

STATE OF NEW YORK INSURANCE DEPARTMENT

REPORT ON EXAMINATION

OF

THE MANHATTAN LIFE INSURANCE COMPANY

AS OF

DECEMBER 31, 2001

DATE OF REPORT:

FEBRUARY 7, 2003

EXAMINER:

KENNETH WEITZ

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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

February 7, 2003

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

Sir:

In accordance with instructions contained in Appointment No. 21912, dated July 3, 2002 and annexed hereto, an examination has been made into the condition and affairs of The Manhattan Life Insurance Company, hereinafter referred to as "the Company," at its home office located at 225 Community Drive, Great Neck, New York 10021.

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 February 4, 2000, Union Central Life Insurance Company (“Union Central”) completed the sale of all of the Guarantee Capital Shares of the Company to Connecticut Reassurance Corporation, which subsequently changed its name to Manhattan Insurance Group, Inc. (“MIG”). Northington Partners (“Northington”), owned by three individual partners, and Harris Insurance Holdings, Inc. (“Harris”), owned by two brothers, jointly own MIG. Northington owns 59.5% of MIG and Harris owns the other 40.5%. (See item 3A of this report)

In November 2001, the Company filed a plan with the Department to retire the Guarantee Capital Shares and convert the Company to a stock insurer. The plan was approved and became effective on April 16, 2002. (See item 3A of this report)

The Company violated Section 325(a) of the New York Insurance Law by not maintaining its charter and by-laws, board minutes, and its books of account at its principal office in this state. (See item 3B of this report)

The examiner’s review of a sample of transactions did not reveal any differences which materially affected the Company’s financial condition as presented in its financial statements contained in the December 31, 2001 filed annual statement. (See item 5 of this report)

The Company violated Section 1202(b)(1) of the New York Insurance Law by failing to have not less than one-third unaffiliated members on its investment committee. (See item 3C of this report)

The Company violated several sections of Department Regulation No. 33 by: inappropriately allocating general insurance expenses on the basis of net investment income; failing to maintain records with sufficient detail to show the income and expense allocation methods used; and failing to include expenses on the appropriate lines of Exhibit 5 in its 2001 filed annual statement. (See item 7 of this report)

The Company violated Section 421.10 of Department Regulation No. 173 by not having an information security program in place by June 1, 2002. (See item 8 of this report)

## 2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 1997. This examination covers the period from January 1, 1998 through December 31, 2001. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2001 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, 2001 to determine whether the Company's 2001 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
- Territory and plan of operation
- Market conduct activities
- Growth of Company
- Business in force by states
- Mortality and loss experience
- Reinsurance
- Accounts and records
- Financial statements

The examiner reviewed the corrective actions taken by the Company with respect to violations, recommendations and comments 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 on May 29, 1850 under Chapter 308 of the laws of 1849 as an entity with a guarantee capital of \$100,000. It was authorized to write participating life insurance policies.

On March 8, 1974, a Delaware corporation known as the Manhattan Life Corporation (“Manhattan Corp.”) acquired control of the Company. In 1977, Manhattan Corp. eliminated minority interests in the Company pursuant to Section 7118 of the New York Insurance Law. The Company then became a privately held corporation. In 1982, Manhattan Corp. changed its name to Manhattan National Corporation (“Manhattan National”).

On March 31, 1987, Union Central acquired a majority interest in Manhattan National. On December 31, 1991 Manhattan National was liquidated and all outstanding shares of the Company were distributed to Manhattan National shareholders. As a result of the liquidation, the Company again became a publicly held corporation with 72.9% of the stock owned by Union Central. Effective January 28, 1997, the Company’s shareholders approved a 1-for-303,784 reverse stock split that resulted in Union Central becoming the sole shareholder of the Company. Union Central thus returned the Company to private ownership and de-listed it from the NASDAQ National Market. As of December 31, 1998 the Company had authorized guarantee capital of \$9,189,466.

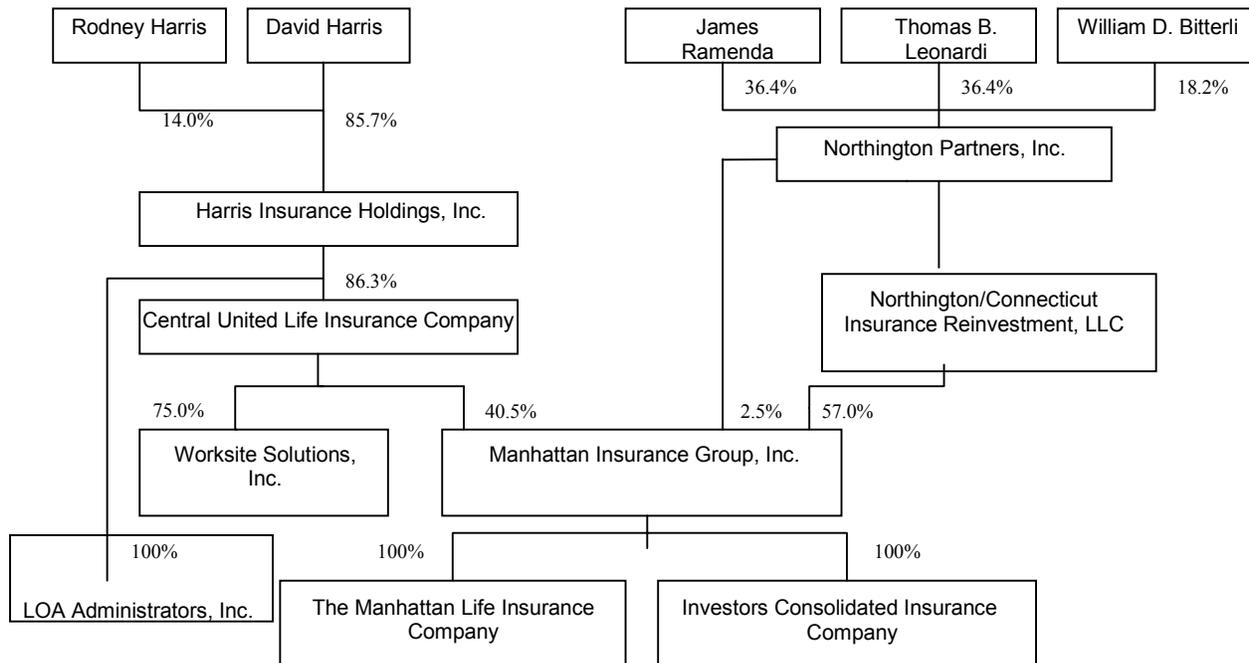
On February 4, 2000, Union Central completed the sale of all of the Guarantee Capital Shares to Connecticut Reassurance Corporation, which subsequently changed its name to Manhattan Insurance Group, Inc. Northington, owned by three individual partners, and Harris, owned by two brothers, jointly own MIG. Northington owns 59.5% of MIG and Harris owns the other 40.5%.

In November 2001, the Company filed a plan to retire the Guarantee Capital Shares and convert the Company to a stock insurer. The plan became effective April 16, 2002. At that time, the Company became a stock insurer with eight shares of stock with a par value of \$835,406 per share for a total capital of \$6,683,248.

## B. Holding Company

The Company is a wholly owned subsidiary of MIG, an insurance holding company domiciled in Connecticut. The ultimate owners of the Company are five individuals.

An organization chart reflecting the relationship between the Company and significant entities in its holding company system as of December 31, 2001 follows:



The Company has two insurance affiliates. Central United Life Insurance Company (“Central United”) is an insurer licensed in 41 states. Central United writes both life insurance and individual and group health insurance.

Investors Consolidated Insurance Company is an insurer licensed in 16 states and writes mostly health insurance.

The Company had one service agreement in effect with Central United as of December 31, 2001. Under the agreement, Central United provides facilities and the following services: administrative; accounting and financial management; underwriting; claims;

reinsurance; marketing; agency development; planning; purchasing; information systems and EDP and reporting; legal; and government and public relations.

Section 325(a) of the New York Insurance Law states, in part:

“Every domestic insurer . . . shall . . . keep and maintain at its principal office in this state its charter and by-laws . . . and its books of account . . . and . . . the minutes of any meetings of its . . . board of directors and committees . . .”

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 as least thirty days prior thereto, or such shorter period as he permit, and he has not disapproved it within such period . . .

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

Article 1.5 of the service agreement between the Company (“MLIC”) and Central United (“Central”) states, in part:

“(c) . . . A computer terminal which is linked to the electronic system that generates the electronic records that constitute MLIC’s books of accounts shall be kept and maintained at MLIC’s principal office in New York. During all normal business hours, there shall be ready availability and easy access through such terminal to the electronic media used to maintain the records comprising MLIC’s books of account . . .”

“(e) Central shall maintain acceptable backup (hard copy or any other durable medium as long as the means to access the durable medium is also maintained at MLIC’s principal office in New York) of the records constituting MLIC’s books of account. Such backup shall be forwarded to MLIC on a monthly basis and shall be maintained by MLIC at its principal office in New York.”

The Company did not keep and maintain its charter and by-laws, board minutes and its books of account at its principal office in this state.

In addition, the Company did not maintain electronic access to its books of account, as required by its filed service agreement.

The Company violated Section 325(a) of the New York Insurance Law for failing to keep and maintain its charter and by-laws, board minutes and books of account at its principal office in this state.

The Company violated Section 1505(d)(3) of the New York Insurance Law and its filed service agreement by not maintaining electronic access to its books of account at its principal office in New York.

The Company has moved the required items to its principal office in this state and has agreed to maintain all required items at its home office in this state. The Company established electronic access to its books of account as required by its filed service agreement.

### 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 15 directors. The number of directors shall be increased to not less than 13 within one year following the end of the calendar year in which the corporation exceeds one and one-half billion dollars in admitted assets. Directors are elected for a period of one year at the annual meeting of the stockholders held in May of each year. As of December 31, 2001, the board of directors consisted of 13 members. Meetings of the board are held quarterly.

The 13 board members and their principal business affiliation, as of December 31, 2001, were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
William Bitterli Avon, CT	Managing Director Northington Partners, Inc.	2000
Daniel J. George Houston, TX	President & Treasurer The Manhattan Life Insurance Company	2000
David W. Harris Houston, TX	Chairman of the Board & Chief Executive Officer The Manhattan Life Insurance Company President and Chief Executive Officer Harris Insurance Holdings, Inc.	2000
Thomas B. Leonardi Avon, CT	President Northington Partners, Inc.	2000
Dale R. Oldham Houston, TX	Chief Operating Officer The Manhattan Life Insurance Company	2000
Douglas S. Pool* Houston, TX	President ATS Plus	2000

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Mary Lou Rainey Houston, TX	Vice President & Secretary The Manhattan Life Insurance Company	2000
James Ramenda Avon, CT	Managing Director Northington Partners, Inc.	2000
Carol J. Seeberger Houston, TX	Director, Claims Department Central United Life Insurance Company	2000
Mary K. Simon* New York, NY	Teacher	2000
Arthur J. Steckman* New York, NY	President Maryesta	2000
Patricia P. Steckman* New York, NY	Youth Art Coordinator Young Men's Christian Association	2000
Frances P. Tiemeyer Enfield, CT	Director of Connecticut Administration The Manhattan Life Insurance Company	2000

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

In April 2002, Carol J. Seeberger and Frances P. Tiemeyer resigned from the board and were not replaced.

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.

Section 1202(b)(1) of the New York Insurance Law states, in part:

“ . . . not less than one-third of the members of each committee of the board of directors of any domestic life insurance company shall be persons who are not officers or employees of such company or of any entity controlling, controlled by, or under common control with such company and who are not beneficial owners of a controlling interest in the voting stock of such company or any such entity. . . . ”

As of December 31, 2001 all members of the investment committee were officers or employees of the Company or an affiliate.

The Company violated Section 1202(b)(1) of the New York Insurance Law by failing to have not less than one-third unaffiliated members on its investment committee.

When brought to the attention of the Company, two unaffiliated directors were elected to the investment committee in October 2002.

The following is a listing of the principal officers of the Company as of December 31, 2001:

<u>Name</u>	<u>Title</u>
David W. Harris	Chairman of the Board & Chief Executive Officer
Daniel J. George	President & Treasurer
Mary L. Rainey	Vice President & Secretary
Kent W. Lamb	Chief Financial Officer
Dale R. Oldham	Chief Operating Officer
Louis Guzick	Controller
David Parsons	Chief Technology Officer
Frances P. Tiemeyer*	Director of Administration

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

#### D. Territory and Plan of Operation

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

The Company is licensed to transact business in all 50 states and the District of Columbia.

The following table shows the percentage of direct life insurance premiums received for the year 2001:

<u>Life Insurance Premiums</u>	
New York	27.8%
Florida	7.8%
New Jersey	7.7%
California	6.9%
Pennsylvania	5.1%
Texas	4.2%
Ohio	<u>4.2%</u>
Subtotal	63.8%
All others	<u>36.2%</u>
Total	<u>100.0%</u>

The Company ceased writing any new business in March 1998. All policies written prior to that date were participating. In July 2002 the Company began writing a simplified issued universal life policy that is non-participating.

#### E. Reinsurance

As of December 31, 2001, the Company had reinsurance treaties in effect with 15 companies, of which 12 were authorized or accredited. The Company's life business is reinsured on a coinsurance and yearly renewable term basis. Reinsurance is provided on an automatic and facultative basis.

The maximum retention limit for individual life contracts is \$200,000 with a 20% quota share of the excess up to a maximum retention limit of \$300,000. The total face amount of life insurance ceded as of December 31, 2001, was \$617,792,295, which represents 27.4% of the total face amount of life insurance in force. Reserve credit taken for reinsurance ceded to unauthorized companies, totaling \$4,054, was not supported by letters of credit, trust agreements and/or funds withheld.

The total face amount of life insurance assumed as of December 31, 2001, was \$110,344,661.

#### 4. SIGNIFICANT OPERATING RESULTS

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

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

	December 31, <u>1997</u>	December 31, <u>2001</u>	Increase (Decrease)
Admitted assets	<u>\$445,334,386</u>	<u>\$372,444,638</u>	<u>\$(72,889,748)</u>
Liabilities	<u>\$423,007,104</u>	<u>\$348,732,565</u>	<u>\$(74,274,539)</u>
Guarantee capital paid up	\$ 6,683,248	\$ 6,683,248	\$ 0
Guarantee capital reserve fund	12,749,579	19,701,338	6,951,759
Unassigned funds (surplus)	<u>2,894,455</u>	<u>(2,672,513)</u>	<u>(5,566,968)</u>
Total capital and surplus	<u>\$ 22,327,282</u>	<u>\$ 23,712,073</u>	<u>\$ 1,384,791</u>
Total liabilities, capital and surplus	<u>\$445,334,386</u>	<u>\$372,444,638</u>	<u>\$(72,889,748)</u>

The decrease in assets and liabilities is due to the fact the Company stopped writing new business in 1998.

The Company's invested assets as of December 31, 2001 were mainly comprised of bonds (67.0%), mortgage loans (17.7%), and policy loans (11.1%).

The majority (93.5%) of the Company's bond portfolio, as of December 31, 2001, 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>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Ordinary:				
Life insurance	\$(1,491,363)	\$ 1,136,883	\$ 3,063,256	\$ 884,716
Individual annuities	(2,420,264)	(1,906,979)	(2,050,454)	523,163
Supplementary contracts	<u>166,713</u>	<u>(38,488)</u>	<u>1,443</u>	<u>19,189</u>
Total ordinary	<u>\$(3,744,914)</u>	<u>\$ (808,584)</u>	<u>\$ 1,014,245</u>	<u>\$1,427,068</u>
Group annuities	<u>\$ 138,006</u>	<u>\$ (587,943)</u>	<u>\$ 275,251</u>	<u>\$ 74,904</u>
Total	<u>\$(3,606,908)</u>	<u>\$(1,396,527)</u>	<u>\$ 1,289,496</u>	<u>\$1,501,972</u>

The variations in the net gains and losses from operations for each of the years under review is due to the fact that the Company did not write any new business since the first quarter of 1998 combined with a reduction in general expenses. The drop in the net gain in the ordinary life line for 2001 was because the amount of death claims paid was much higher than in previous years.

## 5. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital, surplus and other funds as of December 31, 2001, as contained in the Company's 2001 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, 2001 filed annual statement.

### A. ASSETS, LIABILITIES, SURPLUS AND OTHER FUNDS AS OF DECEMBER 31, 2001

#### Admitted Assets

Bonds	\$241,060,496
Mortgage loans:	
First liens	63,558,020
Real estate:	
Properties held for the production of income	5,351,116
Policy loans	39,923,246
Cash and short term investments	9,752,525
Reinsurance ceded:	
Amounts recoverable from reinsurers	989,341
Commissions and expense allowances due	11,568
Electronic data processing equipment and software	13,812
Federal and foreign income tax recoverable and interest thereon	539,172
Guaranty funds receivable or on deposit	35,327
Life insurance premiums and annuity considerations deferred and uncollected on in force business	5,582,025
Investment income due and accrued	<u>5,627,990</u>
 Total admitted assets	 <u>\$372,444,638</u>

Liabilities, Capital, Surplus and Other Funds

Aggregate reserve for life policies and contracts	\$294,301,280
Liability for deposit-type contracts	36,822,795
Policy and contract claims:	
Life	8,586,242
Policyholders' dividends and coupons due and unpaid	70,947
Provision for policyholders' dividends and coupons payable in following calendar year - estimated amounts:	
Dividends apportioned for payment	1,202,831
Dividends not yet apportioned	2,532,848
Premiums and annuity considerations for life and accident and health policies and contracts received in advance	100,706
Policy and contract liabilities:	
Interest maintenance reserve	413,028
General expenses due or accrued	395,466
Taxes, licenses and fees due or accrued	26,200
Unearned investment income	164,799
Amounts withheld or retained by company as agent or trustee	(12,186)
Amounts held for agents' account	158,589
Remittances and items not allocated	(170,610)
Liability for benefits for employees and agents	78,178
Miscellaneous liabilities:	
Asset valuation reserve	2,549,052
Payable to parent, subsidiaries and affiliates	548,243
Acquisition liabilities	18,661
Interest payable on guaranteed capital	195,496
Conversion liability	<u>750,000</u>
 Total liabilities	 <u>\$348,732,565</u>
 Guarantee capital paid up	 \$ 6,683,248
Guarantee capital reserve fund	19,701,338
Unassigned funds (surplus)	(2,672,513)
 Total surplus and other funds	 <u>\$ 23,712,073</u>
 Total liabilities, surplus and other funds	 <u>\$372,444,638</u>

B. CONDENSED SUMMARY OF OPERATIONS

	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Premiums and considerations	\$35,767,896	\$32,598,381	\$28,399,928	\$ 26,419,590
Investment income	31,298,915	28,699,919	26,915,973	26,483,256
Commissions and reserve adjustments on reinsurance ceded	557,875	300,760	165,149	252,384
Miscellaneous income	<u>5,678</u>	<u>2,518</u>	<u>(22,608)</u>	<u>0</u>
 Total income	 <u>\$67,630,364</u>	 <u>\$61,601,578</u>	 <u>\$55,503,658</u>	 <u>\$ 53,155,230</u>
 Benefit payments	 \$53,265,787	 \$52,958,949	 \$56,235,087	 \$ 53,419,236
Increase in reserves	(5,309,797)	(9,707,791)	(16,290,638)	(14,787,299)
Commissions	2,607,566	910,476	917,481	1,257,598
General expenses and taxes	16,895,443	14,446,411	10,220,396	8,994,586
Increase in loading on deferred and uncollected premiums	(270,762)	(259,551)	(173,964)	(617,489)
Miscellaneous deductions	<u>53,809</u>	<u>186,285</u>	<u>34,806</u>	<u>0</u>
 Total deductions	 <u>\$67,242,046</u>	 <u>\$58,534,779</u>	 <u>\$50,943,168</u>	 <u>\$ 48,266,632</u>
 Net gain	 \$ 388,318	 \$ 3,066,799	 \$ 4,560,490	 \$ 4,888,598
Dividends	4,344,214	4,388,440	3,538,798	3,107,168
Federal and foreign income taxes incurred	<u>(348,988)</u>	<u>74,886</u>	<u>(267,803)</u>	<u>279,458</u>
 Net gain (loss) from operations before net realized capital gains	 \$(3,606,908)	 \$(1,396,527)	 \$ 1,289,495	 \$ 1,501,972
Net realized capital gains (losses)	<u>(994,157)</u>	<u>(1,535,948)</u>	<u>(568,063)</u>	<u>7,791</u>
 Net income	 <u>\$(4,601,065)</u>	 <u>\$(2,932,475)</u>	 <u>\$ 721,432</u>	 <u>\$ 1,509,763</u>

C. CAPITAL AND SURPLUS ACCOUNT

	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Capital and surplus, December 31, prior year	\$ <u>22,327,282</u>	\$ <u>22,822,993</u>	\$ <u>22,985,484</u>	\$ <u>23,133,262</u>
Net income	\$ (4,601,065)	\$ (2,932,475)	\$ 721,432	\$ 1,509,763
Change in net unrealized capital gains (losses)	2,500	(140,000)	(217,182)	(1,950,311)
Change in non-admitted assets and related items	92,774	(59,987)	16,666	(66,501)
Change in liability for reinsurance in unauthorized companies	(6,267)	2,734	3,533	0
Change in asset valuation reserve	266,685	1,075,945	322,027	1,262,832
Cumulative effect of changes in accounting principles	0	0	0	871,630
Change in employee retirement plan	(2,388,808)	2,388,808	0	0
Gain (loss) on warehouse lease	(132,131)	21,772	0	0
Gain (loss) on sale of furniture and equipment	(127,215)	1,190	79,402	0
Refund of prior year payroll tax	0	0	63,825	0
Interest paid on guarantee capital	(195,496)	(195,496)	(195,496)	(195,496)
Change in New York lease	0	0	1,027,777	0
Change due to acquisition	0	0	(1,674,206)	0
Excess rent paid	0	0	0	(103,106)
Conversion liability	0	0	0	(750,000)
Release of additional actuarial reserves	4,000,000	0	0	0
Substandard extra reserve correction	3,408,851	0	0	0
Refund of prior years federal income tax	<u>175,883</u>	<u>0</u>	<u>0</u>	<u>0</u>
Net change in capital and surplus	\$ <u>495,711</u>	\$ <u>162,491</u>	\$ <u>147,778</u>	\$ <u>578,811</u>
Capital and surplus, December 31, current year	\$ <u>22,822,993</u>	\$ <u>22,985,484</u>	\$ <u>23,133,262</u>	\$ <u>23,712,073</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 Company did not write any new business or do any solicitations during the examination period.

### B. Underwriting and Policy Forms

The Company did not write any new business during the period under examination.

### 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 3214(c) of the New York Insurance Law states, in part:

“If no action has been commenced, interest upon the principal sum paid to the beneficiary or policyholder shall be computed daily at the rate of interest currently paid by the insurer on proceeds left under the interest settlement option, from the date of the death of an insured or annuitant in connection with a death claim on such a policy of life insurance or contract of annuity . . . to the date of payment and shall be added to and be a part of the total sum paid.”

During the review of death claims the examiner found that interest was not paid on some death claims for policies issued in New York. When brought to the attention of the Company, all death claims paid from August 2000 to the present for policies issued in New York were reviewed and it was found that 100 policies were not paid delayed settlement interest.

The Company violated Section 3214(c) of the New York Insurance Law by failing to pay interest on death claims.

The Company paid the required interest to the beneficiaries when informed by the examiner.

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 on September 11, 2000 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 reported that a review of its past and present underwriting practices as they relate to race-based underwriting was performed. The Company stated that it reviewed its archives and records, including rate charts, manuals, mortality tables, underwriting and agents manuals, agent and broker contracts, applications, and policy forms and filings. In summary, the Company’s findings were that no instances were found where the Company engaged in any race-based underwriting.

In response to a Department inquiry, the Company submitted rate manuals from 1907, 1930, 1946 and 1959. Sample applications on policies issued in the 1940’s through the 1990’s were also submitted for Department review. The Department’s review of the submitted material indicated that there were references to race-based underwriting policies in the 1907 and 1930 rate manuals and on forms used by the Company during the 1940’s. The Company’s response to Circular Letter No. 19(2000) did not disclose the references to race-based underwriting.

The 1907 rate manual stated the following:

“Laborers and Colored People: Great care must be exercised regarding the writing of applications on the lives of laborers, colored people and others whose mode of life and surroundings, with the uncertainties of employment and the exposures of various kinds, make them more than ordinarily hazardous. It is of the utmost importance that in all such cases we should have full particulars as to the general standing, place of residence, its character and surroundings, whether or not it is in

a house crowded with other families. Applications will only be entertained upon colored persons when they are property owners or persons with an education, holding a salaried position which will justify them in paying annually a premium on a 20-year Endowment Policy of at least \$1,000. With full and satisfactory information on all of the above points, the Company would be willing to entertain applications on the lives of laborers and colored people for amounts not exceeding \$2,000 with the understanding that the premiums must be paid down annually in advance on policies of \$1,000, and semi-annually or annually on policies exceeding that amount. Policies will be written only on the 20 Year Endowment Plan.”

In addition to the rate manuals previously provided to the Department, the Company produced rate manuals dated 1910, 1913, 1916, 1918, 1920 and 1927 for the examiner’s review during the on-site examination. The 1910 and 1913 rate manuals contained the same language used in the 1907 rate manual as quoted above.

No references to any race-based underwriting policies were noted in the rate manuals dated 1916 through 1927.

The examiner attempted to review a sample of applications on policies issued from 1907 through the 1960’s. Certain documentation pertaining to the Company’s policies, during the relevant time period, had been discarded in accordance with the Company’s normal record retention policy. Therefore, the sample reviewed consisted mainly of applications on policies issued in the 1940’s through the 1960’s.

The 1930 rate manual stated, in the section entitled “Non-Medical Insurance,” “An applicant to be considered on the non-medical basis must be a self-supporting Caucasian not younger than eighteen nor older than forty-five years of age . . . must be a citizen of the United States and able to read and write English.” The practice stated above is supported by the Company’s use of the “Continuation of Application” form in cases where an application was taken on a non-medical basis. The “Rules Governing Use of the Form” printed on the form indicate that “. . . any application coming within the following rules must be submitted on the non-medical plan . . .” “Applicants – Caucasians who are residents of the United States and are able to read and write English.” This language appeared on forms contained in application files for policies issued throughout the 1940’s. In 1950, however the form was revised to delete the reference to race.

The examiner's review of policies issued in the 1940's revealed that both Caucasians and non-Caucasians were issued policies on both medical and non-medical bases.

The Department's findings were reported to the Company in a letter written in April 2001. On May 20, 2001, the Company's counsel responded to the Department's letter, stating "Our client does not question findings concerning the references found in the 1907 and 1930 rate manuals, however, it is unable to find instances from among the records it reviewed for in-force policies . . . in which such criteria were applied during the underwriting process."

Although the Company's rate manuals refer to underwriting requirements based on the policyholder's race, the examiner's review of policies issued during the related time period did not identify any current or past policyholder affected by any race-based underwriting policy or practice.

## 7. DEPARTMENT REGULATION NO. 33

Section 91.4(f)(6) of Department Regulation No. 33 states:

“The ratio of investment income to total income, the ratio of direct investment expense to total expenses, and any similar formulae shall not be used in distributing costs between insurance and investment expenses, except where there is no more appropriate basis for distribution.”

The Company allocated general insurance expenses to the various lines of business using net investment income as the basis.

The Company violated Section 91.4(f)(6) of Department Regulation No. 33 by allocating general insurance expenses on the basis of net investment income.

Section 91.4(a)(2) of Department Regulation No. 33 states, in part:

“Each life insurer shall maintain records sufficient detail to show fully:

- (i) the system actually used for allocation of income and expenses;
- (ii) the actual bases of allocation;
- (iii) the actual monetary distribution of the respective items of income, salaries, wages, expenses, and taxes to . . .
- (c) annual statement lines of business . . . ”

The Company did not maintain records with sufficient detail to show fully the system actually used for the allocation of expenses in 2000. In addition, the Company re-allocated surplus in Schedule NP of the 2001 annual statement from the “Other participating line” to the “Universal life type” participating line of business. The Company did not maintain workpapers to substantiate the re-allocation or indicate how the change in the allocation method was developed.

The Company violated Section 91.4(a)(2) of Department Regulation No. 33 by failing to maintain records with sufficient detail to show the allocation method used for expenses in 2000 and the re-allocation of surplus in Schedule NP in 2001.

The examiner recommends that the Company reverse the re-allocation of surplus.

Section 90.7 of Department Regulation No. 33 states, in part:

“(a)(3) Whenever personnel or facilities are used in common by two or more companies, or whenever the personnel or facilities of one company are used in the activities of two or more companies, each company shall assign its share of the expense to the same expense classification as if it had incurred the entire expense . . .

(c) Line 2 – salaries and wages.

Include . . . Fees and other compensation to directors for attendance at board or committee meetings and any other fees and compensation paid to them in their capacities as directors or committee members . . .

(p) Line 5.4 - printing and stationery . . .

Include . . . office supplies . . .

(x) Line 6.6 - sundry general expenses . . .

If the amount for any one type of expense included in this line represents more than 25 percent of the total for this line, the nature of the expense and the amount should be inserted as a sub-heading. . . .”

The Company included inter-company charges paid to Central United in the group service and administration fees line of Exhibit 5 of its 2001 filed annual statement rather than to the specific expense classification it would have included it in, if it had directly incurred the entire expense.

The Company included board fees and office supplies as sundry general expenses and not in the appropriate lines as required by Department Regulation No. 33.

The Company included computer expenses as part of sundry general expenses in Exhibit 5 of the 2001 annual statement; the computer expenses were greater than 25% of the total amount of sundry general expenses. A write in item for this expense (i.e., computer expenses) should have been reported in Exhibit 5.

The Company violated Section 90.7 of Department Regulation No. 33 by failing to include expenses on the appropriate lines of Exhibit 5 in its 2001 filed annual statement.

8. PRIVACY

Section 421.10 of Department Regulation No. 173 states:

“Each licensee shall establish policies and systems and implement an information security program pursuant to this Part by June 1, 2002.”

The Company did not have an information security program in place by June 1, 2002 as required by the Regulation. On January 27, 2003, a draft plan was provided to the examiner.

The Company violated Section 421.10 of Department Regulation No. 173 by failing to have an information security program in place by June 1, 2002.

## 9. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violations, recommendations and comments 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 Company violated Section 1209(b) of the New York Insurance Law by having more than four directors who were not members of the Company or officers of member corporations.</p> <p>The Company had reduced the number of directors who were not members of the Company or officers of member corporations.</p>
B	<p>The Company was not in compliance with Section 7 of its by-laws by failing to elect a Chairman of the Board at any of its annual meetings during the period under examination.</p> <p>The Company now elects a Chairman of the Board at each annual meeting.</p>
C	<p>The Company violated Section 3203(a)(2) of the New York Insurance Law by failing to refund the required premiums on death claims.</p> <p>The Company now refunds premiums as required by Section 3203(a)(2) of the New York Insurance Law.</p>
D	<p>The examiner recommended that the Company ascertain the effect of policy loans on the overall investment experience of the various policies and incorporate that information accurately in its dividend formulas.</p> <p>The Company filed a new dividend formula with the Department and it was accepted.</p>
E	<p>The examiner recommended that the Company remove the increases in mortality at durations greater than 16 years.</p> <p>The Company filed a new dividend formula with the Department and it was accepted.</p>
F	<p>The examiner recommended that the Company revise its dividend resolution to accurately reflect its practice.</p> <p>The Company filed a new dividend formula with the Department and it was accepted.</p>

<u>Item</u>	<u>Description</u>
G	<p>The Company violated Section 91.5(b) of Department Regulation No. 33 by allocating its net investment income using a method other than that approved by the Department.</p> <p>The Company filed a new formula for allocating net investment income with the Department and it was accepted.</p>
H	<p>The examiner recommended that the Company file the method of allocation currently being used pursuant to Department Regulation No. 33.</p> <p>The Company filed a new formula for allocating net investment income with the Department and it was accepted.</p>

## 10. SUMMARY AND CONCLUSIONS

Following are the violations and the recommendation contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The Company violated Section 325(a) of the New York Insurance Law for failing to keep and maintain its charter and by-laws, board minutes and books of account at its principal office in this state.	6
B	The Company violated Section 1505(d)(3) of the New York Insurance Law and its filed service agreement by not maintaining electronic access to its books of account at its principal office in New York.	6 – 7
C	The Company violated Section 1202(b)(1) of the New York Insurance Law by failing to have not less than one-third unaffiliated members on its investment committee.	9
D	The Company violated Section 3214(c) of the New York Insurance Law by failing to pay interest on death claims.	17
E	The Company violated Section 91.4(f)(6) of Department Regulation No. 33 by allocating general insurance expenses on the basis of net investment income.	21
F	The Company violated Section 91.4(a)(2) of Department Regulation No. 33 by failing to maintain records with sufficient detail to show the allocation method used for expenses in 2000 and the re-allocation of surplus in Schedule NP in 2001.	21
G	The examiner recommends that the Company reverse the re-allocation of surplus from the “Other participating line” to the “Universal life type” participating line of business.	21
H	The Company violated Section 90.7 of Department Regulation No. 33 by failing to include expenses on the appropriate lines of Exhibit 5 of its 2001 filed annual statement.	22
I	The Company violated Section 421.10 of Department Regulation No. 173 by not having an information security program in place by June 1, 2002.	23



APPOINTMENT NO. 21912

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:

**KENNETH WEITZ**

as a proper person to examine into the affairs of the

**MANHATTAN LIFE INSURANCE COMPANY**

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

**COMPANY**

with such other information as he shall deem requisite.

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

this 3rd day of July, 2002



**GREGORY V. SERIO**

Superintendent of Insurance

  
Superintendent