEPARTMENT
REPORT ON EXAMINATION
OF THE
CONSECO LIFE INSURANCE COMPANY OF NEW YORK
AS OF
DECEMBER 31, 2002

DATE OF REPORT:

JULY 11, 2003

EXAMINER:

DARLENE SINGLEMANN

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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

July 11, 2003

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

Sir:

In accordance with instructions contained in Appointment No. 21942, dated October 7, 2002 and annexed hereto, an examination has been made into the condition and affairs of Conseco Life Insurance Company of New York, hereinafter referred to as "the Company," at its home office located at 350 Jericho Turnpike, Suite 304, Jericho, 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

On December 17, 2002, Conseco, Inc. (“CNC”) and several of its financial company subsidiaries within the holding company filed voluntary petitions for reorganization under Chapter 11 of the United States bankruptcy code. On March 18, 2003 CNC received approval of its reorganization plan disclosure statement. CNC solicited votes from eligible creditors for approval of the plan and the voting ended June 6, 2003. Bankruptcy court proceedings to confirm the reorganization plan commenced on June 13, 2003. On September 9, 2003, the U.S. Bankruptcy Court confirmed the Company’s Sixth Amended Joint Plan of Reorganization, allowing CNC to begin its emergence from bankruptcy. (See item 3B of this report)

As a result of the bankruptcy proceedings and the resulting restructuring and streamlining of the business operations within the holding company, the Company announced the cessation of its long-term care and annuity business as of April 18, 2003 and May 1, 2003, respectively. The Company’s only remaining line of business is its direct response business. The Company continues to experience losses on its long-term care business and has projected these losses to continue through 2009. (See item 4 of this report)

The Company violated Section 3201(b)(1) of the New York Insurance Law by utilizing several forms for its long-term care insurance that were not filed with and approved by the Superintendent. The Company used the forms in numerous instances to amend applications and policy benefits and to reinstate policies. When the forms were finally submitted for approval they were determined to be unapprovable or in need of revisions in order to comply with Department requirements. In March 2003, the Company signed a stipulation in settlement of a similar violation discovered during a previous examination. The admitted usage of several additional unapproved forms since the brief time period of executing the stipulation indicates that the procedures mentioned in the stipulation to improve compliance were either not implemented or were inadequate in addressing policy form compliance issues. (See item 6B of this report)

The Company violated Section 3201(b)(1) of the New York Insurance Law by utilizing internet applications for graded benefit life and simplified issue whole life policies that were not filed with and approved by the Superintendent. (See item 6B of this report)

The examiner recommends that the Company develop a plan of compliance regarding its policy form procedures, approved and monitored by the audit committee, to ensure that: policy forms are filed and approved with the Department; changes to existing policy forms are filed and approved before they are implemented; the recurrence of similar violations to those contained in this report on examination and the March 21, 2003 stipulation are prevented in the future; and the Company complies with all other applicable laws, regulations and rules regarding policy forms. (See item 6B of this report)

The Department has determined that minimum statutory formula reserves for long-term care insurance need to be increased by \$2.4 million to explicitly cover all benefits, including the inflation protection benefit. The Company has agreed to establish half of the required increase as of the third quarter and the remainder as of the fourth quarter 2004. In addition, the Company has agreed to utilize a revised methodology for determining adequacy of long-term care reserves for December 31, 2004. It is expected that this revised methodology will result in additional reserve strengthening. (See item 5D of this report)

The Company violated Section 1507 of the New York Insurance Law by failing to maintain a separate operating identity. (See item 7 of this report)

The Company violated Section 51.6(b)(6) of Department Regulation No. 60 by failing to maintain all notifications of replacement indexed by agent. (See item 6A of this report)

The Company violated Section 4232(a)(2) of the New York Insurance Law by crediting additional interest on its annuity contracts that was not based on written criteria approved by the board of directors or a committee thereof. (See item 6C of this report)

The examiner recommends that the Company establish and maintain an independent, adequately resourced, and competently staffed internal audit function to provide management and the outside committee with ongoing assessments of the Company's risk management processes and the accompanying system of internal control. To the extent that audits performed by an affiliate on a functional basis are intended to encompass the activities of the Company, it should be clear from the audit workpapers that Company transactions or activities are specifically included in the samples reviewed by internal audit. (See item 8 of this report)

2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 1999. This examination covers the period from January 1, 2000 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
- Mortality and loss experience
- Reinsurance
- Accounts and records
- Financial statements

The examiner reviewed the corrective actions taken by the Company with respect to violations and the 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 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 accident and health insurance company, as American Accident and Health Insurance Company, under the laws of New York on April 29, 1987, and commenced business on July 13, 1987. Initial resources of \$300,000 were provided through the sale of 100 shares of common stock for \$3,000 per share. Effective December 31, 1991, Arista Insurance Company (“Arista”) assumed 100% of the Company’s liabilities under a transfer and assumption agreement. Concurrently, the Company entered into a stock purchase agreement with Arista, whereby Arista purchased 100% of the Company’s issued and outstanding stock after the Company’s note holders exchanged their notes for shares of the Company’s common stock. On December 20, 1995, American Travellers Life Insurance Company purchased all the outstanding shares of the Company from Arista. In 1995, the Company received a cash contribution to surplus from its parent company, American Travellers Life Insurance Company, in the amount of \$9,953,047. In 1996, the name of the Company was changed to American Travellers Insurance Company of New York. Also in 1996, CNC acquired the American Travellers Group. As a result of this acquisition, CNC became the ultimate parent of the Company. On September 30, 1997 the Company became licensed to write life insurance and annuities in New York and changed its name to its present name, Conseco Life Insurance Company of New York.

In 1998, the Company increased its capital from \$300,000 to \$2,000,000 by increasing the par value of each of the 100 authorized and issued shares of the Company’s common stock from \$3,000 to \$20,000.

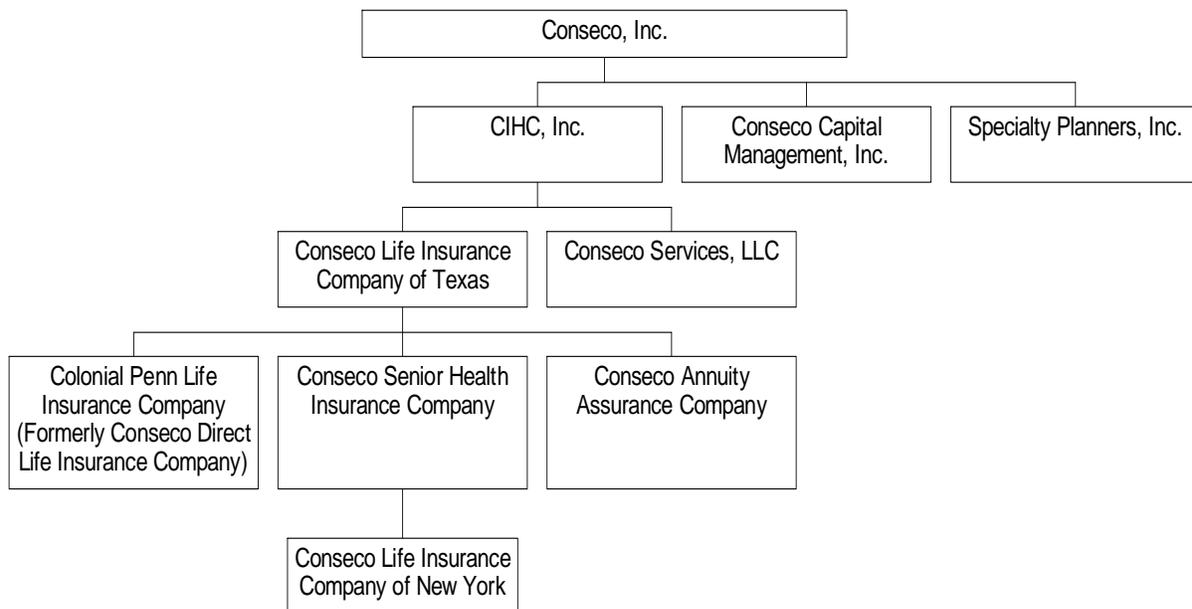
On December 29, 2000 and December 21, 2001 the Company received cash contributions to surplus from its immediate parent, Conseco Senior Health Insurance Company (“Conseco Senior Health”), in the amounts of \$3,000,000 and \$5,000,000, respectively.

Capital and contributed surplus were \$2,000,000 and \$16,253,047, respectively, as of December 31, 2002.

B. Holding Company

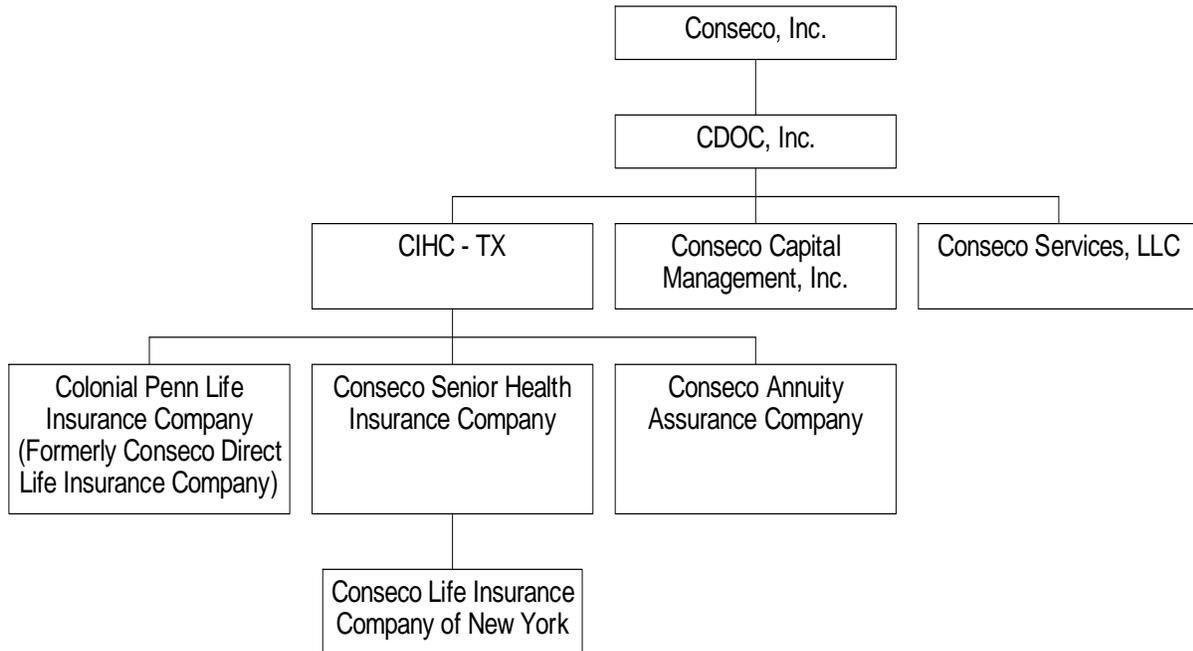
The Company was a wholly owned subsidiary of Conseco Senior Health, a Pennsylvania company, which in turn was a wholly owned subsidiary of Conseco Life Insurance Company of Texas, a Texas company. Conseco Life Insurance Company of Texas was a wholly owned subsidiary of CIHC, Inc. CIHC, Inc. was an intermediate holding company controlled by the ultimate parent, Conseco, Inc., an Indiana publicly held financial services 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:



On December 17, 2002, CNC and several of its financial company subsidiaries within the holding company filed voluntary petitions for reorganization under Chapter 11 of the United States bankruptcy code. On March 18, 2003 CNC received approval of its reorganization plan disclosure statement. CNC solicited votes from eligible creditors for approval of the plan and the voting ended June 6, 2003. Bankruptcy court proceedings to confirm the reorganization plan commenced on June 13, 2003 with arbitration continuing to September of 2003. On September 9, 2003, the U.S. Bankruptcy Court confirmed the Company's Sixth Amended Joint Plan of Reorganization, allowing CNC to begin its emergence from bankruptcy.

An organization chart reflecting the relationship between the Company and significant entities in its holding company system as of September 9, 2003 is as follows:



The Company had three service agreements in effect as of December 31, 2002.

1. A service agreement with Consecos Services, LLC (“CSLLC”) whereby CSLLC provides accounting, tax, marketing, actuarial, legal, underwriting, policyholder services, data processing and other functional support services.
2. An investment advisory agreement with Consecos Capital Management, Inc. (“CCM”) that calls for CCM to supervise and direct the composition of the Company’s portfolio of invested assets, subject to the Company’s written investment objectives, policies and restrictions.
3. A sublease agreement with Specialty Planners, Inc., an affiliated brokerage specializing in long-term care business, that provides for the sharing of a corporate suite with Specialty Planners, Inc.

In addition, the Company is party to a federal tax allocation agreement with CNC.

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

“Transactions within a holding company system to which a controlled insurer is a party shall be subject to the following:

- (1) the terms shall be fair and equitable;
- (2) charges or fees for services performed shall be reasonable . . .”

A review of advertising revealed that the Company is receiving services on a regular and systematic basis at no cost to the Company. The Company receives advertising and solicitation services from CSLLC through Colonial Penn Life Insurance Company’s (“CPL”) website. The examiner requested documentation regarding the payments made for these services. The Company responded, “CPL does not charge . . . a fee to advertise on the website. The Company activity on the website has not been substantial and virtually all of the costs of the website would have been incurred by CPL regardless of the Company’s presence on the website. The development cost for additional Company-specific web pages will be paid by the Company to the vendor who provides the services.”

The Company violated Section 1505(a) of the New York Insurance Law by receiving website services on a regular and systematic basis at no cost to the Company.

A review of federal income taxes revealed that the Company did not establish the required escrow accounts according to its filed consolidated tax allocation agreements for 2000. In addition, in 2001 in lieu of an escrow agreement the Company entered into a collateral agreement that was not filed with the Department.

The Company has agreed to terminate the collateral agreement and establish and fund escrow agreements for the tax years 2000 and 2001.

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 17 directors. Directors are elected for a period of one year at the annual meeting of the stockholders held in June of each year. In addition, the minimum number of directors shall be increased to not less than 13 within one year following the end of the calendar year in which the Company’s admitted assets exceed \$1.5 billion. As of December 31, 2002, the board of directors consisted of ten members. Meetings of the board are held annually.

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

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Lawrence M. Coss* Fort Pierre, SC	Retired	2001
Richard I. Dick* Ithaca, NY	Professor Cornell University	1997
Elizabeth C. Georgakopoulos Carmel, IN	President Conseco Life Insurance Company of New York Conseco Insurance Group	2002
Murray P. Hathaway* Bloomington, IN	Retired	1996
David K. Herzog Carmel, IN	Executive Vice President, General Counsel and Secretary Conseco Life Insurance Company of New York Executive Vice President and General Counsel Conseco, Inc.	2000
Andrew W. Hubregsen New York, NY	Partner Conseco Private Capital Group	1997
Robert S. Nickoloff* St. Paul, MN	General Counsel Venturi Group, LLC.	2001
Ronald R. Ruhl Carmel, IN	Executive Vice President Conseco, Inc.	2001
William J. Shea North Andover, MA	President Conseco, Inc.	2002
Ian F. Wismann Staten Island, NY	Consultant	2001

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

Effective February 27, 2003 David K. Herzog resigned from the board. Effective March 10, 2003 Elizabeth C. Georgakopoulos resigned from the board. Effective March 24, 2003 the following members were elected to the board: Edward M. Berube; Eugene M. Bullis; John M. Squarok; and Stephanie L. Valadez. Effective April 12, 2003 Stephanie L. Valadez resigned 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>
Elizabeth C. Georgakopoulos	President
Daniel Joseph Murphy	Treasurer
David K. Herzog	Executive Vice President, General Counsel, Secretary
*Theresa Waters	Vice President

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

As a result of the bankruptcy proceedings described earlier in this report, the holding company has been restructured, which resulted in many changes to the management of the Company.

The following management changes occurred subsequent to the examination period. Effective February 25, 2003, Joseph R. Sitar was removed as Senior Vice President. Effective February 27, 2003, David K. Herzog was removed as Executive Vice President, General Counsel and Secretary. On March 7, 2003, William J. Shea was elected as President, Eugene M. Bullis was elected as Executive Vice President and Chief Financial Officer, L. Michael Hone was elected as Executive Vice President of Sales and Marketing, Ronald F. Ruhl was elected as Executive Vice President, Chief Operating Officer and Chief Actuary, and Stephanie L. Valadez was elected as Secretary. Effective March 10, 2003, Elizabeth C. Georgakopoulos was removed as President. Effective April 12, 2003 Stephanie L. Valadez was removed as Secretary. On April 16, 2003 Alexis M. Berg was elected as Secretary.

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 New York State only. Policies are written on a non-participating basis.

The Company wrote ordinary life insurance, fixed annuities and long-term care health insurance products during the examination period.

As part of the restructuring and streamlining of the business operations within the holding company system, the Company announced the cessation of its long-term care and annuity businesses as of April 18, 2003 and May 1, 2003, respectively.

The Company's long-term care products and annuities were sold on a general agency basis. The Company's life products are sold on a direct response basis.

E. Reinsurance

Effective September 30, 1997 the Company entered into an assumption and indemnity reinsurance agreement with Intramerica Life Insurance Company ("Intramerica"). Pursuant to the terms of the treaty, the Company assumed by novation all non-variable policies issued to Intramerica policyholders who were residents of New York as of January 1, 1997. Those policyholders that elected not to transfer their policies to the Company are reinsured on a 100% indemnity basis. In addition, the Company assumed all Intramerica policies issued prior to August 2, 1985 on an indemnity basis only.

As of December 31, 2002 the Company assumed a face amount of life insurance of \$39.6 million which represented 21.3% of the total face amount of life insurance in-force. The Company also assumes a negligible amount of accident and health business. The Company does not cede any business.

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>1999</u>	December 31, <u>2002</u>	Increase (Decrease)
Admitted assets	<u>\$85,713,790</u>	<u>\$142,944,140</u>	<u>\$57,230,350</u>
Liabilities	<u>\$79,089,025</u>	<u>\$132,711,867</u>	<u>\$53,622,842</u>
Common capital stock	\$ 2,000,000	\$ 2,000,000	\$ 0
Gross paid in and contributed surplus	8,253,047	16,253,047	8,000,000
Unassigned funds (surplus)	<u>(3,628,282)</u>	<u>(8,020,774)</u>	<u>(4,392,492)</u>
Total capital and surplus	<u>\$ 6,624,765</u>	<u>\$ 10,232,273</u>	<u>\$ 3,607,508</u>
Total liabilities, capital and surplus	<u>\$85,713,790</u>	<u>\$142,944,140</u>	<u>\$57,230,350</u>

The increase in contributed surplus is due to the surplus contributions made by Conseco Senior Health on December 29, 2000 and December 21, 2001 in the amounts of \$3,000,000 and \$5,000,000, respectively.

The Company's invested assets as of December 31, 2002 were mainly comprised of bonds (91%) and cash and short-term investments (5.1%). The Companies entire bond portfolio as of December 31, 2002 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>2000</u>	<u>2001</u>	<u>2002</u>
Ordinary:			
Life insurance	\$ 1,347,267	\$ 978,282	\$ 2,717,449
Individual annuities	(126,218)	(1,367,018)	(747,820)
Supplementary contracts	<u>0</u>	<u>0</u>	<u>513</u>
Total ordinary	<u>\$ 1,221,049</u>	<u>\$ (388,736)</u>	<u>\$ 1,970,142</u>
Group life	<u>\$ 15,103</u>	<u>\$ 9,456</u>	<u>\$ 13,739</u>
Accident and health – other	<u>\$(2,777,489)</u>	<u>\$(1,172,106)</u>	<u>\$(4,110,243)</u>
All other lines	<u>\$ 328,873</u>	<u>\$ 446,026</u>	<u>\$ 523,093</u>
Total	<u>\$(1,212,464)</u>	<u>\$(1,105,360)</u>	<u>\$(1,603,269)</u>

Part of the fluctuations between 2000 and 2001 for the ordinary life and the other accident and health lines of business are a result of the misallocation of the federal income tax expense between those two lines of business. Approximately \$917,000 of additional federal income tax expense was misallocated from the other accident and health line to the ordinary life line. The corrected amounts for 2001 would have been approximately a gain of \$1.9 million on the ordinary life line and a loss of \$2.09 million on the other accident and health line of business. The method of allocating the federal income tax expense was corrected in 2002.

The Company continually experienced losses in the annuity line of business due to new business acquisition costs. The increase in net loss from operations for the annuity line of business in 2001 compared to 2000 is primarily due to an increase in operating expenses. In 2002, the downgrade of the Conseco companies and the subsequent bankruptcy proceedings resulted in a decrease in the sales of the fixed deferred annuity product resulting in lower losses from operations due to decreases in commissions and general expenses.

The Company continually experienced losses in the long-term care line of business (i.e., accident and health - other) due to new business acquisition costs and the mandatory reserve requirements in the early years of this business. The decrease in net loss in this line from 2000 to

2001, is mainly attributable to a decrease in operating expenses. The increase in net loss from 2001 to 2002 is due primarily to an increase in the disabled life reserves and an increase in paid claims.

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

“General expenses, taxes, licenses and fees. (1) In distributing costs to lines of business, each company shall employ those principles and methods that will reasonably reflect the actual incidence of cost by line of business . . .

(5) General indexes such as premium volume, number of policies, and insurance in force shall not be used as basis for distributing costs among major annual statement lines of business, except where the incidence of cost is closely related to such general indexes, or except where there is no more appropriate basis for measurement. . . .”

A review of the Company’s method to allocate expenses to annual statement lines of business revealed that it was based on premium volume. The Company could not provide adequate documentation to support that premium volume, a general index, should be used for distributing costs among major annual statement lines of business.

The Company violated Section 91.4(f)(5) of Department Regulation No. 33 by allocating expenses to annual statement lines of business based on premium volume without support showing there is no more appropriate basis.

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.

A. ASSETS, LIABILITIES, CAPITAL, SURPLUS AND OTHER FUNDS AS OF DECEMBER 31, 2002

Admitted Assets

Bonds	\$124,862,853
Preferred stocks	3,483,286
Policy loans	1,863,712
Cash and short term investments	7,058,411
Reinsurance ceded	
Other amounts receivable under reinsurance contracts	32,874
Federal and foreign income tax recoverable and interest thereon	655,283
Life insurance premiums and annuity considerations	
deferred and uncollected on in force business	3,074,973
Accident and health premiums due and unpaid	215,187
Investment income due and accrued	<u>1,697,562</u>
 Total admitted assets	 <u>\$142,944,140</u>

Liabilities, Capital, Surplus and Other Funds

Aggregate reserve for life policies and contracts	\$ 78,323,840
Aggregate reserve for accident and health policies	43,561,186
Liability for deposit-type contracts	123,926
Policy and contract claims:	
Life	1,988,775
Accident and health	138,108
Premiums and annuity considerations received in advance	1,184,324
Contract liabilities not included elsewhere	
Interest maintenance reserve	2,104,177
Commissions to agents due or accrued-life contracts and annuity contracts	83,000
Taxes, licenses and fees due or accrued	418,347
Federal and foreign income taxes	826,523
Amounts withheld or retained by company as agent or trustee	7,484
Amounts held for agents account	194,052
Remittances and items not allocated	151,405
Borrowed money	1,147,854
Miscellaneous liabilities:	
Asset valuation reserve	259,222
Payable to parent, subsidiaries and affiliates	1,962,651
Unclaimed funds	<u>236,994</u>
 Total liabilities	 <u>\$132,711,867</u>
 Common capital stock	 \$ 2,000,000
Gross paid in and contributed surplus	16,253,047
Unassigned funds (surplus)	<u>(8,020,774)</u>
 Total capital, surplus and other funds	 <u>\$ 10,232,273</u>
 Total liabilities, capital, surplus and other funds	 <u>\$142,944,140</u>

B. CONDENSED SUMMARY OF OPERATIONS

	<u>2000</u>	<u>2001</u>	<u>2002</u>
Premiums and considerations	\$28,698,183	\$43,917,155	\$40,330,476
Investment income	<u>5,225,526</u>	<u>6,423,542</u>	<u>8,237,588</u>
Total income	<u>\$33,923,709</u>	<u>\$50,340,697</u>	<u>\$48,568,064</u>
Benefit payments	\$10,903,080	\$11,448,770	\$15,985,597
Increase in reserves	12,813,376	26,327,121	24,074,147
Commissions	3,858,699	3,924,336	3,286,877
General expenses and taxes	6,975,203	7,480,221	5,896,282
Increase in loading on deferred and uncollected premiums	<u>79,477</u>	<u>39,570</u>	<u>68,480</u>
Total deductions	<u>\$34,629,835</u>	<u>\$49,220,018</u>	<u>\$49,311,383</u>
Net gain (loss)	\$ (706,126)	\$ 1,120,679	\$ (743,319)
Federal and foreign income taxes incurred	<u>506,337</u>	<u>2,226,039</u>	<u>859,949</u>
Net gain (loss) from operations before net realized capital gains	\$ (1,212,463)	\$ (1,105,360)	\$ (1,603,268)
Net realized capital gains (losses)	<u>0</u>	<u>0</u>	<u>(47,931)</u>
Net income	<u>\$ (1,212,463)</u>	<u>\$ (1,105,360)</u>	<u>\$ (1,651,199)</u>

C. CAPITAL AND SURPLUS ACCOUNT

	<u>2000</u>	<u>2001</u>	<u>2002</u>
Capital and surplus, December 31, prior year	\$ <u>6,624,765</u>	\$ <u>7,723,860</u>	\$ <u>11,549,294</u>
Net income	\$(1,212,463)	\$(1,105,360)	\$ (1,651,199)
Change in deferred income tax	0	0	1,170,467
Change in non-admitted assets and related items	(642,351)	1,903,090	(1,140,734)
Change in asset valuation reserve	(46,092)	(74,057)	(43,081)
Cumulative effect of changes in accounting Principles	0	(1,898,239)	347,526
Capital changes: Paid in	<u>3,000,000</u>	<u>5,000,000</u>	<u>0</u>
Net change in capital and surplus	\$ <u>1,099,094</u>	\$ <u>3,825,434</u>	\$ <u>(1,317,021)</u>
Capital and surplus, December 31, current year	\$ <u>7,723,860</u>	\$ <u>11,549,294</u>	\$ <u>10,232,273</u>

D. RESERVES

The Department has determined that minimum statutory formula reserves for long-term care insurance need to be increased by \$2.4 million to explicitly cover all benefits, including the inflation protection benefit. The Company has agreed to establish half of the required increase as of the third quarter and the remainder as of the fourth quarter 2004. In addition, the Company has agreed to utilize a revised methodology for determining adequacy of long-term care reserves for December 31, 2004. It is expected that this revised methodology will result in additional reserve strengthening.

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 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's products are advertised by CPL in national advertisements on television and on the internet (www.colonialpenn.com). The Company does not have its own website. These advertisements contain references to an unauthorized insurer (CPL) without a disclosure stating that the unauthorized insurer does not sell insurance in New York.

The Company also uses brochures and direct mailer packets to advertise its products. The long-term care brochure contained references to unauthorized insurers, Conseco Senior Health and Conseco Health Insurance Company. Information provided in the direct mailer packets contained references to CPL's website, and in some instances letters from Conseco Direct Life Insurance Company (the former name of CPL), which is an unauthorized insurer.

The Company violated Section 2122(a)(2) of the New York Insurance Law by using advertisements that call attention to unauthorized insurers.

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 did not maintain in the advertising files at the Company’s home office the advertising material on CPL’s website. In addition, the Company did not maintain the manner and extent of distribution for any of the advertising material for life insurance.

The Company violated Section 219.5(a) of Department Regulation No. 34-A for not maintaining a complete advertising file at its home office including the manner and extent of distribution for all life insurance advertisements.

Section 51.6(b) of Department Regulation No. 60 states, in part:

“Where a replacement has occurred or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall . . .

(6) . . . maintain copies of . . . the notification of replacement to the insurer whose life insurance policy or annuity contract is to be replaced indexed by agent and broker . . . ”

A review of the information maintained by the Company to comply with Department Regulation No. 60 revealed that the Company did not maintain a complete index of replacements by agent. The examiner reviewed 12 annuity replacements taken from the underwriting sample and nine of these replacements were not included on the Company’s index of replacements by agent. Failure to track replacements by agent compromises the Company’s ability to detect patterns of replacement activity.

The Company violated Section 51.6(b)(6) of Department Regulation No. 60 by failing to maintain all notifications of replacement indexed by agent.

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 . . .”

During the examination, a review of a sample of 25 long-term care underwriting files revealed that in certain instances the Company used an unapproved amendment form (AP AMEND) to amend the applications used to issue long-term care policies.

After the amendment form was submitted to the Health Bureau for approval, it was determined that the form was not approvable as submitted. Upon further investigation by the Health Bureau, the Company admitted using this form in 2,150 instances from August 1996 through July 2003 to make changes to both applications and policies for their long-term care insurance business. Therefore, the form used during those 2,150 instances was an unapprovable form. The form was used with both non-Partnership and Partnership policies not only to amend the application, but also to directly amend policy benefits such as elimination periods and daily benefit amounts. Without an assurance to the Department about the limits on variables and language used in this form, the form may have been used to make changes to previously approved applications and policies. Without prior approval of AP AMEND by the Department, the Department has no way of knowing whether the changes made by AP AMEND to previously approved forms comply with pertinent statutes and regulations. In any event, the use of AP AMEND without prior Department approval is a violation of Section 3201(b)(1) of the New York Insurance Law. Although the Company performed an audit, the Company has admitted that the audit did not include all of the instances of the unapproved form's usage. In addition, their partial audit did not provide any information as to whether the usage of AP AMEND on an unapproved basis resulted in benefits that did not comply with New York State standards for non-Partnership policies.

Approval of the future use of the AP AMEND form remains pending with the Health Bureau. Although the Department's concern about the prospective use of AP AMEND appears to be resolved, the investigation of the AP AMEND form resulted in yet another admission by

the Company of the use of another form (CLNY-RIAPP-LTC) without Department approval. CLNY-RIAPP-LTC subsequently had to be revised by the Company because it did not comply with a regulatory requirement of the Department. Upon investigation of the prior use of CLNY-RIAPP-LTC, the Company admitted that two additional reinstatement forms were used without Department approval (CH-APP-REIN and an unnumbered form). Both of these forms appear to again contain language that does not comply with Department requirements.

On March 21, 2003, the Company signed a stipulation in settlement of violations with respect to their long-term care products including a similar violation of the use of an unapproved form discovered during the prior examination by the Department. Another violation mentioned in the stipulation signed on March 21, 2003 involved the use of an approved form contrary to a specific condition of approval stated by the Department. The Company approximated that there were about 1,200 instances involved in the violations admitted to in the March 21, 2003 stipulation. In item 4 of that stipulation, the Company agreed that they were “instituting procedures to improve future compliance and to prevent the recurrence of similar violations in the future.” However, the admitted usage of several unapproved forms within the brief time period since executing the stipulation is problematic.

Company representations to the Department have not always been reliable. For example, the Company, in pursuing the approval of AP AMEND, indicated in writing that it had no intention of using AP AMEND. However, the Department investigation resulted in a subsequent Company correspondence indicating that AP AMEND would be used in the future for in-force business.

The procedures mentioned in the March 21, 2003 stipulation to improve future compliance either were not implemented by the Company or were inadequate in addressing policy form compliance issues.

The Company violated Section 3201(b)(1) of the New York Insurance Law by utilizing several forms for its long-term care insurance that were not filed with and approved by the Superintendent.

A review of CPL’s website, used by the Company to solicit its direct life business, revealed that the Company’s internet applications for graded benefit life and simplified issue whole life insurance policies differed from the applications approved by the Superintendent. The Company issued 97 graded benefit life policies and 14 simplified issue life policies through the

internet. In addition, 15 individuals that applied for simplified issue life policies were declined through the online application on the website.

The Company violated Section 3201(b)(1) of the New York Insurance Law by utilizing internet applications for graded benefit life and simplified issue whole life policies that were not filed with and approved by the Superintendent.

Based on the policy form violations contained in this report and the March 21, 2003 stipulation, it is apparent that the Company needs to significantly enhance its policy form compliance and oversight procedures. The examiner recommends that the Company develop a plan of compliance regarding its policy form procedures, approved and monitored by the audit committee, to ensure that: policy forms are filed and approved with the Department; changes to existing policy forms are filed and approved before they are implemented; the recurrence of similar violations to those contained in this report on examination and the March 21, 2003 stipulation are prevented in the future; and the Company complies with all other applicable laws, regulations and rules regarding policy forms.

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 4232 of the New York Insurance Law states, in part:

“(a)(1) If any contract subject to section four thousand two hundred twenty-three of this article, provides for additional amounts to be credited to the contract during any period in accordance with the provisions of paragraph one of subsection (g) of section four thousand two hundred thirty-one of this article, then any additional amounts to be so credited must be determined for each year during such period . . .

(2) No such additional amounts shall be guaranteed or credited except upon . . .
 (iii) written criteria approved by the board of directors of the company or a committee thereof . . .”

A review of annuities revealed that the Company issued contracts with additional interest guarantees and credited the additional interest on these contracts during the examination period. A review of the minutes of the board of directors and committee meetings for the period under

examination did not reveal any approvals of additional interest guaranteed or credited on annuity policies issued or in-force during the examination period.

The Company violated Section 4232(a)(2) of the New York Insurance Law by crediting additional interest on its annuity contracts that was not based on written criteria approved by the board of directors or a committee thereof.

Section 2108(a)(3) of the New York Insurance Law states:

“No adjuster shall act on behalf of an insurer unless licensed as an independent adjuster, and no adjuster shall act on behalf of an insured unless licensed as a public adjuster.”

During the period under review CSLLC adjusted accident and health claims for the Company without having an adjusters license.

The Company violated Section 2108(a)(3) of the New York Insurance Law by having an unlicensed adjuster, CSLLC, adjust its accident and health claims.

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 in a timely manner 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 became licensed to write life insurance on September 30, 1997. The Company assumed, through a reinsurance and assumption transaction, life business from Intramerica in 1997.

The Company performed a review of the policy forms and rate manuals used in the underwriting of its written and assumed business. In summary, the Company’s findings were that no evidence of race-based underwriting was found.

The Company did not provide documented workpapers regarding its review of race-based underwriting; the examiner reconstructed workpapers and found no evidence, based on this limited scope review, of race-based underwriting.

7. SEPARATE OPERATING IDENTITY

Section 1507(a) of the New York Insurance Law states, in part:

“Notwithstanding the control of an authorized insurer by any person . . . the insurer shall be managed so as to assure its separate operating identity . . .”

The review of Company documents revealed the following:

- a) the Company routinely used an affiliate’s letterhead to correspond with its contractholders and other insurers;
- b) the Company routinely corresponded with other insurers directing them to make checks payable to Conseco Annuity Assurance Company (“CAAC”) regarding 1035 exchanges;
- c) the Company used an affiliate’s contract amendments, Required Minimum Distribution Option Form (form RMD1), and annuity statements in corresponding with its contractholders;
- d) monthly payments on supplementary contracts were paid by CAAC through the date of this report. In addition, the Company could not provide evidence to substantiate that it had reimbursed CAAC for all of the payments made on its behalf;
- e) the Company used Conseco Senior Health’s long-term care claim form; and
- f) when a person applies online for insurance using CPL’s website, applicants are notified by CPL, an unauthorized insurer, through e-mail whether they are declined or accepted for insurance.

The Company violated Section 1507(a) of the New York Insurance Law by failing to maintain a separate operating identity.

8. INTERNAL AUDIT

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. In the case of the Company, duties normally delegated to the audit committee are the fiduciary responsibility of the outside committee (which is comprised of the Company's unaffiliated directors).

In response to the examination planning questionnaire, the Company indicated that the internal audit staff of Consecro, Inc. performs audits of the insurance companies in the holding company system on a functional basis and not by company. In response to the examiner's request for all internal audits that pertained to the Company, the examiner was provided with the following seven internal audit reports: (1) Review of Harris Lockbox Balancing Procedures for Life Pro Companies; (2) Examination of Life Policy Benefits Processing; (3) Review of Mainframe General Controls; (4) Review of LifePro, Life70 and CK4 suspended policy administration; (5) Examination of Life Transaction workflow; (6) Windows NT review; and (7) CIG Commission Accounting and Agency Services Agent Debit Balance Review. The Company indicated that reports (2) and (5) as labeled above do not apply to the Company but were provided for review.

The audit reports did not indicate whether or not any Company activity was included in the audits.

The examiner recommends that the Company establish and maintain an independent, adequately resourced, and competently staffed internal audit function to provide management and the outside committee with ongoing assessments of the Company's risk management processes and the accompanying system of internal control. To the extent that audits performed by an affiliate on a functional basis are intended to encompass the activities of the Company, it should be clear from the audit workpapers that Company transactions or activities are specifically included in the samples reviewed by internal audit.

9. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violations 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 Department has not certified, as to the accuracy or adequacy, the Company's reserves for 1999 due to concerns related to the Company's long-term care business, which will be addressed as part of an asset adequacy analysis conducted as of December 31, 2000.</p> <p>As a result of the asset adequacy analysis, the 1999 reserves were certified.</p>
B	<p>The Company violated Section 219.5(a) of Department Regulation No. 34-A by not maintaining a complete advertising file at its home office.</p> <p>The Company established an advertising file at its home office. However, a review of the advertising file revealed that the website advertising was not complete.</p>
C	<p>The Company violated Section 216.6(c) of Department Regulation No. 64 by not notifying claimants of the rejection or acceptance of their claims within 15 business days of receipt of all pertinent documentation.</p> <p>A review of a sample of claim files revealed that the Company notified claimants pursuant to statutory requirements.</p>

10. 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 Company violated Section 1505(a) of the New York Insurance Law by receiving website services on a regular and systematic basis at no cost to the Company.	8
B	The Company has agreed to terminate the collateral agreement and establish and fund escrow agreements for the tax years 2000 and 2001.	8
C	The Company violated Section 91.4(f)(5) of Department Regulation No. 33 by allocating expenses to annual statement lines of business based on premium volume without support to show there is no more appropriate basis.	14
D	The Department has determined that minimum statutory formula reserves for long-term care insurance need to be increased by \$2.4 million to explicitly cover all benefits, including the inflation protection benefit. The Company has agreed to establish half of the required increase as of the third quarter and the remainder as of the fourth quarter 2004. In addition, the Company has agreed to utilize a revised methodology for determining adequacy of long-term care reserves for December 31, 2004. It is expected that this revised methodology will result in additional reserve strengthening.	18
E	The Company violated Section 2122(a)(2) of the New York Insurance Law by using advertisements that call attention to unauthorized insurers.	19
F	The Company violated Section 219.5(a) of Department Regulation No. 34-A by not maintaining a complete advertising file at its home office including the manner and extent of distribution for all life insurance advertisements.	20
G	The Company violated Section 51.6(b)(6) of Department Regulation No. 60 by failing to maintain all notifications of replacement indexed by agent.	20
H	The Company violated Section 3201(b)(1) of the New York Insurance Law by utilizing several forms for its long-term care insurance that were not filed with and approved by the Superintendent.	21 – 22

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
I	The Company violated Section 3201(b)(1) of the New York Insurance Law by utilizing internet applications for graded benefit life and simplified issue whole life policies that were not filed with and approved by the Superintendent.	22 – 23
J	The examiner recommends that the Company develop a plan of compliance regarding its policy form procedures, approved and monitored by the audit committee, to ensure that: policy forms are filed and approved with the Department; changes to existing policy forms are filed and approved before they are implemented; the recurrence of similar violations to those contained in this report on examination and the March 21, 2003 stipulation are prevented in the future; and the Company complies with all other applicable laws, regulations and rules regarding policy forms.	23
K	The Company violated Section 4232(a)(2) of the New York Insurance Law by crediting additional interest on its annuity contracts that was not based on written criteria approved by the board of directors or a committee thereof.	23 – 24
L	The Company violated Section 2108(a)(3) of the New York Insurance Law by having an unlicensed adjuster, CSLLC, adjust its accident and health claims.	24
M	The Company violated Section 1507(a) of the New York Insurance Law by failing to maintain a separate operating identity.	25
N	The examiner recommends that the Company establish and maintain an independent, adequately resourced, and competently staffed internal audit function to provide management and the outside committee with ongoing assessments of the Company's risk management processes and the accompanying system of internal control.	26

APPOINTMENT NO. 21942

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:

DARLENE SINGLEMANN

as a proper person to examine into the affairs of the

CONSECO 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 7th day of October, 2002



GREGORY V. SERIO

Superintendent of Insurance

[Handwritten Signature]

Superintendent