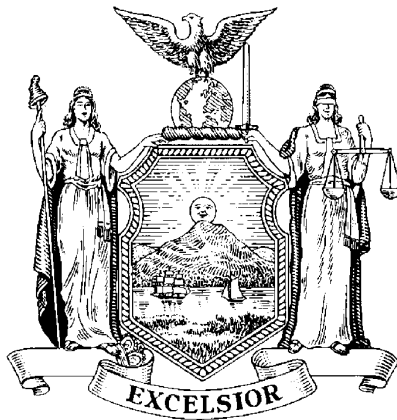


***Annual Report  
of the  
Superintendent of Insurance  
to the  
New York Legislature***

***Calendar Year 2003***



***Governor George E. Pataki***

***Superintendent of Insurance Gregory V. Serio***

***[www.ins.state.ny.us](http://www.ins.state.ny.us)***

***The One Hundred Forty-Fifth  
Annual Report  
of the  
Superintendent of Insurance***

*A Report to the New York State Legislature for the  
Year Ending December 31, 2003*

*George E. Pataki  
Governor*

*Gregory V. Serio  
Superintendent of Insurance*

**Data in this report are subject to small table-to-table variations. Such variations are attributable to the fact that data are retrieved at various times throughout the year.**

**Selected portions of this report are available on the Department's Web site at  
[www.ins.state.ny.us](http://www.ins.state.ny.us)**

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# I. Major Developments

## A. Healthy NY Rates Reduced

In June 2003, Governor Pataki announced that premium rates for the Healthy NY program would be reduced by an average of 17% in New York State and that eligibility guidelines had been expanded so that more New Yorkers would qualify for the program. In addition, several new options were introduced which, if selected by a policyholder, would result in an additional 12% savings. Even before the reduction, Healthy NY was a less expensive alternative to traditional health insurance coverage.

Begun in 2001, the Healthy NY program is a state-sponsored health insurance program for eligible small businesses with 50 or fewer employees, sole proprietors and eligible working uninsured individuals, including recent college graduates. The benefits are available through all New York State HMOs.



*Governor George E. Pataki*

The new lower rates for the Healthy NY program went into effect July 1, 2003. In addition, Healthy NY is now available with or without a prescription drug coverage benefit. Additional improvements to the program include simplified re-certification procedures, removal of child-support payments from income eligibility requirements, removal of co-pays for well-child visits, and greater flexibility in employer contribution requirements.

Current Healthy NY rates, by HMO, are posted on [www.HealthyNY.com](http://www.HealthyNY.com).

## B. New Captive Initiative

In early 2003, the Department announced the creation of a newly dedicated “captive group” and the launch of a new Web site designed to speed applications for captive formation. Captive insurance companies are traditionally used by large corporations as a risk management strategy to insure their own risks.

Since the implementation of the new initiative, several captives have been formed in New York, including TSI Insurance Incorporated and Viacom Inc. In late December, Superintendent Serio announced that the Department had licensed its first group captive, Customer Asset Protection Company, comprised of 14 financial institutions. CAPCO will be providing investment protection coverage in excess of that provided by the federal Securities Investor Protection Corporation (SIPC).

In addition, a bill, proposed by Governor Pataki and New York City Mayor Bloomberg, was enacted in 2003. The new law allows New York City to form a captive to provide retroactive coverage for liability claims relating to the various clean-up activities around the World Trade Center site. The bill, Chapter 188 of the Laws of 2003, is summarized on p. 150 of this Report.

## C. Online Licensing for Brokers & Agents

The Department instituted online capabilities to meet the licensing needs of brokers, agents and other licensees in 2002. Under the system, agents and brokers can renew their licenses on a 24-hour-a-day, seven-day-a-week basis. Other licensing enhancements include online temporary adjuster permits, online applications for original licenses, online renewals for brokers and agents, and licensing through the National Insurance Producer Registry (NIPR) for nonresident brokers and agents. By December 31, 2003, the Department had completed over 325,000 online appointments.

## **D. Continued Response to Disasters**

No single event has ever had the impact of September 11 on the New York State Insurance Department. The attack on the World Trade Center and the anticipated claims in its aftermath prompted the Insurance Department to activate its newly formed Insurance Emergency Operations Center (IEOC). The IEOC was designed early in 2001 to expedite the claims-making process for disaster victims and their families. It also serves as a mechanism through which the Insurance Department can assess the financial impact of New York State catastrophes. Command centers have been established in Manhattan and Albany, each with state-of-the-art videoconferencing and telecommunications capabilities.

In 2003, The IEOC was activated in response to the Northeast blackout in August so that Department staff could effectively assess damages and respond to claimants. Fortunately, the blackout generated few claims and had a marginal impact on the financial condition of New York insurers.

### **1. Federal Terrorism Risk Insurance Act of 2002 (TRIA)**

From an insurance perspective, the events of September 11 resulted in the largest property insurance loss event in our nation's history. These events, coupled with the hardening of the insurance market over the past few years, have raised significant issues, none more important than that of addressing the issue of comprehensive coverage for terrorist acts. Beginning just days after the tragic events, Superintendent Serio strongly supported passage of a federal terrorism backstop package, noting that it was imperative that Congress take some meaningful action to avert further disruptions of the insurance marketplace and the national economy.

On November 26, 2002, after 14 months of negotiations between the House and Senate, President George W. Bush signed the Terrorism Risk Insurance Act (TRIA) into law. TRIA is a temporary federal property/casualty reinsurance program for losses resulting from specifically defined acts of terrorism. Under the Act, insurers must make terrorism coverage for "insured losses" available to their commercial insureds and inform them of the premiums for such coverage. Once the deductible is satisfied, the federal government will cover 90% of remaining losses up to a combined aggregate program limit of \$100 billion annually. The program is scheduled to expire on December 31, 2005.



*Superintendent  
Gregory V. Serio*

### **2. New York Insurance Network**

The New York Insurance Department has developed and implemented the New York Insurance Network (NYIN) as a response to the events of September 11. The Network is the main conduit through which the Department communicates intelligence reports and other critical but sensitive information on terrorism to the New York insurance community. NYIN was initiated by Governor Pataki to address safety and security issues on a statewide basis following the establishment of the federal Office of Homeland Security and New York's Office of Public Security.

The creation of these offices led to an unprecedented flow of critical information on matters related to this nation's preparedness and safety. In order to maximize the value of this information, it was imperative that the Department establish the necessary infrastructure to distribute time-sensitive information to all authorized insurer representatives as quickly as possible.

As a result, the Department created a password-protected area, NYIN, accessible on its Web site containing directives, advisories and other terrorism-related information addressed to New York's authorized insurers. The New York Information Network also includes a mailbox that enables all participants to exchange intelligence and other terrorism-related information with the Department.

Since its inception, NYIN has disseminated over 100 alerts to participating insurers. In early 2004, the Department established a Disaster Preparedness Bureau to assist the industry and regulators in preparing for and responding to disasters.

### **3. Civil Authority Legislation Introduced**

In June, Governor Pataki announced he had introduced legislation to provide enhanced insurance protections for New York State business owners. The legislation would allow for the availability of more meaningful, adequate and flexible coverage options for economic loss resulting from business interruptions in times of emergencies. The bill creates a new stand-alone line of coverage called "civil authority insurance," which would authorize insurers to provide additional coverage to protect businesses when an action of a governmental authority results in the loss of business income. This bill would expand the benefits currently offered under business interruption insurance by eliminating actual physical damage to the insureds' premises as the trigger for such coverage.

#### **E. Workers' Compensation**

In August, the Department approved a 1.7% increase in average Workers' Compensation rates. The New York Compensation Insurance Rating Board had requested an 11.3% increase in 2003 which was rejected by the Department. A subsequent request for a 3.7% increase was modified to 1.7% by the Department and approved. The modest rate hike follows eight years of average annual workers' compensation rate changes that ranged from a low of -18% (in 1996) to a high of 0% (in 1999, 2001 and 2002). Rates have declined significantly since the signing by Governor Pataki in 1996 of the New York State Employment, Safety and Security Act.

#### **F. Workers' Comp Fraud Uncovered**

As a result of a large-scale investigation by the Insurance Department's Frauds Bureau and other state agencies as well as Suffolk County District Attorney Thomas Spota, 18 Suffolk County residents were charged last June with defrauding the State Workers' Compensation System. Those arrested included two teachers, a limousine company operator, and a chiropractor. The chiropractor allegedly collected \$273,000 in benefits while serving as the sole proprietor of a management company. Overall, the 18 individuals were responsible for over \$500,000 in fraudulent claims.

#### **G. Unlicensed Health Insurers**

Throughout the country, unlicensed health insurers have been known to attract consumers and employers by offering low-cost alternatives to traditional health insurance. The companies often offer cut-rate coverage, and may even pay claims for a brief period of time. Eventually, however, their reserves prove insufficient to provide the promised level of services. Although such unlicensed entities emerge less often in New York than in many other states, in 2003 the Insurance Department and Attorney General Eliot Spitzer successfully shut down Millennium Business Association of America, Inc. Millennium was an unlicensed entity offering health insurance benefits to New Yorkers. The principals of the company as well as licensed brokers who sold the product were fined as a result of the action.

#### **H. Health Coverage Tax Credit for Displaced Workers**

Governor Pataki and U.S. Treasury Secretary John W. Snow announced in June a new initiative that made available affordable quality health insurance coverage to eligible New Yorkers whose

employment has been displaced due to changes in foreign trade or whose pensions have been taken over by the Pension Benefit Guarantee Corporation (PBGC). Eligible New Yorkers are given access to the Healthy NY benefits package along with a 65% federal Health Coverage Tax Credit to assist them in paying the premium.

## **I. Boosting Effectiveness of NAIC's Securities Valuation Office (SVO)**

Last year, Superintendent Serio served as chair of the Securities Valuation Office (SVO) Oversight Working Group (SVOOWG) of the National Association of Insurance Commissioners (NAIC). The group developed a number of initiatives to bolster the efficiency and effectiveness of the NAIC's Securities Valuation Office, including the elimination of responsibilities associated with rating fixed income securities that had been assigned ratings by nationally recognized statistical rating organizations (NRSROs). The adoption of this measure served to leverage the rating expertise of NRSROs and to reduce the SVO filing requirements of insurers. Refinements in the SVO rating appeal process were also adopted in 2003. Additional attention to enhancing the value of the SVO to the insurance regulatory community through research and technical work will continue to be a priority in 2004.

## **J. Property Bureau (Automobile)**

### **1. Revised No-Fault Regulation Promulgated**

For the past four years, the Department has been seeking to significantly revise Regulation 68 in order to help combat no-fault insurance fraud. The initial revision briefly took effect in February 2000, but was ultimately vacated by the Court for procedural reasons. The Department then sought to promulgate a new revision to Regulation 68 to take effect in September 2001.

Like the 2000 revision, the new revision required a 30-day period for claimants to provide notice of claim to an insurer following a loss and a 45-day period for health providers to bill an insurer for no-fault treatments (previous time limits were 90 and 180 days, respectively). The new revision also included significant consumer safeguards to ensure legitimate claimants have their claims paid. The same group of plaintiffs that challenged the previous revision once again challenged the Department's effort to promulgate the revised regulation.

The New York State Supreme Court upheld the legality of the new revision to Regulation 68 on February 19, 2002, noting that the Department had properly addressed all procedural deficiencies. The revised regulation took effect on April 5, 2002 in accordance with the Court's decision. The decision was affirmed by Appellate Division, First Department on October 22, 2002. On October 21, 2003, in a unanimous ruling, the Court of Appeals affirmed the order of the Appellate Division and upheld Regulation 68. These court decisions represent a noteworthy victory in the Insurance Department's continuing battle against automobile insurance fraud.

### **2. Decline in Pending No-Fault Arbitration Cases**

The inventory of no-fault arbitration cases continued to grow through March 2002 when it reached just under 116,200 cases. From that point, the inventory declined each month and by December 31, 2003, the inventory of cases pending in the no-fault arbitration program fell to about 28,900 cases, a 75% decrease from the number of cases pending at the close of March 2002. In addition, there was a dramatic improvement in the speed of resolving disputes in the no-fault arbitration system in 2003. The average age of the assignee cases — measured from conciliation filing date to the scheduled arbitration hearing date — dropped from 528 days in July 2002 to 113 days in December 2003.

The decrease resulted from a major reform package that was introduced at the beginning of 2002. The initiative was designed to expedite settlement of no-fault insurance disputes, reduce abuses to the

system by health providers and attorneys, and compel more efficient and effective management of claims by insurers.

## **K. Property Bureau (Non-Auto)**

### **1. Market Conduct Investigations**

The Property Bureau continued its program of reviewing insurance company underwriting, rating and claims practices to determine compliance with the Insurance Law and Department regulations. In addition, the Unit devoted a significant amount of time monitoring post September 11, 2001 events related to the hardening of the insurance market.

Ninety-five market conduct investigations were closed during the course of the year. Of these, 29 insurers entered into stipulations that resulted in fines totaling nearly \$1.3 million. In addition, fines totaling \$52,000 were received from insurers and self-insurers for failure to pay no-fault arbitration awards in a timely manner.

### **2. NYPIUA Issues**

Chapter 85 of the Laws of 2003 extended the operating authority of NYPIUA to April 30, 2004, thus maintaining the safety net for residents unable to obtain fire insurance in the voluntary market. The law also grants authority to the Superintendent to authorize NYPIUA to provide full homeowners insurance coverage if deemed necessary. (NYPIUA currently provides fire and extended coverages, but does not provide protection for theft or personal liability.)

Last fall, the Department held a series of public hearings around the state to determine whether to require the New York Property Insurance Underwriting Association (NYPIUA) to provide commercial liability insurance coverage. The hearings were held in accordance with Section 5412 of the Insurance Law which permits the Superintendent to require NYPIUA to provide liability insurance coverage for the property/casualty market following a public hearing. As of the end of the year, the Department had not imposed the requirement.

### **3. Insurer Web Site Monitoring**

The Property Bureau continued its monitoring and review of insurer Web sites during 2003. In addition, as part of these reviews, the Unit has been verifying the accuracy of online quotes. As part of Circular Letter No. 31 of 1998, the Department advised the industry of the general guidelines that would be followed when monitoring the marketing of insurance products on the Internet. Supplement No. 1 to Circular Letter No. 31, issued in May 1999, further advised the industry that Web-based activities would be reviewed and/or monitored by the Department. In general, the Web sites reviewed during 2003 were found to be in substantial compliance with the Department's general guidelines.

## **L. Health Bureau**

### **1. External Appeal Program**

In 2003, New York's external appeal program continued to provide health care consumers with the right to obtain an independent, impartial review when health plans denied services as not medically necessary, experimental or investigational, or because the services were provided in a clinical trial. Since the program's inception on July 1, 1999, there have been over 7,000 external appeal requests.

## **2. Health Care Reform Act of 2000 – Stabilizing HMO Premiums for Individuals**

The Health Care Reform Act of 2000 (HCRA) requires the Insurance Department to administer the ongoing operations of a unique program designed to ensure that individual consumers have continued access to comprehensive health insurance. HCRA allocated \$130 million over a three and a half-year period commencing January 1, 2000 and ending July 1, 2003 to direct payment market reforms. In 2003, funding was renewed to July 1, 2005. The funding is level at \$40 million per year for those years.

HCRA required the establishment of two state-funded stop loss funds that operate on a calendar year basis from which health maintenance organizations may receive reimbursement for certain claims paid on behalf of members covered under individual enrollee direct payment contracts. These stop loss funds are established for the purpose of stabilizing the premium rates for such individual standardized health insurance contracts for the benefit of both existing enrollees and currently uninsured individuals seeking to purchase health insurance coverage.

## **3. Medicare + Choice**

The trend toward Medicare + Choice plans leaving the New York market reversed itself in 2003. None of the HMOs issuing plans in New York terminated. In fact, one HMO removed its enrollment restriction and began to accept new enrollees. Another HMO expanded its service area into two additional counties. Medicare + Choice plans are offered to senior citizens by HMOs and approved by the federal Medicare program. Medicare agrees to pay a set fee to the HMO for providing coverage, while the covered senior usually contributes a monthly premium for the coverage. No Medicare supplement insurance is necessary for those enrolled in Medicare + Choice plans.

## **M. Life Bureau**

### **1. SERFF Filings**

In addition to the traditional paper filings, the Life Bureau accepts electronic form filings for all types of individual and group life and annuity products, as well as compensation filings, through the NAIC-sponsored System for Electronic Rate and Form Filing (SERFF). The Department's Web site provides detailed filing guidelines for SERFF submissions to assist insurers in making such filings with the Department.

During 2003, the life insurance industry's use of SERFF continued to expand. At the start of 2003, only 22 life insurance companies used SERFF to make policy form submissions. However, by the end of the year, 51 life insurers were using SERFF as a submission platform. In 2003, insurers submitted 235 files, consisting of 939 policy forms through SERFF. This total represents 10.4% of all policy form filings in 2003. Continued growth both in the number of insurers using SERFF as a submission platform and in the percentage of filings made through SERFF is expected.

### **2. Guaranteed Living Benefits**

As the equities market decline of recent years remained fresh in the minds of consumers, insurers continued to offer new and innovative guaranteed living benefits to make variable annuities more attractive to risk-averse consumers. Guaranteed living benefits in variable annuity contracts generally provide for guaranteed minimum account values during the accumulation phase or guaranteed minimum income benefits upon annuitization or guaranteed withdrawal benefit.

During 2003, the Life Bureau received an increase in the number and variety of submissions providing for guaranteed living benefits in variable annuity contracts. Approximately one dozen insurers currently offer one or more types of guaranteed living benefits. The Life Bureau has provided some

interim guidance to insurers through the approval process and informally through the Life Insurance Council of New York (LICONY) regarding approval requirements and necessary disclosure.

### **3. Corporate-Owned Life Insurance**

During 2003, corporate-owned life insurance (COLI) covering rank-and-file employees, also called "janitors insurance" or "dead peasant insurance," received some nationwide press. In addition, the Internal Revenue Service has pursued litigation against some businesses using corporate-owned life insurance to evade tax obligations. New York's insurable interest requirements in Section 3205 of the New York State Insurance Law have effectively curbed the abuses that have been reported outside New York with respect to rank-and-file employees.

The Life Bureau has developed an outline and checklist to assist life insurers marketing corporate-owned life insurance products in New York. The outline and checklist are available on the Department's Web site.

## **N. Consumer Services Bureau**

### **1. Complaint Handling**

The Consumer Services Bureau is responsible for responding to consumer complaints and inquiries and investigating the actions of licensed producers. The Bureau closed a total of 63,251 cases in 2003. Of these, 50,521 involved complaints against insurance companies regarding loss settlements or policy provisions, of which 37.7% were automobile complaints, 51.7 were accident and health complaints, 8.0% were property and liability complaints and 3.0% were life and annuity complaints.

### **2. Disaster Response Plan**

In response to the August 2003 Northeast Blackout, the Bureau, through the Department's Disaster Response Plan, contacted disaster liaisons from various property insurance companies to obtain data concerning the numbers of claims and amounts of losses their insureds suffered. Since the reported losses were minimal, full activation of the Disaster Response Plan was not necessary.

The Disaster Response Plan was again utilized in September in response to Hurricane Isabel. The ten largest writers of commercial and personal property insurance were contacted to assess their preparations for responding to the expected losses in New York State. Fortunately, due to the track of the storm, New York losses were again minimal and the Disaster Response Plan was deactivated. Those citizens affected by the storm who filed complaints with the Bureau received expedited handling and resolution of their complaints.

### **3. Availability of Snowmobile Coverage**

For the second year in a row, the Consumer Services Bureau was called upon to assist the State's snowmobile clubs with obtaining trail liability insurance following the cancellation of the clubs' policies. This insurance is vital for the operation of the New York State snowmobile trail system and the maintenance of a recreational activity that is estimated to contribute over \$500 million annually to New York's economy.

In 2003, the Consumer Services Bureau produced a comprehensive insurer loss run history for over 150 snowmobile clubs. This data proved to be a crucial part of the new insurer's decision to provide the insurance coverage. In addition, the Consumer Services Bureau and the Property Bureau provided the Office of Parks, Recreation and Historic Preservation with several analyses of the various proposals for coverage.



#### **4. Annual Health Insurance Consumer Guide**

The Department publishes an Annual Consumer Guide to Health Insurers that ranks insurers and HMOs based on complaints upheld by the Consumer Services Bureau and contains a separate ranking based on upheld prompt payment complaints. The Bureau also plays an integral role in producing a companion HMO Guide and the only Interactive Guide to HMOs available from any state insurance department. The Interactive Guide can be accessed through the New York Insurance Department's Web site at [www.ins.state.ny.us](http://www.ins.state.ny.us).

#### **O. Frauds Bureau**

##### **1. Arrests Reach Record High**

The Frauds Bureau participated in investigations that led to the arrest of 811 individuals for insurance fraud and related crimes during 2003, outpacing last year's performance by nearly 15%. The number of arrests posted in 2003 sets a new record for the Bureau and represents an increase of more than 108% over the past five years. Criminal convictions obtained by prosecutors in Frauds Bureau cases reached 324 for the year. In addition, 311 individuals were sentenced in connection with Frauds Bureau cases.

Frauds Bureau activities led to stiff fines against 97 individuals who were sentenced to nearly \$7.5 million in court-ordered restitution during the past year. In 22 cases, individuals made voluntary restitution totaling more than \$143,000. In another 10 instances, insurers were able to achieve savings of almost \$420,000 in connection with fraudulent claims under investigation by the Bureau.

##### **2. Satellite Office in Brooklyn**

The Frauds Bureau and the Brooklyn Borough President established an Automobile Insurance Task Force in 2002 to advance innovative ways of reducing the incidence of fraud to help control auto insurance premiums in Brooklyn. As part of that effort, last year the Frauds Bureau relocated a team of no-fault investigators from the Organized/No-Fault/Auto Unit in Manhattan to an office in downtown Brooklyn to work closely with the other members of the Task Force in combating no-fault fraud and abuse.

#### **P. Capital Markets Bureau — Participating in the Examination Process**

Last year, the Capital Markets Bureau was active in using its formulated risk-focused examination procedures applicable to capital markets oversight. It increased its exam participation by taking part in seven examinations, three for the Property Bureau, three for the Life Bureau, and one for the Health Bureau. This exam participation was largely on a targeted basis, focusing on specific areas of risk either detected by the Bureau in its review of financial statements or identified by the examiner-in-charge of the examination. In certain instances, particular attention was given to derivatives, asset allocation and quality, asset turnover, investments differing from the typical sector profile and the composition of Schedule BA assets, often comprising hedge and venture capital funds.

#### **Q. Systems Bureau – Internet Developments**

The Department's Web site ([www.ins.state.ny.us](http://www.ins.state.ny.us)) continues to play a vital role in communicating and providing services to the Department's diverse constituencies. Many of the Department's activities are in some way reflected on the pages of this site. An improved method of measuring Web site activity was adopted at the start of 2003. During the year, over 2.1 million visitors accessed the Department's Web site.

## II. Review of New York State Insurance Business

### A. LIFE BUREAU

#### 1. Licensed Life Companies

There were 143 life insurance companies licensed to transact business in New York State as of December 31, 2003. The total admitted assets of licensed life insurers amounted to approximately \$1.72 trillion at December 31, 2002, a ten-year gain of 76.9%. Bonds totaled \$802.3 billion; stocks \$47.1 billion; mortgage loans \$145.7 billion; real estate \$14.5 billion; policy loans \$56.5 billion, and short-term holdings \$27.9 billion. Other admitted assets totaled \$625.4 billion.

#### 2. Domestic Life Companies

Domestic life insurance companies had admitted assets of \$639.0 billion on December 31, 2002, an increase of 80.3% since 1992. Insurance in force at December 31, 2002 of \$4.02 trillion represents an increase of 65.3% since December 31, 1992.

#### 3. Organizations Under Life Bureau Supervision

The Life Bureau supervised 474 organizations as of December 31, 2003. These organizations consisted of: 143 licensed life insurance companies--86 domiciled in New York and 57 foreign; 45 fraternal benefit societies--6 domiciled in New York, 38 foreign and 1 United States Branch of a Canadian Society; 12 retirement systems — 4 private pension funds and 8 governmental systems; nine governmental variable supplements funds; 179 charitable annuity funds; 25 employee welfare funds; 8 viatical settlement companies and 53 accredited reinsurers. Unless otherwise noted, tables and related data for life insurance companies refer to the **nationwide** operations of insurers licensed to do business in the State.

**Table 1**  
**ADMITTED ASSETS**  
**Life Insurance Companies Licensed in New York State**  
**Selected Years, 1992-2002**  
**(dollar amounts in billions)**

Admitted Assets	2002	2001	1997	1992
<b>Total</b>	\$1,719.6	\$1,680.0	\$1,424.9	\$971.9
Percent increase from 1992	76.9%	72.9%	46.6%	---
<b>Type of asset</b>				
Bonds	\$802.3	\$715.3	\$615.1	\$441.1
Stocks	47.1	50.1	50.6	31.7
Mortgage Loans	145.7	142.3	132.4	172.3
Real Estate	14.5	14.8	25.4	31.2
Policy loans/liens	56.5	56.2	61.7	43.8
Short-term holdings	27.9	20.9	29.5	16.5
Other	625.4	680.3	510.2	235.3

**NOTE:** Detail may not add to totals due to rounding.

Source: New York State Insurance Department

**Table 2**  
**BALANCE SHEET**  
**Life Insurance Companies Licensed in New York State**  
**Selected Years, 1997-2002**  
**(in billions)**

	<b>2002</b>	<b>2001</b>	<b>1997</b>
Assets	\$1,719.6	\$1,680.0	\$1,424.9
Liabilities	1,623.4	1,588.6	1,350.8
Capital & Surplus	96.2	91.3	74.1

Source: New York State Insurance Department

**Table 3**  
**TOTAL LIFE INSURANCE IN FORCE**  
**Life Insurance Companies Licensed in New York State**  
**Selected Years, 1992-2002**  
**(dollar amounts in billions)**

<b>Class of Business</b>	<b>2002</b>	<b>2001</b>	<b>1997</b>	<b>1992</b>
Total insurance in force	\$10,142.7	\$9,963.6	\$7,780.1	\$6,084.6
Percent increase from 1992	66.7%	63.8%	27.9%	---
Ordinary	\$5,580.3	\$5,437.2	\$4,172.3	\$2,986.9
Group	4,462.1	4,500.1	3,519.7	3,022.0
Credit	57.4	55.4	80.5	67.6
Industrial	6.8	6.9	7.5	8.1

Source: New York State Insurance Department

**Table 4**  
**SOURCES OF INCOME\***  
**Life Insurance Companies Licensed in New York State**  
**Selected Years, 1997-2002**  
**(dollar amounts in millions)**

Source of Income	2002		2001		1997	
	Amount	Percent of Total	Amount	Percent of Total	Amount	Percent of Total
Group life	\$15,630.0	5.5%	\$17,139.8	6.2%	\$13,94.1	5.1%
Group annuities	65,878.0	23.1	65,878.0	23.7	68,338.3	25.0
Group A & H	21,277.8	7.4	20,914.5	7.5	24,296.8	8.9
Ordinary life	46,373.2	16.2	40,808.0	14.7	44,005.9	16.1
Individual annuities	50,823.7	17.8	41,160.1	14.8	30,899.9	11.3
Individual A & H	4,543.6	1.6	3,183.3	1.1	3,737.1	1.4
Credit life	240.1	0.1	276.3	0.1	363.6	0.1
Industrial life	204.0	0.1	228.2	0.1	236.6	0.1
<b>Total Premiums</b>	<b>\$204,970.4</b>	<b>71.8%</b>	<b>\$189,588.2</b>	<b>68.1%</b>	<b>\$185,826.3</b>	<b>68.0%</b>
Supplementary contracts	376.1	0.1	388.9	0.1	7,803.7	2.9%
Net investment income	71,990.1	25.2	71,446.1	25.7	66,704.6	24.4
Other income	8,246.3	2.9	17,060.6	6.1	12,740.6	4.7
<b>TOTAL</b>	<b>\$285,582.9</b>	<b>100.0%</b>	<b>\$278,483.8</b>	<b>100.0%</b>	<b>\$273,075.3</b>	<b>100.0%</b>

\* As of 2001, deposit type funds — which were a component of group annuities — and supplementary contracts without life contingencies are no longer classified as income.

NOTE: Detail may not add to totals due to rounding.

Source: New York State Insurance Department

**Table 5**  
**OPERATING RESULTS\***  
**Life Insurance Companies Licensed in New York State**  
**Selected Years, 1997-2002**  
**(in millions)**

	2002	2001	1997
Total premiums	\$199,150.3	\$189,588.1	\$185,826.4
Investment income	71,990.1	71,446.1	66,704.6
Supplementary contracts	376.1	388.9	7,803.7
Other income	14,066.4	17,060.7	12,740.6
Total income	285,582.9	278,483.8	273,075.3
Net gain from operations	11,243.0	7,050.0	8,266.9
Net income	3,747.9	6,280.9	9,283.0

\*As of 2001, deposit type funds and supplementary contracts without life contingencies are no longer classified as income.

Source: New York State Insurance Department

**Table 6**  
**LIFE INSURANCE IN FORCE IN THE STATE OF NEW YORK**  
**Life Insurance Companies Licensed in New York State**  
**Selected Years, 1992-2002**  
**(dollar amounts in billions)**

<b>Insurance In Force</b>	<b>2002</b>	<b>2001</b>	<b>1997</b>	<b>1992</b>
Total	\$1,387.0	\$1,231.0	\$975.0	\$740.4
Percent increase from 1992	87.3%	66.3%	31.7%	---
Class of business				
Ordinary	\$830.2	\$749.2	\$581.3	\$431.9
Group	548.5	473.5	386.9	296.6
Credit	7.6	7.5	5.9	10.9
Industrial	0.8	0.8	.9	1.0

Source: New York State Insurance Department

**Table 7**  
**ADMITTED ASSETS/INSURANCE IN FORCE**  
**DOMESTIC LIFE INSURANCE COMPANIES**  
**Selected Years, 1992-2002**  
**(dollar amounts in billions)**

<b>Domestic Life Insurers</b>	<b>2002</b>	<b>2001</b>	<b>1997</b>	<b>1992</b>
Admitted assets	\$639.0	\$608.7	\$514.3	\$354.4
Percent increase from 1992	80.3%	71.8%	45.1%	---
Insurance in force	\$4,018.0	\$3,818.9	\$3,336.5	\$2,430.5
Percent increase from 1992	65.3%	57.1%	37.3%	---

Source: New York State Insurance Department

**4. Licensed Fraternal Benefit Societies**

At the close of 2002, 47 fraternal benefit societies were licensed to conduct insurance business in New York State. Of these, 6 were domestic, 40 were foreign and 1 was an alien society. In the ten-year period ending December 31, 2002 the admitted assets of licensed societies roughly doubled, rising from \$33.7 billion to \$63.9 billion. Insurance in force rose \$86 billion over the period to \$272.2 billion, an increase of 46%.

**Table 8**  
**FRATERNAL BENEFIT SOCIETIES**  
**Selected Years, 1992-2002**  
**(in billions)**

<b>Fraternal Benefit Societies</b>	<b>2002</b>	<b>2001</b>	<b>1997</b>	<b>1992</b>
Admitted assets	\$63.9	\$58.9	\$47.8	\$33.7
Insurance in force	\$272.2	\$264.6	\$231.1	\$185.8

Source: New York State Insurance Department

## 5. Private Retirement Systems

At the close of 2002, four private retirement systems were under the supervision of the Insurance Department.

The four systems, which are private pension funds of nonprofit organizations, were made subject to Insurance Department regulation by special legislative enactments. At the end of 2002, the assets of these four private pension funds totaled approximately \$129.3 billion. The following table shows data for the private pension funds for selected years from 1992 to 2002.

**Table 9**  
**PRIVATE PENSION FUNDS**  
**Regulated by NYS Insurance Department**  
**Selected Years, 1992-2002**  
**(in millions)**

Private Pension Funds	2002	2001	1997	1992
Total admitted assets	\$129,336.7	\$154,922.4	\$126,667.7	\$55,308.7
Payments to annuitants and beneficiaries	\$10,482.8	\$9,875.5	\$6,391.0	\$2,115.9

Source: New York State Insurance Department

## 6. Public Retirement Systems

The eight actuarially funded public retirement systems under the supervision of the Insurance Department at the close of 2002 are governmental systems that provide retirement, death and disability benefits to the employees of New York State and those of its political subdivisions that have elected to provide such benefits to their employees. The aggregate assets of the eight governmental systems as of the end of their respective fiscal years ending in 2002 were approximately \$267 billion. During the period from 1992 to 2002, the assets of these retirement systems increased at the compound rate of 7.1% per year.

The governmental retirement systems cover a total of 1.9 million active and retired members. The number of active employees in the public retirement systems in 2002 increased by 4% from its 1992 level, while the number of pensioners increased by 21% in the same period. The substantial increase in pensioners, as compared with a lesser increase in the work force, reinforces the need for maintaining adequate actuarial reserves.

The New York City Administrative Code provides for five active nonpension funds known as variable supplements funds, financed by the transfer of earnings from the equity portfolios of the New York City Police and Fire Department Pension Funds and the Employees' Retirement System. If at any time the earnings so transferred are insufficient, the City guarantees the payment of the variable supplements benefits. These variable supplements funds provide retirement benefits in addition to those received from the pension funds and the retirement system. The variable supplements funds, all of which are under the supervision of the Insurance Department, had assets as of June 30, 2002 totaling \$3.0 billion.

The following table shows data for the public employee retirement systems, excluding the variable supplements funds, for selected years from 1992 to 2002:

**Table 10**  
**PUBLIC RETIREMENT SYSTEMS AND PENSION FUNDS**  
 Regulated by NYS Insurance Department  
 Selected Years, 1992-2002  
 (in millions)

Public Retirement Systems & Pension Funds	2002	2001	1997	1992
Total admitted assets	\$266,926	\$289,695	\$228,781	\$134,725
Payments to annuitants and beneficiaries	\$14,196	\$13,214	\$9,960	\$6,838

Source: New York State Insurance Department

### 7. Segregated Gift Annuity Funds for Charitable Organizations

At the end of 2002, 161 charitable annuity societies held permits under Section 1110 of the Insurance Law. In return for, or conditioned upon, the receipt of gift funds, such organizations agree to pay an annuity to the donor, or a nominee. These agreements must provide to the issuer, upon the death of the annuitant, a residue equal to at least one-half the original gift or other consideration for such annuity. In the ten-year period ending December 31, 2002, admitted assets of these funds increased by 400% and the annual payments increased by 491%. This reflects the rapid growth in the number of licensed societies during the period under review.

**Table 11**  
**SEGREGATED GIFT ANNUITY FUNDS**  
 Selected Years, 1992-2002  
 (in millions)

Segregated Gift Annuity Funds	2002	2001	1997	1992
Total admitted assets	\$1,230.4	\$1,003.4	\$575.4	\$246.1
Annual payments to annuitants	\$114.0	\$92.4	\$44.0	\$19.3

Source: New York State Insurance Department

### 8. Employee Welfare Funds

Twenty-four employee welfare funds covering 124,408 employees were supervised by the Department at the close of 2002. These funds are jointly administered by management and labor representatives. The employee welfare funds cover government employees for benefits financed by contributions from New York governmental authorities. Government employee welfare funds were not pre-empted by the federal Employee Retirement Income Security Act of 1974 (ERISA) as most private pension funds were.



Contributions to employee welfare funds amounted to \$350.5 million in 2002. Benefits paid totaled \$374.4 million and included life insurance; medical, surgical and hospital coverage; major medical coverage; optical, dental and prescription drug plans; disability insurance, and legal services. Administrative expenses totaled \$18.6 million representing 5.3% of contributions.

## 9. Viatical Settlement Companies

Regulation 148 and Article 78 of the Insurance Law became effective as of July 6, 1994 for the purpose of regulating viatical settlement companies and brokers. At the end of 2002, eight companies were licensed or authorized to act as viatical settlement companies in New York.

As of December 31, 2002, these companies had combined assets of \$23.1 million, with the largest company accounting for \$12.9 million. The assets were primarily in the form of life insurance policies purchased. Costs of purchasing these policies amounted to \$13.1 million, which comprised about 69.3% of the \$18.9 million total face value.

The amounts reported for licensed viatical settlement companies have decreased dramatically (in 2002, nine viaticals had combined assets of \$433 million) due to the fact that the viatical settlement company with the largest New York market share surrendered its license in 2002.

## 10. Examinations of Insurers Conducted in 2003

**Table 12**  
**EXAMINATIONS CONDUCTED**  
**Life Bureau**  
**2003**

	Regularly Scheduled			Other	
	Total	Initiated		Special	On Organi- zation*
		In 2003	Prior to 2003		
Life insurance companies	36	23	7	4	2
Fraternal benefit societies	2	2	0	0	0
Retirement systems and pension funds	2	2	0	0	0
Segregated gift annuity funds of charitable organizations	22	22	0	0	0
Viatical settlement companies	1	1			
Welfare funds	2	2	0	0	0
<b>Total</b>	<b>65</b>	<b>52</b>	<b>7</b>	<b>4</b>	<b>2</b>

\*Examination conducted when insurer is first incorporated in New York State.

## 11. Auditing of Financial Statements

### a. Audit and Analysis

As of December 31, 2003, there were 474 companies that were licensed or accredited to conduct business in New York State, as detailed below. These companies are required to file their Annual Statements for audit and analysis.

**Table 13**  
**COMPANIES LICENSED BY THE LIFE BUREAU**  
**December 31, 2003**

Life - New York	86
Life - Other States	57
Accredited Reinsurers	53
Fraternal - New York	6
Fraternal - Other States	38
Fraternal - Canadian, U.S. Branch	1
Charitable Annuities	179
Retirement Systems	21
Viaticals	8
Welfare Funds	25
<b>Total</b>	<b>474</b>

In addition to a financial analysis, which includes but is not limited to solvency, investment portfolio, reinsurance, and a review of the CPA report etc., the Annual Statements are audited for overall integrity; compliance with National Association of Insurance Commissioners (NAIC) requirements for completing the Annual Statement blank; and compliance with Department statutes, regulations and rules. Questions arising during the audits of the statements are resolved with the companies.

### b. New York Supplements to the Annual Statements

New York Supplements to the Life and Accident & Health Annual Statement and the Fraternal Benefit Society Annual Statement were developed for use beginning with the 1986 Annual Statement filing. The Supplements for 2002 were updated to meet current needs and requirements. Copies of the Supplements are now distributed through the Department's Web site to all life companies and Fraternal Benefit Societies licensed to do business in New York State.

## 12. Real Estate Review

During 2003, the real estate unit submitted eight reports relative to the valuation and condition of real estate related assets held by companies under examination.

In addition, recommendations were made in connection with the acquisition and construction of home office real estate, real estate valuation, transfer of real estate related assets, leases between holding system members, regulatory changes and mortgage loan participations.

### **13. Actuarial Submissions and Reviews**

The actuarial staff of the Life Bureau's New York City office reviews submissions made by life insurance companies and fraternal benefit societies for (1) separate account plans of operation for individual and group annuity products and for variable life insurance products; (2) methods of allocation of investment income by annual statement lines of business and by product lines; (3) synthetic guaranteed investment contracts ("synthetic GICs"); and (4) plans of operation and actuarial projections in connection with the licensing of a company, merger of two or more companies or acquisition of control of one company by another.

The actuarial staff also reviews company filings mandated by Section 4228 of the Insurance Law, which deal with expense limitations, agent compensation plans, agent training allowance plans and expense allowance plans. Numerous filings are required under Section 4228. An electronic filing option using Lotus Notes, implemented in 2002, remains available. Its use has doubled during 2003, with approximately 20% of filers now using the all-electronic route.

The actuaries evaluate the actuarial aspects of life insurer demutualizations and reorganizations of foreign insurers as mutual holding companies. Although few in number, such evaluations are very labor intensive, involving, among other things, the selection of legal, investment banking and actuarial consulting firms, ongoing monitoring of their work and evaluation of their final work product. It is believed most life insurers that plan to reorganize have already submitted their plans, and less activity in this area is anticipated during the next few years. However, one large upstate mutual life insurer has announced it will reorganize as a stock company in 2004.

Actuaries perform the required regulatory functions concerning the various New York State and New York City public employee retirement systems, each of which is governed by different chapters of law (mainly New York State Retirement and Social Security Law, New York State Education Law and New York City Administrative Code), as explained in more detail in Section 6 of this report.

The staff participates in on-site examinations scheduled by the Field Examinations Unit to ascertain the organizations' actuarial practices.

Separate account submissions continued to comprise the majority of filings reviewed by the actuarial staff, 334 out of a total of 573. Many of those submissions involved the addition of various protections and guarantees, including guarantee of principal (on withdrawal, not just on death), guaranteed minimum annuitization amounts and other variations. Such guarantees may help accommodate the public's desire to avoid risk in separate account products, but they also increase the insurers' financial risk. The Bureau continues to evaluate the degree of this risk and to consider possible enhanced reserve standards on its account.

There were 170 submissions under New York's agent compensation law (Section 4228), which comprised the next greatest number of actuarial filings again in 2003. We received the same number of agent compensation related submissions in 2003 as we did in 2002.

There were 17 submissions related to mergers, acquisitions and new company formations during 2003, the same number as in 2002. There were 15 synthetic GIC submissions during 2003, a 67% increase over 2002. All but one of the synthetic GIC submissions received in 2002 and 2003 were from a single, large domestic insurer.

**14. Guardian Life Section 4219(a) Waiver**

On December 24, 2003, pursuant to Section 4219(b) of the Insurance Law, the Department granted Guardian Life Insurance Company permission to exceed the surplus limitations prescribed in Section 4219(a) of the law for the one year period from December 31, 2003 to December 31, 2004. Permission was expressly conditioned upon the filing by Guardian of a written plan with the Department, to be received no later than March 15, 2004, specifying in detail the steps Guardian will take to cause its surplus to fall within the applicable limits of Section 4219(a) by December 31, 2004.

The excess of surplus was the result of recent accounting rule changes as well as a one-time business restructuring with certain insurance subsidiaries.

**15. Life Bureau - Albany**

**a. Processing of Life Insurance, Annuity Contracts and Other Financial Products**

In 2003, the Life Bureau in Albany received 2,264 policy form submissions (files) consisting of 9,172 life and annuity policy forms and other financial products offered by life insurance companies, fraternal benefit societies, charitable annuity societies and viatical settlement companies as indicated in Table 14 below. This total is the highest total ever received by the Life Bureau and is more than 28% higher than the average number (7,153) of policy forms received over the previous five years. It should be noted that much of the increase is attributable to the increase in individual annuity submissions. The number of individual annuity policy forms has increased by over 284% since 2001.

In addition, the Life Bureau processed a total of 2,213 policy form submissions (files) consisting of 9,235 policy forms as indicated in Table 14. Of the 9,235 forms processed in 2003, approximately 52.3% were approved, deemed approved or filed for reference, 28.6% were filed for out-of-state use and 19.1% were disapproved, rejected, withdrawn or replaced.

**Table 14  
NUMBER OF FILES & POLICY FORMS  
RECEIVED AND PROCESSED, BY TYPE  
2003\***

<b><u>PRODUCT TYPE</u></b>	<b><u>RECEIVED</u></b>		<b><u>PROCESSED</u></b>	
	<b>Files</b>	<b>Forms</b>	<b>Files</b>	<b>Forms</b>
Individual Life	705	2,916	702	2,972
Group Life	222	917	202	906
Individual Annuity	736	3,089	721	3,154
Group Annuity	490	1,650	491	1,690
Credit Insurance	19	65	14	50
Viatical Settlement	3	55	0	1
Miscellaneous	89	480	83	462
<b>TOTAL</b>	<b>2,264</b>	<b>9,172</b>	<b>2,213</b>	<b>9,235</b>

\*Individual and group life includes term and whole life insurance, indeterminate premium, universal life insurance, and variable life insurance. Individual and group annuity includes fixed and variable annuities, separate account agreements, funding agreements, structured settlements, charitable annuities and synthetic guaranteed investment contracts. Credit insurance includes credit life, disability and unemployment insurance.

## b. Review of Actuarial and Other Form-Related Filings

In conjunction with the policy form approval process, the Life Bureau received 428 other filings related to the policy form approval process and products offered for sale in New York, including 45 rate and actuarial filings, 85 inquiries and complaints, 56 FOIL requests, 44 prefilings under Circular Letter 64-1, 40 compensation filings and 84 annual illustration certification filings.

**Table 15**  
**POLICY FORM RELATED FILINGS RECEIVED IN 2003**

Fraternal Benefit Societies (Constitution, Articles of Incorporation, bylaws, etc.)	16
Calculation of Life Estates	14
Circular Letter 64-1	44
Compensation Filings	40
Conversion Filing (Unaffiliated Insurer)	1
FOIL Requests	56
Inquiries & Complaints	85
Rate Filings & Actuarial Memorandum	45
Violations & Market Conduct	40
Informational Filings	3
Regulation 74 Illustration Certification Filings	84
<b>Total</b>	<b>428</b>

## c. Speed to Market

The Life Bureau continued to encourage insurers to use the certified filing procedure established by Circular Letter No. 27 (2000). The certification procedure is designed to assist insurers in bringing products to market quickly. It requires insurers to complete detailed product checklists for each policy form submitted and provide a signed certification of compliance with all applicable statutes and regulations. All product checklists and corresponding outlines are available to insurers and consumers on the Department's Web site.

In 2003, the Life Bureau received 551 Circular Letter No. 27 (2000) certified files, consisting of 2,444 policy forms. The 2,444 policy form total represents a 48% increase in certified submissions from 2002. This total constitutes 26.7% of all policy forms received by the Life Bureau in 2003 for in-state or out-of-state use and approximately 40% of all forms submitted for sale in New York under one of the three prior approval filing procedures (*i.e.*, §3201(b)(1) traditional prior approval, §3201(b)(6) deemer approval and Circular Letter No. 27 (2000) certified approval).

During the year, the Life Bureau processed 2,317 policy forms submitted under the certified procedure, with an average disposal time of 38.9 days. Of the total 2,317 policy forms, 1,430 were approved, 797 were rejected and 48 were withdrawn. The approval of 1,259 of the 1,430 certified policy forms approved was based primarily in reliance upon the certification of compliance and the completed checklist.

In addition to the certified filings, the Life Bureau has continued to process policy forms submitted under the deemer authority in Section 3201(b)(6) of the Insurance Law. Section 3201(b)(6) establishes an alternative policy form filing procedure in which forms are deemed approved if the Department fails to provide comments or objections or to request additional information within 90 days of receipt of the submission or fails to respond within 45 days of receipt of a letter from the insurer replying to the Department's comments or requests. In 2003, the Department processed 100 policy forms submitted under Section 3201(b)(6), including 73 forms that were deemed approved by operation of law. It should be noted that the number of forms processed under Section 3201(b)(6) has been steadily declining from the high of 478 in 2001.

#### **d. SERFF**

In addition to the traditional paper filings, the Life Bureau accepts electronic form filings for all types of individual and group life and annuity products, as well as producer compensation filings, through the NAIC sponsored System for Electronic Rate and Form Filing (SERFF). The Department's Web site provides detailed filing guidelines for SERFF submissions to assist insurers in making such filings with the Department.

In 2003, the Life Bureau made electronic versions of the checklists needed for the certified filing procedure available to facilitate the electronic filings through SERFF. Prior to this change, companies submitting certified files through SERFF had to print the checklist from the Department's Web site, complete the checklist by hand and then scan the result back into an electronic version.

During 2003, the life insurance industry's use of SERFF has continued to expand. At the start of 2003, only 22 life insurance companies used SERFF to make policy form submissions. However, by the end of the year, 51 life insurers were using SERFF as a submission platform. In 2003, insurers submitted 235 files, consisting of 939 policy forms through SERFF. This total represents 10.4% of all policy form filings in 2003. Continued growth both in the number of insurers using SERFF as a submission platform and in the percentage of filings made through SERFF is expected.

#### **e. Nonforfeiture Law Interest Rate Change – Web Site Guidance**

Section 4223(c)(2)(C) of the Insurance Law was amended by §29 of Chapter 62 of the Laws of 2003 to reduce the minimum interest rate for individual deferred annuity contracts from 3% to 1.5%. The change in the minimum interest rate was necessary because of the low interest rate environment. Some insurers considered ceasing or actually ceased sales of fixed annuity products and fixed account options in variable annuity contracts because the yields on fixed income assets would not support the 3% minimum interest rate on new deposits.

The 1.5% minimum interest rate is an interim measure and is effective until May 15, 2005. The NAIC has adopted a model law in which the minimum interest rate is the lesser of 3.0% and an indexed rate based upon the five-year Constant Maturity Treasury Rate reported by the Federal Reserve.

To expedite the approval of policy forms revised solely to reflect the lower guaranteed minimum interest rate, the Life Bureau developed the NY Annuity Interest Rate Transmittal Form and provided additional guidance on the Department's Web site to assist insurers in making submissions. The expedited process allowed insurers to revise the guaranteed minimum interest rate provision in a timely manner. The Life Bureau received approximately 100 such policy form submissions.

## **f. Restrictions on Fixed Account Availability – Web Site Guidance**

As a response to the low interest rate environment and in addition to the change in the minimum nonforfeiture law interest rate, insurers requested approval of a number of innovative provisions intended to restrict the availability of the insurer's fixed account investment option in variable annuity contracts. After careful consideration, the Life Bureau approved several types of restrictions only for new issues of contracts generally giving insurers discretion with respect to the establishment and continuing availability of fixed account options in variable annuity contracts.

The Department has approved deposit restrictions that grant insurers the right to refuse additional deposits and transfers into the fixed account of a variable annuity contract after issue or to cease offering fixed account guarantee periods for future deposits or transfers at the expiration of the interest rate guarantee in the event that the yield on fixed income assets declined to a level that would not support the statutory minimum interest rate. The Department has required contract language providing for 30 days prior written notice to consumers before an insurer can implement any deposit restriction.

## **g. War Exclusions and Restrictions**

On March 7, 2003, the Department issued Circular Letter No. 6 (2003) to remind life insurers and fraternal benefit societies about certain provisions in the Insurance Law which pertain to war risk exclusions and restrictions for the payment of life insurance death benefits.

Insurers were reminded that Section 336 of the Insurance Law requires notification to the Department prior to the issuance of any life insurance policy that excludes or restricts the payment of the death benefit as a result of war or special hazards incident to service in or with any armed forces or attached civilian units. Insurers were also reminded that Section 3203(c)(4) of the Insurance Law states that it is the legislative intent that such exclusions not be construed or interpreted as exclusions due to the status of the insured in the armed forces or attached civilian units or the presence of a civilian in a combat or adjacent area.

Life insurance policies with war exclusions or restrictions need to be in compliance with Section 3201(c)(4) of the Insurance Law and Section 45.1 of Regulation 19. Any life insurance policy which contains a war exclusion or restriction is required by Section 3201(c)(4) to have a notice across the face page in red and in capital letters not smaller than twelve point type stating "*Read the policy carefully. Certain war risks are not assumed.*" Section 45.1 of Regulation 19 also requires insurers who issue life insurance policies with war exclusions or restrictions to include in their application forms a notice that the policy will contain such exclusions or restrictions. All war exclusions are required to terminate six months after the end of the war in accordance with Section 3203(c)(5) of the Insurance Law.

## **h. Guaranteed Living Benefits – Update**

As the equities market decline of recent years remained fresh in the minds of consumers, insurers continued to offer new and innovative guaranteed living benefits to make variable annuities more attractive to risk-averse consumers. Guaranteed living benefits in variable annuity contracts (VAGLBs) generally provide for guaranteed minimum account values during the accumulation phase (GMAB) or guaranteed minimum income benefits upon annuitization (GMIB) or guaranteed withdrawal benefit (GMWB).

During 2003, the Life Bureau received an increase in the number and variety of submissions providing for guaranteed living benefits in variable annuity contracts. Approximately one dozen insurers currently offer one or more types of guaranteed living benefits. The Life Bureau has provided some

interim guidance to insurers through the approval process and informally through the Life Insurance Council of New York (LICONY) regarding approval requirements and necessary disclosure.

However, the extension of guarantees to separate account products and the additional risks posed by such products have raised a number of questions and concerns in New York and other states regarding the appropriate type of regulation needed for such benefits. It is expected that additional guidance will be incorporated in the next revision of Regulation 47 "Separate Accounts and Separate Account Annuities".

#### **i. Promoting Uniform Standards of High Quality**

The National Association of Insurance Commissioners (NAIC) works with the states to develop uniform product and reserve standards for the industry. The goal of uniformity is to reduce the cost and increase the availability of products to consumers. To support the goals of uniformity while safeguarding the quality of standards, the Department has taken an active role in the development of NAIC standards.

The Department has been an active participant in the NAIC's Life and Health Actuarial Task Force. In 2003, the Task Force adopted stronger reserve standards more reflective of actual experience for Long Term Care products and the Task Force adopted clarifications on reserving standards for variable annuities with minimum guaranteed death benefits. In 2003 the Task Force also adopted changes in the model nonforfeiture law for annuities to allow minimum interest rates to be determined using an index. In addition, significant efforts are ongoing to improve reserve standards for variable annuities with guarantees, to adopt a mortality standard for credit insurance and to develop a model regulation to implement changes in the annuity non-forfeiture model act.

#### **j. Interstate Insurance Product Regulation Compact**

In March 2002, the NAIC established the Interstate Compact Working Group to accomplish the goal of establishing a national state-based system of insurance regulation that would provide for uniform standard and a single point of filing for several lines of insurance. The working group drafted a proposed interstate compact.

During 2003, the Interstate Compact National Standards Working Group was appointed to begin drafting uniform national standards for selected products to serve as a prototype of possible national standards and filing procedures for the Interstate Insurance Product Regulation Compact. The Life Bureau has taken an active role in the development of the uniform standards for individual term life insurance and individual flexible premium deferred variable annuity contracts in 2003.

It should be noted that the legal and actuarial staff of the Life Bureau made extensive contributions to the ad hoc actuarial group discussions concerning individual flexible premium deferred variable annuity contract because New York's nonforfeiture law for annuities and other requirements differ significantly from the NAIC model law. Some but not all of such differences were incorporated or addressed in the proposed standard.

#### **k. Financial Indicators**

The Risk-Based Capital (RBC) Formula and Model Act that was adopted by the NAIC and the New York Legislature went into effect for the December 31, 1993 Annual Statement Filings. The RBC formula is updated yearly by the NAIC's Capital Adequacy Task Force currently chaired by New York.

In 2003, changes were adopted to expand the RBC formula to encompass separate accounts that guarantee an index where the index is not as closely matched as expected. Department actuaries



noted conceptual flaws in the initial draft proposals and thus substantially improved the final recommendations adopted by the NAIC.

Department actuaries also have been involved in a major effort to set capital and reserve standards for variable annuities with guarantees. Proposals have been exposed for comment that would allow a company to set reserves and risk based capital using its own models and many return scenarios. If adopted, the Life Bureau will review results and recommend changes as needed to ensure consistency and adequacy of the capital requirements determined using company models.

### **I. Eligibility for Life and Disability Insurance for Persons with History of Cancer**

A new Section 2613 was added to the Insurance Law to prohibit an insurer from refusing to issue a life insurance policy or non-cancelable disability income policy or canceling or declining to renew such policy because the proposed insured has had any type of cancer. The initial diagnosis of cancer must have occurred three years prior to the date of application and a physician must certify that the cancer has not reoccurred. An insurer however still retains the right to refuse to issue or to cancel or refuse to renew the policy if its actions are based on sound actuarial principles or are related to actual or reasonably anticipated experience.

This new legislation replaces and expands upon the language of former Section 3234, which prohibited discrimination against proposed insureds with a history of breast cancer.

### **m. Increases in Juvenile Coverage Limits for Individual Life Insurance**

In August 2003, Section 3207 of the Insurance Law was amended to increase the monetary limits on the amount of insurance issued on the life of a minor. The flat monetary limit for all minors under age 14½ was increased from \$10,000 to \$25,000. The justification for the increase was to keep pace with inflation and to establish consistency with the \$25,000 limit on group dependent coverage.

The old law prescribed a limit of the greater of \$10,000 or 50% of the amount of life insurance in force upon the life of the person effectuating the insurance for minors under age 14½ (5,000 or 25% for minors under age 4½). The old law also prescribed incremental limitations by age and amount as an alternative the flat monetary and percentage limitations.

New Section 3207(c) provides a uniform limitation of the greater of \$25,000 or 50% for minors under age 14½ and the greater of \$25,000 or 25% if the minor is under age 4½. The incremental limitations under the old law were repealed. As a result of the amendment to Section 3207, the Life Bureau has received dozens of filings of endorsements reflecting the new juvenile coverage limitations, and many more filings are expected in 2004.

### **n. New Life Insurance Benefits Authorized to Protect against Lapse of Policy in Event of Residency in a Nursing Home**

In July 2003, Section 1113(a)(1) of the Insurance Law was amended by expanding the definition of "life insurance" to include benefits that safeguard the policy against lapse due to the insured's residency in a nursing home. The law enables insurers to provide new lapse-protection benefits, such as premium waiver riders and monthly deduction waiver riders. Prior to amendment, the law allowed additional benefits to safeguard against lapse in the event of total and permanent disability or unemployment of the insured. The passage of the law did not result in any new filings in the Life Bureau in 2003. However, the Life Bureau anticipates that a number of insurers will make submissions in 2004.

#### **o. Corporate-Owned Life Insurance -- GAO Report**

The Life Bureau continued its review of corporate-owned life insurance (COLI) products for use in the employee benefit plan market under section 3205(d) of the Insurance Law and in the key person market under Section 3205(a)(1)(B) of the Insurance Law. In 2003, the Life Bureau reviewed criteria regarding the use of key person COLI to fund liabilities under employee benefit plans.

During 2003, corporate-owned life insurance covering rank-and-file employees, also called "janitors insurance" or "dead peasant insurance," received press attention. In addition, the Internal Revenue Service has pursued litigation against some business using corporate-owned life insurance as a means of evading tax responsibilities. New York's insurable interest requirements in Section 3205 of the New York State Insurance Law have effectively curbed the abuses that have been reported outside New York with respect to rank-and-file employees.

The Life Bureau has developed an outline and checklist to assist life insurers marketing corporate-owned life insurance products in New York. The outline and checklist are available on the Department's Web site.

In addition, the Life Bureau met with representatives of the United States General Accounting Office (GAO) in July 2003 to discuss how New York regulates and monitors corporate-owned life insurance products marketed by life insurers, particularly with respect to insurable interest and notice and consent requirements for products intended to fund employee benefit plans. In October 2003, the Life Bureau responded in writing to specific follow-up questions posed by the GAO. The GAO report "*Business-Owned Life Insurance: Preliminary Observations on Uses, Prevalence and Regulatory Oversight*" GAO-04-191T was released on October 23, 2003.

#### **p. Statutory Examinations**

The Life Bureau staff in Albany has been expanding its analysis of life insurers' risks beyond the traditional analysis of minimum statutory formula reserves and asset/liability matching. Historically, the Bureau has relied on the requirements of Regulation 126 to ensure reserve adequacy under moderately adverse conditions. Regulation 126 requires asset adequacy analysis, which necessitates the need to consider asset and liability cash flows under various economic scenarios. Given the recent volatility of economic conditions, the Bureau has continued to stipulate a series of additional required sensitivity tests, in addition to the regular asset adequacy analysis, for variables related to policyholder behavior and investment assumptions. This type of additional analysis has proven to better determine an insurer's susceptibility to deteriorating economic conditions. This type of analysis has also led to the establishment of additional reserves for insurers with significant exposure to various kinds of risk. The Life Bureau also considers a life insurers' overall risk characteristics which enhances the Bureau's ability to prioritize and focus its resources on insurers that are more susceptible to deteriorating economic conditions.

During the year, significant progress was achieved on issues related to the management of liquidity risk, insurers' interest crediting strategy on annuity products, and establishing reasonable reserve standards for variable annuities that guarantee performance of the underlying funds. These efforts materially improved the Bureau's risk-based examination focus during 2003.

Also, the Bureau has updated Regulation 56 to be consistent with the National Association of Insurance Commissioners (NAIC) model health insurance reserve regulation. The major changes were to the sections covering reserves for long-term care insurance. In addition, we are in the process of adopting a regulation to update our mortality standards for life insurance reserves and cash surrender values.



## B. PROPERTY BUREAU

### 1. Entities Supervised by the Financial Regulation Division

As of December 31, 2003, the Financial Regulation Division side of the Property Bureau exercised regulatory authority over some 1,650 insurer and noninsurer entities.

The Bureau regulated 968 insurer entities as of year-end 2003. Table 16 provides a breakdown.

**Table 16**  
**ENTITIES REGULATED BY PROPERTY BUREAU**  
**2003**

<b>Number of Regulated Entities</b>	<b>Type of insurer/reinsurer/entity</b>
79	Accredited reinsurers*
19	Advance premium co-operatives
26	Assessment co-operatives
9	Associations, pools, and syndicates
9	Captive insurers
15	Financial guaranty insurers
5	Medical malpractice insurers
25	Mortgage guaranty insurers
1	Property Insurance Underwriting Association (FAIR Plan)
742	Property/casualty insurers
24	Title insurers (including two accredited reinsurers)
14	United States branches

\* Lloyd's of London (Lloyd's), included as an accredited reinsurer, is comprised of individual underwriting syndicates, each of which must meet the requirements for recognition as an accredited reinsurer. As of December 31, 2003, the Department recognized 57 active Lloyd's syndicates as accredited reinsurers.

In addition, in 2003 the Bureau oversaw the operation of 57 risk retention groups, 229 reinsurance intermediaries, 9 insurer-controlling producers, and 404 managing general agents.

The Property Bureau received 19 applications for licensing and 4 applications for recognition as an accredited reinsurer during 2003. Twenty-two insurers were newly licensed including 1 foreign mortgage guaranty insurer, 1 foreign title company and 18 foreign stock insurers. In addition, 3 insurers were accredited, 1 of which was an alien accredited insurer. At the close of the year, 8 domestic stock companies, 1 domestic reciprocal insurer, 2 domestic financial guaranty insurers, 2 mutual insurers, 1 foreign title insurer and 6 foreign stock insurers had license applications pending with the Department.

### 2. Property and Casualty Business

Unless otherwise noted, tables and related data for property and casualty companies refer to the **nationwide operations** of insurers authorized to do business in this State. Data for stock insurers includes United States branches of alien insurers. Data for mutual insurers include the State Insurance Fund, and reciprocals. Data for financial guaranty insurers, mortgage guaranty insurers, title insurers, and co-operative fire insurers are summarized separately.

**a. Premium Volume and Surplus to Policyholders**

Net premiums written during 2002 by all New York-licensed property and casualty insurers aggregated was \$267.6 billion, of which 76.6% represents stock company writings. As noted previously, the following underwriting and investment results deal with the **nationwide** business of New York licensed companies:

**Table 17**  
**NET PREMIUMS WRITTEN AND SURPLUS TO POLICYHOLDERS**  
**Property and Casualty Insurers Licensed in New York State**  
**1997-2002**  
(dollar amounts in millions)

Year	Stock Companies				Mutual Companies			
	No. of Cos.	Net Premiums Written (during year)	Surplus/ Policy-holders (end of year)	Ratio of Premiums to Surplus	No. of Cos.	Net Premiums Written (during year)	Surplus/ Policy-holders (end of year)	Ratio of Premiums to Surplus
1997	623	\$146,706	\$168,327	0.9	73	\$53,644	\$76,793	0.7
1998	620	144,788	175,313	0.8	76	53,453	85,503	0.6
1999	647	146,569	174,440	0.8	71	55,697	88,998	0.6
2000	683	160,173	168,969	0.9	74	57,305	85,206	0.7
2001	710	178,615	175,383	1.0	75	57,015	72,721	0.8
2002	737	205,017	181,615	1.1	78	62,576	63,789	1.0

Source: New York State Insurance Department

**b. Underwriting Results**

Results for 2002 show a **net** underwriting loss of \$19.7 billion for stock companies and a **net** underwriting loss of \$6.0 billion for mutual companies.

**Table 18**  
**UNDERWRITING RESULTS**  
**Property and Casualty Insurers Licensed in New York State**  
**1999-2002**  
(dollar amounts in millions)

Year		<u>Stock Companies</u>		<u>Mutual Companies</u>	
		Number of Companies	Amount	Number of Companies	Amount
1999	Underwriting gains	144	\$ 1,709.7	10	\$ 117.5
	Underwriting losses	441	14,062.9	61	5,484.9
	No gain or loss	62	0.0	0	0.0
2000	Underwriting gains	135	\$ 1,270.1	8	\$ 65.9
	Underwriting losses	495	17,251.3	66	6,920.0
	No gain or loss	53	0.0	0	0.0
2001	Underwriting gains	123	\$ 1,722.9	6	\$ 33.3
	Underwriting losses	518	33,916.8	69	9,037.4
	No gain or loss	69	0.0	0	0.0
2002	Underwriting gains	167	\$ 2,617.3	18	\$ 740.7
	Underwriting losses	480	22,285.4	60	6,759.6
	No gain or loss	90	0.0	0	0.0

Source: New York State Insurance Department

**c. Investment Income and Capital Gains**

Investment income and net capital gains for stock and mutual companies from 1999 to 2002 are as follows:

**Table 19**  
**INVESTMENT INCOME AND CAPITAL GAINS**  
**Property and Casualty Insurers Licensed in New York State**  
**1999-2002**  
**(in millions)**

Year		Stock Companies	Mutual Companies
1999	Net investment income	\$25,328.2	\$ 6,535.4
	Realized capital gains	7,003.3	3,117.2
	Unrealized capital gains	<u>-3,516.1</u>	<u>2,922.7</u>
	Net gain from investments	<u>\$28,815.4</u>	<u>\$12,575.3</u>
2000	Net investment income	\$26,717.1	\$ 6,486.8
	Realized capital gains	5,494.5	5,249.9
	Unrealized capital gains	<u>-12,761.2</u>	<u>-3,475.7</u>
	Net gain from investments	<u>\$19,450.5</u>	<u>\$ 8,261.0</u>
2001	Net investment income	\$23,689.3	\$ 5,735.7
	Realized capital gains	3,353.5	565.6
	Unrealized capital gains	<u>-7,792.4</u>	<u>-7,065.7</u>
	Net gain from investments	<u>\$19,250.4</u>	<u>\$ -764.4</u>
2002	Net investment income	\$26,794.6	\$ 5,366.4
	Realized capital gains	4,350.8	-2,168.6
	Unrealized capital gains	<u>-17,405.1</u>	<u>-6,969.4</u>
	Net gain from investments	<u>\$13,740.4</u>	<u>\$-3,771.7</u>

Source: New York State Insurance Department

**d. Underwriting and Investment Exhibit**

During 2002, dividends to stockholders amounted to \$8.4 billion; while dividends to policyholders aggregated to \$1.3 billion (for both mutual and stock insurers). The aggregate contribution to surplus for 2002 for stock companies was \$18.8 billion compared with \$13.7 billion for 2001.

**Table 20**  
**AGGREGATE UNDERWRITING AND INVESTMENT EXHIBIT**  
**Property and Casualty Insurers Licensed in New York State**  
**2001 and 2002**  
(in millions)

	Stock Companies		Mutual Companies	
	2002	2001	2002	2001
Net gain or loss from:				
Underwriting	\$-19,668.1	\$-32,193.9	\$-6,018.9	\$-9,004.1
Investments <sup>a</sup>	31,145.5	27,042.8	3,197.8	6,301.3
Other income	<u>-1,035.5</u>	<u>1,069.3</u>	<u>361.5</u>	<u>504.3</u>
Net gain or loss	\$ 10,441.8	\$-4,081.8	\$-2,459.7	\$-2,198.5
Less:				
Dividends to policyholders	691.3	809.6	650.0	672.9
Federal income taxes incurred	<u>956.1</u>	<u>-1,015.1</u>	<u>-1,284.5</u>	<u>-285.5</u>
Net income	\$ 8,794.4	\$-3,876.3	\$-1,825.1	\$-2,585.9
Surplus changes other than net income:				
Dividends to stockholders				
• Cash	\$ -8,410.5	\$-9,668.4	\$ 0.0	\$ 0.0
• Stock	-9.3	-28.1		
US Branches - Net remittance to/from home office	<u>-1.0</u>	<u>-18.9</u>	<u>0.0</u>	<u>0.0</u>
Total dividends and remittance	\$ -8,420.7	\$-9,715.5	\$ 0.0	\$ 0.0
Unrealized capital gains/losses	-17,405.1	-7,789.7	-6,969.4	-7,065.7
Cumulative effect of changes in accounting principles <sup>b</sup>	1,331.5	5,510.4	244.4	7.7
Miscellaneous items <sup>c</sup>	6,993.2	4,506.3	1,161.9	2,452.8
Contributions to surplus	<u>18,838.9</u>	<u>13,671.7</u>	<u>1.0</u>	<u>7.1</u>
Total other sources	<u>\$ 1,337.8</u>	<u>\$ 6,183.2</u>	<u>\$-5,562.1</u>	<u>\$-4,598.1</u>
Net increase or decrease in surplus	<u>\$10,132.2</u>	<u>\$ 2,306.9</u>	<u>\$-7,389.2</u>	<u>\$-7,184.0</u>

<sup>a</sup> Excludes unrealized capital gains.

<sup>b</sup> This account was added to the NAIC Annual Statement Blank in 2001.

<sup>c</sup> In 2001, "Changes in net deferred income tax" was added to the NAIC Annual Statement Blank and is included here in "Miscellaneous items," while "Extraordinary amounts of taxes for prior years" was a deleted item.

Source: New York State Insurance Department



**e. Selected Annual Statement Data**

From 1999 to 2002 aggregate (*i.e.*, stock and mutual) net premiums written increased by 32.3%; admitted assets increased 13.5%; unearned premium and loss reserves increased 18.5%; and other liabilities increased 65.6%. Capital and surplus to policyholders decreased by 6.6%.

**Table 21**  
**SELECTED ANNUAL STATEMENT DATA**  
**Property and Casualty Insurers Licensed in New York State**  
**1999-2002**  
 (dollar amounts in millions)

	2002	2001	2000	1999
<b>Stock Companies</b>				
Number of insurers	737	710	683	647
Net premiums written	\$205,017	\$178,615	\$160,173	\$146,569
Admitted assets	626,595	574,923	511,202	504,597
Unearned premium & loss reserves	356,381	327,186	295,849	285,537
Other liabilities	88,631	72,353	46,383	44,619
Capital	5,209	5,025	4,932	4,782
Surplus funds	181,615	175,383	168,969	174,440
<b>Mutual Companies</b>				
Number of insurers	78	75	74	71
Net premiums written	\$ 62,576	\$ 57,015	\$ 57,305	\$ 55,697
Admitted assets	165,464	168,215	192,189	193,235
Unearned premium & loss reserves	77,708	73,067	80,098	80,872
Other liabilities	23,967	22,427	26,939	23,366
Surplus to policyholders	63,781	72,721	85,206	88,998

Source: New York State Insurance Department

## f. Direct Premiums Written, by Line

There were large increases in property/casualty writings in New York State in 2002 as direct premiums written for all property/casualty lines increased by 14%. Major lines, *i.e.*, those with greater than \$1 billion premium written in 2002, with at or above average year-to-year increases in 2002 included other liability (42%), commercial multi-peril (14%), and financial guaranty (51%).

**Table 22**  
**DIRECT PREMIUMS WRITTEN BY PROPERTY/CASUALTY INSURERS**  
**New York State — 1998-2002<sup>1</sup>**  
**(dollar amounts in millions)**

Property and Casualty Lines	1998	1999	2000	2001	2002	Percentage Change	
						1998-2002	2001-2002
All Premiums Written	23,098	22,173	23,282	26,047	29,588	28%	14%
Private Passenger Auto	8,219	8,165	8,173	9,018	9,913	21	10
Bodily Injury and Property Damage Liability	5,479	5,368	5,352	6,040	6,718	23	11
Comprehensive and Collision	2,739	2,797	2,821	2,978	3,195	17	7
Commercial Auto	1,412	1,429	1,491	1,755	1,985	41	13
General (Other) Liability	2,734	1,825	2,148	2,447	3,478	27	42
Workers' Compensation	2,686	2,725	3,154	3,283	3,412	27	4
Commercial Multi-Peril	2,071	2,002	2,085	2,349	2,688	30	14
Homeowners' Multi-Peril	2,181	2,230	2,326	2,469	2,662	22	8
Financial Guaranty <sup>2</sup>	389	381	449	664	1,006	159	51
Medical Malpractice	873	859	815	858	945	8	10
Inland Marine	487	527	519	607	660	36	9
Accident and Health	393	410	442	498	473	20	-5
Ocean Marine	421	353	351	404	469	11	16
Fire	269	256	277	334	411	53	23
Fidelity and Surety	330	348	357	380	358	9	-6
Allied Lines	104	122	135	173	256	146	48
Mortgage Guaranty	155	164	170	203	231	49	14
Product Liability	111	103	111	140	162	46	16
Boiler and Machinery	59	56	62	76	91	54	19
Aircraft	41	40	47	56	78	90	39
Credit	44	45	41	39	40	-9	1
Burglary and Theft	10	10	10	9	8	-22	-10
All Other <sup>3</sup>	110	123	119	286	263	139	-8

**NOTE:** Detail may not add to totals due to rounding.

<sup>1</sup> New York State business of all NYS licensed companies. Includes Federal employee health benefits program premium.

<sup>2</sup> Includes monoline and non-monoline insurers.

<sup>3</sup> Includes Farmowners Multi-Peril, Multi-Peril Crop, Federal Flood, Earthquake, and Aggregate Write-Ins.

### **g. Audit and Analysis**

The 2002 Annual Statements of the companies authorized to transact business in the State of New York were filed for audit and analysis in 2003, as were those of reinsurers accredited in this State. Issues arising during the audits were resolved with the companies. As a result of the audits, some filed statements were adjusted to bring reported figures into compliance with New York requirements.

All property/casualty insurers are required to file quarterly statements. Insurers licensed pursuant to Section 6302 of the New York Insurance Law are also required to file a supplemental schedule of special risks. Approximately 2,874 quarterly statements were received, reviewed for completeness and accuracy, and the financial data analyzed.

### **h. State Insurance Fund**

All purchases and sales of stocks and bonds by the State Insurance Fund are subject to the approval of the Superintendent. During 2003, the State Insurance Fund acquired stocks and bonds totaling \$16.6 billion and sold stocks and bonds totaling \$10.0 billion. Upon review, the Property Bureau recommended the approval of the total acquisitions of \$16.6 billion and the total sales of \$10.0 billion. In 2002, the Bureau recommended approval of acquisitions totaling \$30.2 billion and sales totaling \$7.5 billion.

### **i. CPA-Audited Financial Statements**

New York Insurance Law Section 307(b) requires licensed insurers to file an annual financial statement, certified by an independent certified public accountant (CPA), on or before May 31 of each year. CPA-audited financial statements were received and reviewed for 905 companies in 2002. There were 12 companies entitled to exemption from the filing requirements.

### **j. Public Inspection of Records**

The Financial Division of the Property Bureau provides public access to various Insurance Department documents pursuant to the Freedom of Information Law (FOIL). In 2003, 132 FOIL requests to review and copy records maintained by the Financial Division were received from members of the public.

### **k. Holding Company-Related Transactions**

Pursuant to Article 15 of the New York Insurance Law and Department Regulation 52, the Property Bureau is responsible for the review and approval of transactions within holding company systems. During 2003, 153 holding company transaction files and 321 holding company registration statements and amendments were reviewed and closed by the Property Bureau. In addition, 21 notices of acquisition of control of domestic insurers were reviewed and closed by the Property Bureau.

### 3. Financial Guaranty Insurance

New York Insurance Law Article 69 made financial guaranty insurance a separate kind of insurance effective May 14, 1989. Financial guaranty insurance may be written only by an insurer empowered to write financial guaranty business as described in Section 1113(a).

As of December 31, 2002, there were 8 domestic and 6 foreign financial guaranty insurers licensed in New York.

**Table 23**  
**NET PREMIUMS WRITTEN AND SURPLUS TO POLICYHOLDERS**  
**Financial Guaranty Insurers Licensed in New York State, 1999-2002**  
(dollar amounts in millions)

Year	Net Premiums Written (during year)	Surplus to Policyholders (end of year)	Ratio of Premiums to Surplus
1999	\$1,297.2	\$7,162.5	0.18
2000	1,404.5	7,372.8	0.19
2001	1,894.7	8,223.1	0.23
2002	2,670.8	9,403.9	0.28

Source: New York State Insurance Department

**Table 24**  
**UNDERWRITING RESULTS**  
**Financial Guaranty Insurers Licensed in New York State, 2000-2002**  
(dollar amounts in millions)

	2002		2001		2000	
	<u>Underwriting</u> Gain	<u>Loss</u>	<u>Underwriting</u> Gain	<u>Loss</u>	<u>Underwriting</u> Gain	<u>Loss</u>
Number of Companies	9	5	8	5	8	6
Amount	\$970.3	\$28.1	\$791.6	\$50.4	\$569.0	\$32.5

Source: New York State Insurance Department

**Table 25**  
**INVESTMENT INCOME AND CAPITAL GAINS**  
**Financial Guaranty Insurers Licensed in New York State, 1999-2002**  
(in millions)

	2002	2001	2000	1999
Net investment income	\$1,125.1	\$1,067.3	\$1,096.1	\$860.2
Realized capital gains	168.8	109.8	355.2	48.9
Unrealized capital gains	51.3	12.2	-344.0	34.9
Net gain from investments	<u>\$1,345.3</u>	<u>\$1,189.4</u>	<u>\$1,107.2</u>	<u>\$944.1</u>

Source: New York State Insurance Department

**Table 26**  
**AGGREGATE UNDERWRITING AND INVESTMENT EXHIBIT**  
**Financial Guaranty Insurers Licensed in New York State**  
**1999-2002**  
**(in millions)**

	2002	2001	2000	1999
Net gain or loss from:				
Underwriting	\$ 942.1	\$ 741.3	\$ 536.5	\$ 593.0
Investments <sup>a</sup>	1,294.0	1,177.1	1,451.2	909.2
Other Income	<u>15.7</u>	<u>10.8</u>	<u>3.5</u>	<u>-8.7</u>
Net gain or loss	<u>\$2,251.8</u>	<u>\$1,929.2</u>	<u>\$1,991.2</u>	<u>\$1,493.4</u>
Less:				
Dividends to policyholders	0.0	0.0	0.0	0.0
Federal income taxes incurred	<u>578.2</u>	<u>506.6</u>	<u>337.1</u>	<u>318.1</u>
Net income	<u>\$1,673.6</u>	<u>\$1,422.7</u>	<u>\$1,654.1</u>	<u>\$1,175.4</u>
Surplus changes other than net income:				
Dividends to stockholders				
• Cash	\$ -442.2	\$ -506.1	\$-1,020.2	\$-360.0
• Stock	<u>0.0</u>	<u>-12.5</u>	<u>0.0</u>	<u>0.0</u>
Total dividends and remittance	\$ -442.2	\$ -518.6	\$-1,020.2	\$ -360.0
Unrealized capital gains	51.3	12.2	-344.0	34.9
Cumulative effect of changes in accounting principles <sup>b</sup>	11.1	-43.6	—	0.0
Miscellaneous items <sup>c</sup>	-361.9	-390.5	-811.6	-577.3
Contributions to surplus	<u>220.8</u>	<u>317.5</u>	<u>4.1</u>	<u>469.2</u>
Total other sources	<u>\$ -520.9</u>	<u>\$ -623.0</u>	<u>\$-2,171.7</u>	<u>\$-433.2</u>
Net increase or decrease in surplus	<u>\$ 1,152.6</u>	<u>\$ 799.6</u>	<u>\$ -517.6</u>	<u>\$ 742.1</u>

<sup>a</sup> Excludes unrealized capital gains.

<sup>b</sup> This account was added to the NAIC Annual Statement Blank in 2001.

<sup>c</sup> In 2001, "Changes in net deferred income tax" was added to the NAIC Annual Statement Blank and is included here in "Miscellaneous items," while "Extraordinary amounts of taxes for prior years" was a deleted item.

Source: New York State Insurance Department

**Table 27**  
**SELECTED ANNUAL STATEMENT DATA**  
**Financial Guaranty Insurers Licensed In New York State**  
**1999-2002**  
(dollar amounts in millions)

	<b>2002</b>	<b>2001</b>	<b>2000</b>	<b>1999</b>
Number of Companies	14	13	14	12
Exposure	\$2,174,240.9	\$1,855,915.0	\$1,668,180.0	\$1,532,586.0
Net premiums written	2,670.8	1,894.7	1,404.5	1,297.1
Admitted assets	25,595.3	22,690.8	20,048.5	18,207.9
Unearned premium & loss reserves	8,336.1	7,227.5	6,613.2	5,925.8
Other liabilities	7,855.3	7,240.1	6,062.5	5,119.5
Capital	247.0	231.0	211.0	203.5
Surplus funds	9,403.9	8,223.1	7,372.8	7,162.5

Source: New York State Insurance Department

#### 4. Mortgage Guaranty Insurance

At year-end 2002, there were 2 domestic and 23 foreign companies licensed to transact mortgage guaranty business in New York.

**Table 28**  
**NET PREMIUMS WRITTEN AND SURPLUS TO POLICYHOLDERS**  
**Mortgage Guaranty Insurers Licensed in New York State**  
**1999-2002**  
(dollar amounts in millions)

<b>Year</b>	<b>Net Premiums Written (during year)</b>	<b>Surplus to Policyholders (end of year)</b>	<b>Ratio of Premiums to Surplus</b>
1999	\$2,691.0	\$2,809.5	0.96
2000	2,925.0	3,591.2	0.81
2001	3,211.1	4,090.8	0.78
2002	3,539.5	3,779.8	0.93

Source: New York State Insurance Department

**Table 29**  
**AGGREGATE UNDERWRITING AND INVESTMENT EXHIBIT**  
**Mortgage Guaranty Insurers Licensed in New York State**  
**1999-2002**  
**(in millions)**

	2002	2001	2000	1999
Net gain or loss from:				
Underwriting	\$1,525.6	\$1,505.1	\$1,515.4	\$1,248.2
Investments <sup>a</sup>	798.3	746.9	640.1	582.2
Other Income	<u>-2.6</u>	<u>9.3</u>	<u>-55.1</u>	<u>12.8</u>
Net gain or loss	\$2,321.3	\$2,261.4	\$2,100.4	\$1,843.2
Less:				
Dividends to policyholders	0.0	0.0	0.0	0.0
Federal income taxes incurred	<u>824.7</u>	<u>350.3</u>	<u>260.7</u>	<u>480.9</u>
Net income	<u>\$1,496.6</u>	<u>\$1,911.1</u>	<u>\$1,839.7</u>	<u>\$1,362.4</u>
Surplus changes other than net income:				
Dividends to stockholders				
• Cash	\$ -876.1	\$ -258.4	\$ -52.5	\$ -495.0
• Stock	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
Total dividends	\$ -876.1	\$ -258.4	\$ -52.5	\$ -495.0
Unrealized capital gains	56.1	35.6	23.5	97.3
Cumulative effect of changes in accounting principles <sup>b</sup>	0	78.8	—	0.0
Miscellaneous items <sup>c</sup>	-1,203.2	-1,164.6	-991.8	-941.4
Contributions to surplus	<u>47.6</u>	<u>10.5</u>	<u>-56.9</u>	<u>-115.7</u>
Total other sources	<u>\$-1,975.6</u>	<u>\$-1,298.1</u>	<u>\$-1,077.7</u>	<u>\$-1,454.8</u>
Net increase or decrease in surplus	<u>\$ -479.0</u>	<u>\$ 613.0</u>	<u>\$ 762.0</u>	<u>\$ -92.4</u>

<sup>a</sup> Excludes unrealized capital gains.

<sup>b</sup> This account was added to the NAIC Annual Statement Blank in 2001.

<sup>c</sup> In 2001, "Changes in net deferred income tax" was added to the NAIC Annual Statement Blank and is included here in "Miscellaneous items," while "Extraordinary amounts of taxes for prior years" was a deleted item.

Source: New York State Insurance Department

**Table 30**  
**SELECTED ANNUAL STATEMENT DATA**  
**Mortgage Guaranty Insurers**  
**1999-2002**  
(dollar amounts in millions)

	<b>2002</b>	<b>2001</b>	<b>2000</b>	<b>1999</b>
Number of companies	25	23	24	22
Net premiums written	\$ 3,539.5	\$ 3,211.1	\$ 2,925.0	\$ 2,691.0
Admitted Assets	19,279.3	17,102.7	14,718.2	12,580.6
Unearned premium & loss reserves	5,842.5	5,269.9	4,724.6	4,391.7
Other liabilities	9,637.0	7,741.9	6,402.4	5,379.4
Capital	66.5	62.0	63.8	58.8
Surplus	3,799.8	4,090.8	3,591.2	2,809.5

Source: New York State Insurance Department

**5. Title Insurance**

Nine domestic and 16 foreign companies were licensed to write title insurance in this State at the close of 2002.

**Table 31**  
**SELECTED ANNUAL STATEMENT DATA**  
**Domestic Title Insurance Companies**  
**1999-2002**  
(dollar amounts in millions)

	<b>2002</b>	<b>2001</b>	<b>2000</b>	<b>1999</b>
Number of Companies	9	10	10	10
Net premiums written	\$873.5	\$613.1	\$496.3	\$559.1
Admitted assets	507.5	440.1	417.4	429.1
Liabilities	320.0	273.4	254.4	241.4
Capital	9.4	10.9	10.8	10.8
Surplus	187.6	166.7	163.0	189.0

Source: New York State Insurance Department



## 6. Advance Premium Corporations and Assessment Corporations

At year-end 2002, there were 18 advance premium corporations under the supervision of the Property Bureau. The total number of advance premium corporations remained unchanged from 2001 to 2002. The net premium volume of the **advance premium corporations** increased by 46% from the prior year.

A total of 27 **assessment corporations** were under the Bureau's supervision at year-end 2002, one fewer than in 2001. The net premium volume of these 27 companies increased by 14.6% from the prior year.

During 2002, the Bureau initiated 10 examinations of advance premium and assessment corporations.

**Table 32**  
**SELECTED ANNUAL STATEMENT DATA**  
**Advance Premium and Assessment Corporations**  
**2001-2003**  
**(dollar amounts in millions)**

Year		Total	Advance Premium Corporations	Assessment Corporations
1999	Number of companies	46	18	28
	Total assets	\$1,184.0	\$991.4	\$192.6
	Net premiums written	471.1	406.8	64.3
	Surplus funds	547.0	428.0	119.0
2000	Number of companies	46	18	28
	Total assets	\$1,228.0	\$1,024.7	\$203.3
	Net premiums written	497.9	429.6	68.3
	Surplus funds	568.3	443.8	124.5
2001	Number of companies	46	18	28
	Total assets	\$1,294.1	\$1,079.0	\$215.1
	Net premiums written	543.4	467.8	75.6
	Surplus funds	559.9	431.5	128.4
2002	Number of companies	45	18	27
	Total assets	\$1,499.0	\$1,267.8	\$231.2
	Net premiums written	769.5	682.9	86.6
	Surplus funds	565.7	434.6	131.1

Source: New York State Insurance Department

## 7. Special Risk Insurers (Free Trade Zone)

Calendar year 2002 was the 24<sup>th</sup> full year of operation for companies licensed as special risk insurers pursuant to Section 6302 of the Insurance Law. There were 189 licensed companies as of December 31, 2002. Net premiums written during the year amounted to \$719.4 million, bringing the net premiums written since inception to approximately \$6.8 billion. Net premiums written since inception are as follows:

**Table 33**  
**NET PREMIUM WRITTEN**  
**By Special Risk Insurers in the Free Trade Zone**  
**1978-2002**  
**(dollar amounts in millions)**

1978-1996	\$3,894.2
1997	398.9
1998	466.2
1999	482.6
2000	423.9
2001	407.6
2002	719.4
<b>Total</b>	<b>\$6,792.8</b>

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Source: New York State Insurance Department

## 8. Risk Retention Groups

On October 27, 1986, the Liability Risk Retention Act of 1986, a significant federal statute affecting the insurance industry, was enacted. Generally, the legislation permits the organization and operation of risk retention groups and purchasing groups for the purpose of providing or obtaining commercial liability insurance coverage. The Financial Regulation Division of the Property Bureau regulates risk retention groups and the Market Product Division of the Property Bureau regulates purchasing groups.

A risk retention group is an insurance company owned by its members and organized for the purpose of assuming and spreading among the members all or a portion of their risk exposure.

As of December 31, 2002, 55 risk retention groups had notified the Department of their intention to do business in New York under the provisions of the federal legislation.

In calendar year 2002, 55 risk retention groups filing financial statements with this Department reported total direct premiums written of \$944.4 million and total net premiums written of \$403.0 million. These risk retention groups reported direct premiums written of \$127.0 million in New York State during this same period.

## 9. Financial Examinations of Insurers

### a. Number of Examinations

The Property Bureau's Financial Examination Unit is required to conduct examinations of all domestic insurers on a regular basis. During calendar year 2003 a total of 162 such examinations were conducted.

**Table 34**  
**EXAMINATIONS CONDUCTED**  
**by the Financial Regulation Division of the Property Bureau**  
**2003**

	<u>Regularly Scheduled</u>			<u>Other Financial Exams</u>		Increase in Capital <sup>2</sup> and Other
	Total	Started in 2003	Started Prior to 2003	Special	On Organi- zation <sup>1</sup>	
Property and casualty insurers, including financial guaranty insurers	156	52	101	1	2	0
Other insurers	3	3	0	0	0	0
Title and mortgage guaranty insurers	3	3	0	0	0	0
<b>Total</b>	<b>162</b>	<b>58</b>	<b>101<sup>3</sup></b>	<b>1</b>	<b>2</b>	<b>0</b>

<sup>1</sup> Examination conducted when insurer is first incorporated in New York State.

<sup>2</sup> Examination conducted when insurer increases its capital.

<sup>3</sup> This total includes 26 reports with completed field work that were not filed as of 1/1/04.

### b. Electronic Audit Program – TeamMate

During 2003, the Financial Examinations Unit began using an electronic workpaper program for its examinations. This software, developed by PricewaterhouseCoopers and known as "TeamMate Audit Management System," ensures uniformity, consistency and efficiency in the examination process.

An extensive amount of time and resources were devoted to customizing this software so that audit programs reflected the provisions of the New York Insurance Law as well as current examination procedures developed by the National Association of Insurance Commissioners. After testing the software on two examinations, the program was distributed to all field examiners and supervisors during 2003. The software was used on 14 examinations during 2003 and will be used on all examinations starting in 2004.

## 10. Lloyd's of London

Underwriters at Lloyd's (Lloyd's of London) consist of underwriting syndicates at Lloyd's which meet the requirement for recognition as accredited reinsurers in New York. As of December 31, 2003,

57 active syndicates at Lloyd's were recognized as accredited reinsurers by the Department. Each syndicate is required to maintain a trust fund in New York and the amount deposited in each trust fund is required to equal each syndicate's gross liabilities for U.S. situs reinsurance business. In addition, all syndicates together must maintain a minimum surplus in trust, on a joint and several basis, of not less than \$100 million, for the protection of United States ceding insurers.

## **11. Certified Capital Companies**

Part FF of Chapter 63 of the Laws of 2000, signed by Governor George E. Pataki on May 15, 2000, established New York's Certified Capital Company (CAPCO) Program Three. CAPCO Program Three provides for the allocation of tax credits in an aggregate amount of \$150 million for calendar year 2002. On December 21, 2000, the Department allocated the 2002 tax credits to 44 insurers that invested in five of the seven CAPCOs certified under Program Three. The statute further provides that each Program Three CAPCO is to invest one-third of its certified capital in New York qualified businesses located in "empire zones" established pursuant to article 18-B of the Municipal Law and another one-third in underserved areas outside the empire zones.

New York's CAPCO Program, originally established by Chapter 389 (Sections 142 through 145) of the Laws of 1997, intended to spur the growth of businesses and employment in New York State by providing a dollar-for-dollar tax credit to insurers investing in certified CAPCOs. The tax credits allocated to such insurers are spread out over a ten-year period and the CAPCOs certified under the Program are required to invest at least half of their certified capital in qualified businesses, as defined by statute. CAPCO Program Two was established by Chapter 407 (Part S) of the Laws of 1999. The Department allocated an aggregate of \$130 million in tax credits under the two Programs: \$50 million to 24 insurers for calendar year 1999; \$50 million to 26 insurers for 2000; and \$30 million to 28 insurers for 2001.

As of December 31, 2002, CAPCOs invested approximately \$117.9 million in 100 qualified businesses. Program One CAPCOs invested 53.6% of their total \$100 million certified capital; Program Two CAPCOs invested 45% of their \$30 million total; and Program Three CAPCOs invested 33.9% of their \$150 million certified capital.

The qualified businesses in which CAPCOs invested were predominately high technology companies; significant investments were also made in media, financial services and manufacturing. Fifty-two qualified businesses had less than \$1 million and 13 businesses had over \$5 million in assets at the time of a CAPCO's initial investment; the CAPCOs' investments in these businesses accounted for approximately 43.4% and 18.1%, respectively, of the total invested. Fifty-nine "early-stage" businesses, as defined by the statute, received approximately \$55.6 million (47.2%). Seventy-four qualified businesses, headquartered downstate (New York City, Long Island and Westchester), received 76.5% of the total dollars invested; 12 businesses located in the Capital District received 11.6%.

Of the \$50.8 million Program Three investments made, 38.1% were made in 20 qualified businesses located in Manhattan, 45.8% in 20 businesses in "underserved areas," defined by the statute as outside Manhattan and Empire Zones, and 15.9% in five businesses located in Empire Zones.

With CAPCO and other venture entity investments in these qualified businesses, overall the total number of employees in these businesses increased by 641 positions, and the number of New York employees increased by 38 positions, since inception of the CAPCO Program in 1997.

## 12. Filings Involving Rate/Rating Rule Changes, Policy Forms, Territories and Classifications

### a. Number of Filings

During 2003, the Market Regulatory Section of the Property Bureau received 8,481 filings involving changes in rates, rating rules, policy forms, rate classifications and rating territories submitted by rate service organizations, joint underwriting associations and insurers. The filings were submitted for the following lines of business:

**Table 35**  
**NUMBER OF FILINGS RECEIVED, BY TYPE\***  
**Market Regulatory Section of the Property Bureau**  
**2003**

Line of Business	Rates & Rules	Policy Forms	Classes and Territories	Totals
Fire and Allied Lines	525	326	1	852
Farmowners Multiple Peril	50	32	1	83
Homeowners Multiple Peril	255	169	2	426
Multiple Line	74	77	0	151
Commercial Multiple Peril	457	320	3	780
Inland Marine	249	227	0	476
Medical Malpractice	319	62	4	385
Earthquake	1	0	0	1
Flood	3	5	0	8
Rain	3	2	0	5
Workers' Compensation & Employer's Liability	122	101	0	223
Other Liability	1,313	1,121	3	2,437
Motor Vehicle Insurance	1,219	640	5	1,864
Aircraft	12	13	0	25
Fidelity & Surety	135	60	3	198
Glass	10	4	0	14
Burglary & Theft	163	98	0	261
Boiler & Machinery	60	40	0	100
Credit	1	0	0	1
Animal Mortality	9	8	0	17
Mortgage Guaranty	22	14	0	36
Residual Value	2	2	0	4
Title	6	5	0	11
Financial Guaranty	6	109	0	115
Prepaid Legal Service Plan	6	2	0	8
Warranty Reimbursement	0	0	0	0
<b>Total</b>	<b>5,022</b>	<b>3,437</b>	<b>22</b>	<b>8,481</b>

\*These figures include approximately 281 consent-to-rate filing applications; 67 group property & casualty filings; 110 manuscript policy form filings; and 177 rating plans submitted in 2003. During 2003, 268 policy form filings and 343 rate or rating rule filings were disapproved. In addition, the Bureau continued speed-to-market (STM) initiatives and accepted electronic submission of filings through the System for Electronic Rate and Form Filing (SERFF). The Bureau received 553 STM and 633 SERFF form and rate filings in 2003, which are included above.

**b. Advisory Rate/Loss Cost Changes**

The following table lists major revisions in rates or loss costs that were approved or acknowledged during 2003. Loss costs apply to the voluntary market and are advisory, *i.e.*, they do not have to be adopted by any insurer. They reflect the experience of all companies that report to the rate service organization. Loss costs are used by the majority of insurers for most lines of business as a basis for determining their individual company rates.

**Table 36  
MAJOR EFFECT OF PRINCIPAL RATE & LOSS COST CHANGES  
Filed in 2003 by Property and Casualty  
Rate Service Organizations**

	<b>Percent Changes in Average State-Wide Rates</b>
<b><u>AUTOMOBILE</u></b>	
<b>Automobile Insurance Plans Service Office</b>	
<b>Private Passenger Automobile</b>	
(Rates Revised)	
Bodily Injury Liability	+14.0
Property Damage Liability	-0.3
Personal Injury Protection	+33.0
Uninsured Motorists	+37.3
Liability Subtotal	+21.2
Comprehensive	-16.1
Collision	+9.2
Physical Damage Subtotal	-1.3
<b>Total All Coverages</b>	<b>+19.7</b>
Effective August 15, 2003	
<b>Automobile Insurance Plans Service Office</b>	
<b>Commercial Automobile – Public Livery</b>	
(Rates Revised)	
<b>Taxis</b>	
Bodily Injury Liability	0.0
Property Damage Liability	0.0
Personal Injury Protection	0.0
<b>Medicars and Ambulettes</b>	
Bodily Injury Liability	+15.0
Property Damage Liability	+15.0
Personal Injury Protection	+15.0
<b>Remainder of Social Service</b>	
Bodily Injury Liability	+15.0
Property Damage Liability	+15.0
Personal Injury Protection	+15.0
<b>Limousines and Van Pools</b>	
Bodily Injury Liability	0.0
Property Damage Liability	0.0
Personal Injury Protection	0.0

**School and Church Buses**

Bodily Injury Liability	0.0
Property Damage Liability	0.0
Personal Injury Protection	0.0

**Total All Vehicle Types and Coverages**

Effective March 1, 2003	+7.3
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**Automobile Insurance Plans Service Office  
Commercial Automobile – Excluding Public Autos  
(Rates Revised)**

**Commercial Cars and Miscellaneous Lines**

Bodily Injury Liability	+19.0
Property Damage Liability	+12.0
Personal Injury Protection	+8.0
Liability Subtotal	+16.8

**Garages**

Bodily Injury Liability	+1.0
Property Damage Liability	+10.0
Personal Injury Protection	+11.5
Liability Subtotal	+4.1

**Zone Rated Risks**

Bodily Injury Liability	+10.0
Property Damage Liability	+15.0
Personal Injury Protection	+10.0
Liability Subtotal	+11.3

Comprehensive and Collision	-7.5
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<b>Total Liability</b>	<b>+15.8</b>
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<b>Total All Coverages</b>	<b>+14.9</b>
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Effective April 1, 2004

**Insurance Services Office, Inc.**

**Commercial Automobile**

(Loss Costs Revised)

**Commercial Cars**

Single Limit Liability	+9.5
Personal Injury Protection	+10.0
Liability Subtotal	+9.5
Comprehensive	-10.0
Collision	-10.0
Physical Damage Subtotal	-10.0
<b>Total Commercial Cars</b>	<b>+7.1</b>

**Garages**

Single Limit Liability	+10.0
Personal Injury Protection	+10.0
Liability Subtotal	+10.0

Physical Damage – Garage Dealers	
Comprehensive	-10.0
Collision	0.0
Physical Damage – Garage Keepers	
Comprehensive	-10.0
Collision	+10.0
Phy. Dam. – Garage Dealers & Keepers Subtotal	-5.4
<b>Total Garages</b>	<b>+3.1</b>

**Private Passenger Types**

Single Limit Liability	0.0
Personal Injury Protection	+15.0
Liability Subtotal	+1.0
Comprehensive	-15.0
Collision	0.0
Physical Damage Subtotal	-5.1
<b>Total Private Passenger Types</b>	<b>-0.6</b>

**Total All Coverage**

+5.0

**Total Liability**

+7.7

**Total Physical Damage**

-7.6

Effective April 1, 2004

**LIABILITY OTHER THAN AUTOMOBILE**

**American Association of Insurance Services**

**Employment Related Practices Liability Coverage**

Artisans and Businessowners Programs  
(Increased Limit Factors Revised)  
Effective September 1, 2003

0.0

**Insurance Service Office, Inc.**

**Commercial General Liability**

(Basic Limits Loss Cost Revised)

Manufacturers and Contractors	+6.8
Owners, Landlords and Tenants	+8.5

**Total Premises/Operations**

+7.6

Products	+2.0
Local Products/Completed Operations	+10.0

**Total Products/Completed Operations**

+7.9

**Total All Coverages**

+7.6

Effective February 1, 2003

**Commercial General Liability**

**Insurance Service Office, Inc.**

(Basic Limits Loss Cost Revised)

New York City Apartments and Tenements Classes	+24.9
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Effective November 1, 2003

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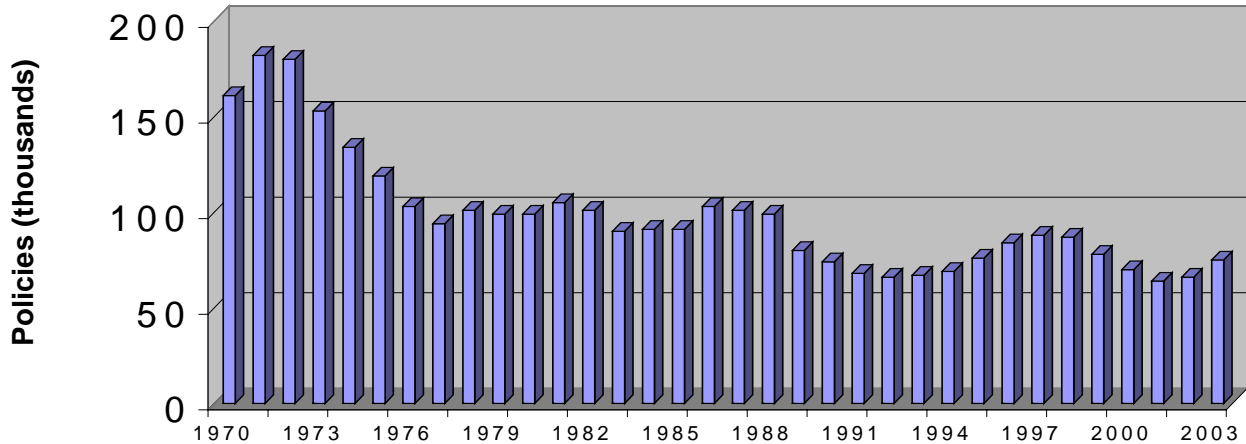


### 13. New York Property Insurance Underwriting Association (NYPIUA)

#### a. Policies Issued

The following graph illustrates the number of policies issued by the New York Property Insurance Underwriting Association from 1970 through 2003:

**Chart A**  
**NYPIUA - Policies Issued, 1970 to 2003**



Following the peak year of 1971 (182,000 policies), there was a steady decline through 1977 in the number of policies issued annually by the Association. The period 1977 through 1982 saw comparative stability, with the number of policies ranging between 94,000 and 105,000. The sharp decline experienced from 1982 to 1983 can be attributed to soft market conditions, while 1986 showed a sharp increase in policies issued as the voluntary insurance market hardened. Another soft insurance market accounted for the large decrease in the number of policies issued by the Association in 1989 and continued through 1994 as many NYPIUA policies were rewritten in the voluntary market. The number of NYPIUA policies began to increase again in 1993 reflecting, in part, the ongoing concern for adequate coastal property insurance coverage. In 1998, 1999, 2000 and 2001 the number of NYPIUA policies declined. The number of policies issued by the Association has increased in 2002 and 2003. The total number of policies issued in 2003 was 74,924.

#### b. Financial Information

For the fiscal year ending December 31, 2003, the Association's Financial Report indicated premiums earned of \$29,484,701 and a net underwriting gain of \$4,484,762. Other income of \$4,597,540 was comprised of net investment income of \$5,030,231; premium balances charged off \$29,893; bond amortization loss of \$594,008; gain on sale of securities of \$116,709; grant program of \$61,299 and policy installment fees of \$135,800, resulted in net income before taxes of \$9,082,302. The change in assets not admitted of \$32,970 and taxes incurred of \$351,101 resulted in a net change in the Members' Equity Account of \$8,698,231. The cumulative operating profit as of December 31, 2003 was \$126,899,528. After all assessments (net of distribution of \$40,268,192), the net Members' Equity Account totaled \$86,631,336.

In accordance with Section 5405(c) of the New York Insurance Law, the Association estimated a surplus from operations of \$2,865,000 for the calendar year 2004. There will be no need to credit the

Association with any funds from the New York Property/Casualty Insurance Security Fund for the year beginning January 1, 2004, since its assets exceed its liabilities.

Based on the Department's own review of the data submitted, no estimated deficit from operations was approved for the Association for the Fiscal Year ending December 31, 2004.

For four consecutive years (1986-1989), NYPIUA made special distributions, initiated by the Department in the form of dividends, totaling \$26.3 million to its commercial policyholders because of the favorable underwriting results those policies attained during those years. However, the underwriting results for later years were not as favorable and therefore did not warrant distributions. If underwriting results improve in the coming years, further distributions will be made to those classes generating favorable results.

### **c. Rate Revisions**

During 2003, there were no rate revisions approved for the Association.

### **d. Legislation in 2003**

Chapter 85 of the Laws of 2003 extended the authority of the New York Property Insurance Underwriting Association to operate until April 30, 2004.

## **14. Medical Malpractice Insurance**

### **a. Establishment of Rates and Premium Surcharges**

Chapter 119 of the Laws of 2003 extended for one year the authority of the Superintendent of Insurance to establish rates for policies providing coverage for physicians and surgeons medical malpractice liability insurance. This legislation also extended the provision that allowed for the application of surcharges of up to 8% annually, beginning July 1, 1989, upon the then-established rates if required to satisfy any deficiency for the policy periods July 1, 1985 through June 30, 2004.

The Department established primary medical malpractice insurance rates in New York for the July 1, 2003 through June 30, 2004 policy year. The combined overall rate level effect was +9.5% above the rates established for the previous year. This overall effect included simultaneously approved classification and territory changes for all insurers in the voluntary market, which resulted in rate changes for some insureds that ranged between approximately -16.9% and +23.0%. Rate changes for the Medical Malpractice Insurance Plan, which provides coverage for insureds unable to obtain coverage in the voluntary market, ranged between +17.3% and +43.3%.

These rate increases followed six years in which physicians and surgeons medical malpractice insurance rates remained relatively unchanged.

### **b. Claims-Made Factors and Optional Tail Factors**

The claims-made rate is obtained by multiplying the established occurrence rate by the claims-made factor. This factor varies depending on the number of years the insured has been covered by the claims-made program. The rate for the optional tail coverage required to be offered upon termination of coverage is based on the number of years the physician has completed in the claims-made program, and is obtained by multiplying the established occurrence rate by the factor established by the Superintendent. For the 2003 to 2004 policy year, it was determined that no change was needed to these factors.

**c. Physicians Excess Medical Malpractice Insurance for 2003 – 2004**

Chapter 119 of the Laws of 2003 continued the excess medical malpractice program provided for in §18 of Chapter 266 of the Laws of 1986, as amended for the period July 1, 2003 through June 30, 2004.

Chapter 1 of the Laws of 2002 required all physicians, surgeons, and dentists participating in the excess medical malpractice insurance program to participate in a proactive risk management program. After consultation with representatives of insurers and the Medical Society of the State of New York, the Superintendent promulgated on an emergency basis the Third Amendment to Regulation 124, which contains standards for the establishment and administration of this risk management program.

**d. Dissolution of the Medical Malpractice Insurance Association**

Chapter 147 of the Laws of 2000 had extended the period allowed for effectuating the orderly dissolution of MMIA by continuing MMIA until June 30, 2001, while providing that the dissolution would be implemented at such time and under such conditions as the Superintendent deemed proper. Consequently, a Supplemental Order and Decision was issued on July 12, 2000 under which the Superintendent continued the MMIA solely for the purpose of winding up its affairs, with no new or renewal policies to be issued after June 30, 2000. By December 31, 2000 MLMIC had received full payment for its assumption of MMIA's liabilities and, by order of the Supreme Court of the State of New York entered May 14, 2001, MMIA was placed into liquidation, with the Superintendent of Insurance named as the liquidator. The final liquidation process is still ongoing.

**e. Mechanism for the Equitable Distribution of Insureds to the Voluntary Medical Malpractice Market – The New York Medical Malpractice Insurance Plan**

The New York Medical Malpractice Insurance Plan ("Plan") has been established by Department Regulation 170 (11 NYCRR 430) to provide medical malpractice insurance to eligible health care practitioners and facilities otherwise unable to obtain coverage in the voluntary market. All insurers licensed in New York and writing medical malpractice insurance in the State are required to be members of the Plan. Regulation 170 also permits the members to participate in an independent pooling mechanism whereby — rather than getting individual assignments — writings, expenses, fees and losses will be shared proportionately among the members. In the year 2003, all members of the Plan participated in the Medical Malpractice Insurance Pool of New York State (Pool).

For 2003, the Pool insured 4,115 individuals (including professional corporations) compared with 2,406 the previous year. A breakdown of the individual insureds by type, and a comparison with previous years, is shown in the following table:

**Table 37**  
**MEDICAL MALPRACTICE INSURANCE POOL OF NEW YORK STATE**  
**Insured Individuals (including professional corporations)**  
**2001-2003**

<b>Type of Insured</b>	<b>Policies as of 12/31/03</b>	<b>Policies as of 12/31/02</b>	<b>Policies as of 12/31/01</b>
<b><u>Primary Insureds</u></b>			
Physicians	561	551	572
Dentists	163	168	135
Podiatrists	73	64	47
Nurse-Anesthetists	10	5	5
Nurse-Midwives	9	2	0
Professional Corporations	29	29	28
<b>Total Primary Insureds</b>	<b>845</b>	<b>819</b>	<b>787</b>
<b><u>Excess Layer Insureds</u></b>			
First Layer Excess	1,701	292	151
Second Layer Excess	1,569	1,295	165
<b>Total Exc. Layer Insureds</b>	<b>3,270</b>	<b>1,587</b>	<b>316</b>
<b>Total All Insureds</b>	<b>4,115</b>	<b>2,406</b>	<b>1,103</b>

Note: Most of the increase in the number of excess layer insureds from 12/31/02 to 12/31/03 was a result of one voluntary insurer nonrenewing both its First Layer Excess and Second Layer Excess book of business for the policy year beginning July 1, 2003.

In addition to these individuals, the Pool insured 259 facilities, up from 132 the year before. The increase in the number of these insureds is attributable to an increase in the number of adult homes and nursing homes not able to obtain coverage in the voluntary market.

## 15. Workers' Compensation

### a. Workers' Compensation Rate Credits for Managed Care Programs

As part of the 1996 workers' compensation insurance reform package, the New York Workers' Compensation Law was amended by the addition of Article 10-A to allow employers to use certified Preferred Provider Organizations (PPOs) to deliver medical services to workers suffering from work-related injuries or illnesses.

A managed-care program can control associated workers' compensation costs through careful review of utilization and case management, safety programs, return-to-work policies and other loss control techniques. Since the initial program was approved in 1997, the Department has approved rate credits for a total of 40 insurance carriers desiring to offer managed care programs. However, the number of insurance companies that have a managed care premium credit program in place has decreased to 35 as of year-end 2003.

In 1997, it had come to the Department's attention that companies that had received approval for workers' compensation managed care programs, and some that had not, were using PPOs or Managed Care Organizations (MCOs) that had not been approved by the Department of Health. As a result, the Department issued Circular Letter No. 18 (1997) to clarify the procedures to be followed by insurers in issuing credits for workers' compensation managed-care programs and in properly administering such programs. The Department continues to monitor and investigate several programs.

Supplement No. 1 to Circular Letter No. 18 (1997) was issued on May 6, 1998 to property/casualty insurers authorized to write workers' compensation insurance in New York State. The letter advised insurers utilizing state-approved managed care programs that they must maintain evidence of compliance with the New York State Workers' Compensation Board in appropriate underwriting files. These files must be made available, upon request by the Insurance Department, for its review and examination.

#### **b. Workers' Compensation Drug-Free Workplace Credit Program**

In 1996, the Department began approving a 5% workers' compensation premium rate modification for those insured employers implementing a drug-free workplace program. Consideration for this program was based upon a significant number of studies on how drugs and alcohol affect an employer's workplace by adversely increasing the frequency and severity of accidents and claims. A drug free credit program is thus a useful tool in efforts to reduce the cost of workers' compensation claims. The Department has received requests and approved a 5% credit for 32 insurance carriers desiring to implement a similar program through 2003.

### **16. Insurance Availability Issues**

While liability insurance coverages continued to be generally available during 2003, some markets experienced difficulties. The Department continued to monitor market conditions and addressed individual problems as they arose.

#### **a. Legislation**

Chapter 85 of the Laws of 2003, known as the Property/Casualty Insurance Availability Act, extended a number of provisions in the Insurance Law designed to increase the availability of homeowners insurance and automobile insurance in New York State, and alleviate serious liability insurance availability and affordability problems.

Chapter 85 of the Laws of 2003 extended the "file and use" and "flex-rating" provisions of Article 23 to June 30, 2006 for commercial insurance not subject to prior approval.

The effects of Chapter 85 of the Laws of 2003 on NYPIUA and homeowners insurance are addressed in Section 13 and Section 18, respectively, of this report.

#### **b. Availability Survey**

In response to the liability insurance crisis of the 1980s, the Department instituted special surveys to ascertain the state of markets for difficult-to-place insurance coverages. The availability survey is conducted annually to ensure that meaningful and timely information is obtained. In cases where a meaningful market did not exist for critical coverages, voluntary market assistance programs (MAPs) were successfully developed.

The current survey methodology allows insurers to submit their data either by diskette or as an email attachment. The Department has developed an electronic database to process the responses. This allows for the rapid analysis of market conditions and developing trends, and enables the Department to better serve the insurance community as well as consumers in New York State. The survey format was revised slightly in 2003 in order to make it simpler for insurers to complete, and to provide the Department with more consistent and accurate information on insurers' underwriting plans for the coming year. In addition, as in previous years, several risk and coverage categories have been added based on our observation of market conditions during the period since our last survey was issued.

Beginning in 2000, the survey included a new section that requested information on Free Trade Zone business written during the year. By adding this section to the availability survey, the Department eliminated the previous requirement for insurers to complete separate hard copy questionnaires to provide this information. The data gathered from the survey is used to produce the Department's Annual Free Trade Zone Update.

The insurance industry's cooperation has been the key to the Department's efforts to cultivate and maintain stability in the commercial insurance marketplace. Information from the survey is made available to the insurance community and assists the Department in providing the proper channels for insurance consumers to find coverage appropriate to their needs. Survey information has also been a helpful tool in the Department's analysis of conditions in an ever-changing insurance marketplace. When survey results have shown constricted conditions for types of coverage and/or types of risks, the Department has been able to help develop availability by working with insurers and producer organizations.

### **c. Contractors**

The market for liability coverage for contractors has been affected by hard market conditions during the past few years. Several factors contributed to the problem, which was further exacerbated by the events of September 11, 2001.

The Department has continued to monitor form and rate filings affecting this market. Additionally, pursuant to Section 308 of the Insurance Law, we have conducted special surveys of market conditions regularly.

### **d. Standby JUA Authority**

The Omnibus Liability Bill enacted in June 1986 added Section 5412 to the Insurance Law to grant the Superintendent of Insurance the authority to activate a mandatory joint underwriting association (JUA) whenever he determines after a public hearing that there is no meaningful market available for a line of insurance.

Pursuant to the law, the Department held a series of public hearings around the state in November and December 2003 to address concerns expressed by businesses regarding the availability of appropriate commercial liability insurance coverage in the current market environment. The hearing record remained open in early January 2004.

## **17. Automobile Insurance**

### **a. Legislation**

Chapter 85 of the Laws of 2003 extends until June 30, 2006 the provisions of Section 2328 regarding the prior approval of rates for Public Automobile insurance. It also made Private Passenger Automobile rates specifically subject to prior approval pursuant to Section 2305(b).

Chapter 85 also extends until June 30, 2006 the provisions of Section 3425 regarding the cancellation and non-renewal of private passenger automobile policies.

### **b. No-Fault Motor Vehicle Insurance Law Activity – 2003**

#### **i. Optional Arbitration System**

Since 1977, the New York No-Fault Automobile Insurance Arbitration program has been comprised of two phases. The first phase is a conciliation process, which involves an attempt to

resolve the dispute in an expedient manner when the parties to the dispute agree that the matter can be resolved without a formal arbitration proceeding. This process was administered by the Department until November 30, 1999. The second phase is an arbitration process. The arbitration process begins when the conciliation attempt is unable to resolve the dispute and the case is transmitted to the arbitration process for assignment to an arbitrator.

From 1978 through 1994, the number of No-Fault arbitration requests received by the Department ranged from approximately 8,000 to 12,000 cases per year. Each year, 4,000 of those cases were submitted by injured persons. Health care providers and other assignees that accepted assignments from injured persons submitted the balance. From 1995 to 2001, there was a substantial increase in the number of arbitration requests filed each year. Chart A illustrates that this enormous case growth was entirely due to requests filed by health care providers and other assignees while those submitted by injured persons actually declined.

The increasing volume of filings compromised the Department's ability to effectively administer the conciliation process and oversee the operation of the No-Fault reparations system. By promulgating the 24<sup>th</sup> Amendment to Insurance Department Regulation 68, the Department outsourced the administration of this process to the American Arbitration Association (AAA), effective with all arbitration requests filed on and after December 1, 1999. However, the No-Fault arbitration system continued to be burdened by dramatic increases in the filing of requests for arbitration and delays in resolving disputes. By December 31, 2001, the inventory of cases pending in the No-Fault arbitration system totaled 110,993 cases.

In order to develop a program to address the increasing inventory of pending cases in 2002, the Department engaged in an extensive examination of the No-Fault arbitration system. As a result of that examination, the Department began implementation of the following administrative and regulatory improvements for the No-Fault arbitration system:

- Cases arising out of the same event and cases with the same litigants are being consolidated in order to increase efficiency and resolve multiple disputes simultaneously while also affording arbitrators an opportunity to identify fraudulent or abusive claims;
- All arbitration requests are being thoroughly reviewed when received in order to ensure that they are complete and accurate and to improve processing speed and efficiency;
- Earlier submission of all forms and supporting evidence is now required in order to promote quicker and more efficient dispute resolution;
- Insurers are permitted the right to negotiate attorney's fees, subject to specified limitations, in order to resolve disputed claims prior to the transmittal of disputes to arbitration;
- In order to deter abuse of the arbitration process, arbitrators have been granted the authority to impose the costs of administration upon an applicant if the arbitrator concludes that the applicant has filed an arbitration that was frivolous or totally without merit;
- Expedited hearings for injured claimants and health care providers that submit bills within 90 days of denial or nonpayment can be conducted to rapidly resolve disputes for those injured persons and health care providers who are truly interested in the prompt resolution of their disputes;
- Direct referrals of arbitration decisions to the Department's Frauds Bureau by arbitrators who have written decisions that identify fraudulent behavior;
- The new prescribed assignment of benefits forms will protect injured persons from those providers who have utilized improper assignment forms to recover unnecessary or illegal charges directly from those injured persons;
- The number of no-fault arbitrators has more than doubled and there are now approximately 100 arbitrators who have been appointed to resolve No-Fault disputes; and
- Insurers were mandated to develop action plans to address their entire pending inventory of arbitration cases in a prompt and efficient manner.

As a result of the above measures, 2003 was a year of dramatic improvement in the speed of resolving disputes in the No-Fault arbitration system. The average age of the assignee cases, measured from conciliation filing date to the scheduled arbitration hearing date, dropped from 528 days in July 2002 to 113 days in December 2003.

The following details the improvement:

- In 2003, there were 62,670 new filings of requests for arbitration. This represents a decrease of 19% from the total of 77,566 filings in 2002 and a 26% decrease from the 84,977 filings in 2001. This decline follows several years of increases in the number of filed arbitration requests. Chart A illustrates the number of requests for arbitration filed each year since 1995.
- There were 18,483 dispositions in conciliation and 105,330 dispositions in arbitration in 2003. This was the second consecutive year of more than 100,000 case dispositions in the No-Fault arbitration system.
- By December 31, 2003, the inventory of cases pending in the No-Fault arbitration system totaled 28,862 cases, a 68% decrease from the number of cases that were pending at the start of the year and a 75% decrease from March 31, 2002, when the inventory peaked at 116,172 cases. Chart B illustrates the total inventory level and the inventory levels in both the conciliation and arbitration forums throughout 2003.

## **ii. No-Fault Regulatory Changes**

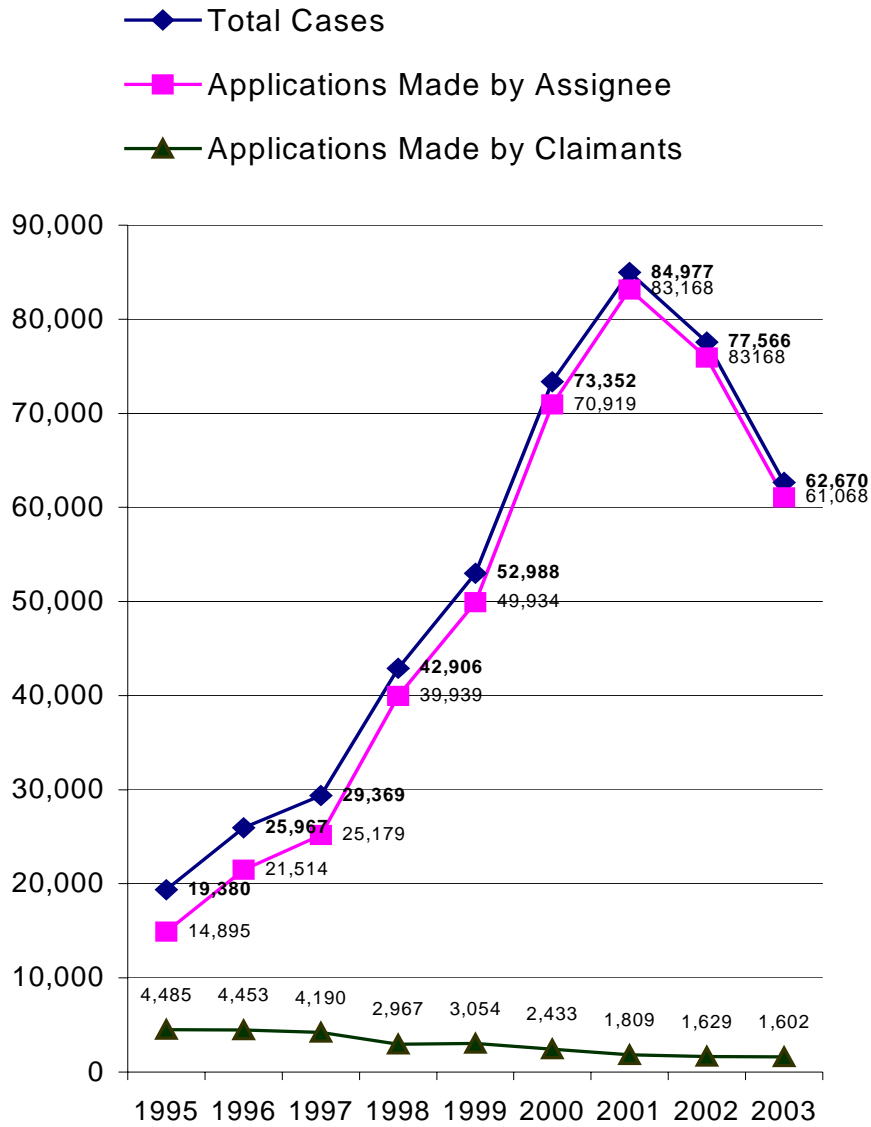
The Department proposed revisions to Regulation 68 to take effect September 1, 2001, that would reduce the time limit for filing a notice of claim from 90 days to 30 days and also reduce the time for submitting medical bills from 180 days to 45 days. Among other provisions, the proposed regulation also included consumer safeguards that will ensure legitimate claimants have their claims paid. Subsequently, a group of plaintiffs challenged the revised regulation in the New York State Supreme Court, *Medical Society of the State of New York v. Serio*.

New York State Supreme Court Justice William Wetzel affirmed the Superintendent's rulemaking authority by upholding the legality of the revision to Regulation 68 on February 19, 2002. As such, the revised regulation took effect on April 5, 2002 in accordance with Justice Wetzel's decision. Subsequently, the Appellate Division, 1st Department and the Court of Appeals unanimously upheld Justice Wetzel's decision. The Court of Appeals decision was rendered on October 21, 2003.



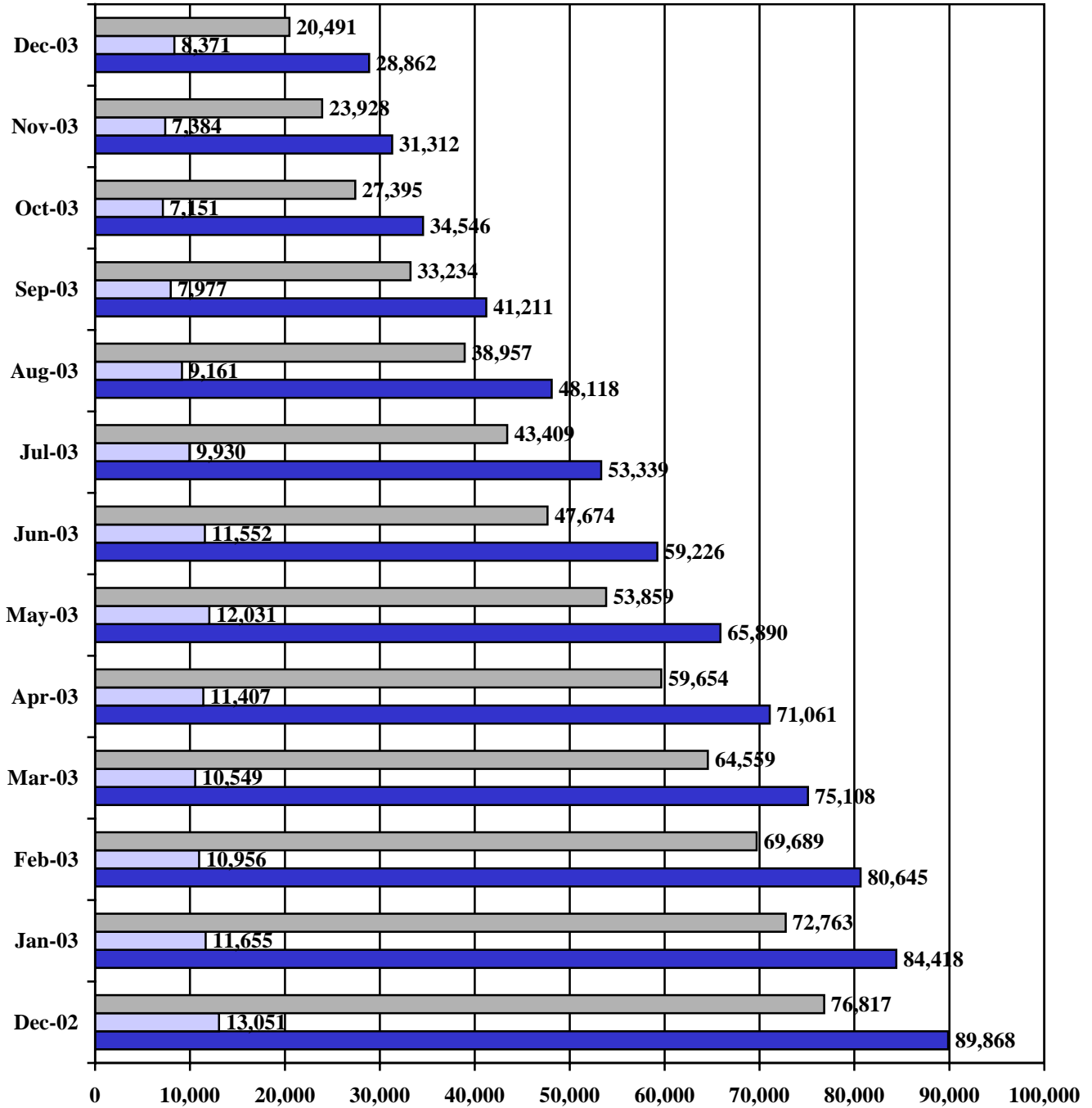
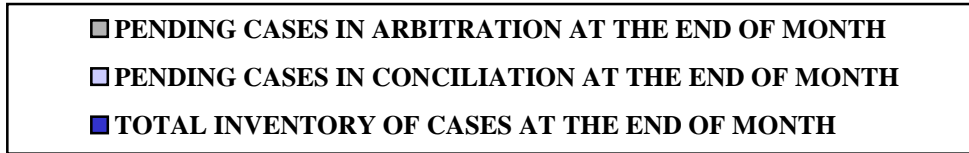
# CHART B

## Sources of Applications for Requests for No-Fault Arbitration 1995 — 2003



# CHART C

## Pending No-Fault Arbitration/Conciliation Cases December 2002-December 2003



## **18. Homeowners Insurance**

### **a. New York's Coastal Areas**

Consistent with past years, property/casualty insurers continued to re-evaluate the concentration of their business in coastal areas in order to determine their individual exposure to catastrophic storms. Homeowners insurance is generally still available both on Long Island and statewide. However, due to major disasters such as Hurricane Andrew, insurers revised their eligibility criteria by limiting the number of policies written, particularly for properties located close to the shore.

The Department continues to carefully monitor the availability of coastal insurance. Staff continues to meet with interested parties to discuss the problems and arrive at workable solutions. In addition, the Department continues to respond to inquiries from producers and property owners received either by mail, in person, or on the Bureau's hotline (800-300-4593). Where appropriate, the Bureau has intervened to resolve disputes involving incorrect policy rating and declination of initial or renewal coverage. The Department's objectives have been—and continue to be—maximizing consumer protections, encouraging risk management, emphasizing responsible underwriting, and facilitating voluntary market homeowners insurance coverage in shore communities.

The Legislature and the Insurance Department have taken several initiatives to assist New York State residents located near shore areas who have experienced difficulty in purchasing and maintaining homeowners insurance. These initiatives have included the development of "wrap-around" policies, as well as permitting insurers to offer catastrophe windstorm deductibles in their homeowners' policies. Under wrap-around programs, an insurer provides liability, theft, and other coverages to an insured who has purchased fire and extended coverage through NYPIUA. The coverage from NYPIUA and the wrap-around coverages from a voluntary insurer essentially provide an insured with the equivalent of a full homeowners' policy. Several insurers and rate service organizations have received approval for both windstorm deductible and wrap-around coverage programs. It is anticipated that the utilization of these innovative underwriting tools will enable those insurance companies with heightened concerns about the catastrophic potential posed by hurricanes to continue to provide comprehensive homeowners coverage for shoreline residents.

The Superintendent activated the Department's Coastal Market Assistance Program (C-MAP) on April 2, 1996. C-MAP is a voluntary network of insurers and insurance producers that assists New York homeowners in coastal areas in obtaining and retaining insurance coverage. Information concerning C-MAP can be obtained through most insurance producers or through NYPIUA at 212-208-9898. Most companies participating in C-MAP are making use of the wrap-around coverage forms mentioned above.

Participating insurers have agreed to write 5,000 policies in total over a three-year period through the C-MAP program. From April 1996 through December 31, 2003, C-MAP has issued 4,228 policies. The Department believes C-MAP will continue to help consumers secure vital homeowners coverage while still addressing insurers' coastal area concerns.

### **b. Legislation and Regulations**

Chapter 85 of the Laws of 2003 extended the operating authority of NYPIUA to April 30, 2004, thus maintaining the safety net for residents unable to obtain fire insurance in the voluntary market. The law also grants authority to the Superintendent to authorize NYPIUA to provide full homeowners insurance coverage if deemed necessary. (NYPIUA currently provides fire and extended coverages, but does not provide protection for theft or personal liability.)

Regulation 154 establishes standards for the definition of "material reduction of volume of policies" and establishes standards by which an insurer's application for such material reduction will be

approved. In addition, the Regulation requires insurers to report information relative to homeowners insurance policies on a quarterly basis in a format prescribed by the Superintendent, and defines those areas in which the Superintendent has deemed that writings by NYPIUA had increased significantly since January 1, 1992. Most policyholders affected by these plans were offered replacement coverage in the voluntary market.

### **c. Computer Hurricane Simulation Models in Rate Filings**

To date, the Department has not permitted the inclusion of computer simulation modeling results in the ratemaking process. Due to the proprietary nature of the model's components and assumptions, as well as the difficulty in determining the reasonableness of certain assumptions, the Department has encountered difficulty in reviewing all of a model's components and assumptions. Accordingly, the inclusion of the results of computer simulation modeling precludes the Department from determining whether an insurer's proposed rates meet the standards set forth in Article 23 of the New York State Insurance Law.

In order to further the Department's knowledge of computer simulation modeling, Circular Letter No. 7 issued April 30, 1998, advised those insurers and rate service organizations that use computer simulation modeling as part of their homeowners insurance rate review and development process in this state, to provide, at their option, a comparison of the indicated rates and rate changes by form and territory. The Circular Letter also advised that any comparison should include the rates and rate changes developed using the results of computer simulation modeling as well as those developed using more traditional ratemaking methodology.

The computer simulation modeling information will not be considered as part of the actual rate submission. However, any comparisons submitted by insurers and rate service organizations will help the Department gain perspective and familiarity with computer simulation modeling, and will assist us in making a future determination on the appropriateness of the use of this methodology in the ratemaking process for homeowners insurance rate filings. Upon request by the insurer, such information would be considered confidential to the extent permitted by Section 87(2) of the Freedom of Information Law.

### **d. Reinsurance Cost Factors in Homeowners Insurance Rate Filings**

The Department permits insurers to reflect the cost of catastrophe excess-of-loss reinsurance in homeowners insurance rate filings, provided an insurer can reasonably allocate the cost of such reinsurance to its New York policyholders. As of the end of 2003, the Department has accepted homeowners rate filings in which reinsurance costs were among the factors reflected in the ratemaking methodology for nearly all major homeowners insurers. Most of these companies had previously used reinsurance costs in the development of their rates.

The Department has been reviewing the reinsurance contracts of insurers that used reinsurance costs as a factor in previous rate increases. This was initiated to determine that consideration is also given to reductions in reinsurance costs in insurers' preparations of rate revisions.

### **e. Mineola Office**

In order to assist consumers on Long Island who are experiencing problems obtaining homeowners policies, the Department opened a satellite office in Mineola, New York. This office was designed to provide consumers with information to assist them in obtaining insurance protection for their homes, and is staffed by Department examiners during regular business hours. Consumers can contact the staff at the Mineola office either in person at 200 Old Country Road in Mineola or by telephone at (800) 300-4593 or (800) 300-4576.

**19. Market Conduct Activities**

**a. Summary of Market Conduct Investigations Conducted and Fines Collected**

The Property Bureau's Market Conduct Unit continued its program of reviewing insurance company underwriting, rating and claims practices to determine compliance with the Insurance Law and Department regulations. In addition, the Unit devoted a significant amount of time monitoring post September 11, 2001 events related to the hardening of the insurance market (see item "i" below).

There were 55 market conduct investigations in progress at the beginning of 2003. Eighty-five market conduct investigations were initiated during the year. Ninety-five market conduct investigations were closed during the course of the year. Forty-five market conduct investigations were in progress at year-end. Twenty-nine stipulations were entered into during the year, resulting in fines collected for admitted violations totaling \$1,287,450. In addition, fines totaling \$52,000 were received from insurers and self-insurers for failure to pay no-fault arbitration awards in a timely manner. The following table provides a breakdown of the market conduct activities for Calendar Year 2003.

**Table 38**  
**MARKET CONDUCT INVESTIGATIONS**  
**by Type of Investigation**  
**2003**

Type of Investigation	Outstanding 1/1/2003	Initiated during 2003	Completed during 2003	Outstanding at 12/31/2003
Claims	12	11	12	11
Rating/Underwriting	7	5	4	8
Public Automobile	0	2	1	1
Focused Underwriting	11	0	0	11
Privacy	11	12	18	5
Frauds	12	12	18	6
Desk Audit:				
Section 3425				
Compliance	0	10	10	0
Rating Complaints	0	2	2	0
Internet Web site				
Reviews	0	29	29	0
Workers' Compensation				
Large Deductible	2	2	1	3
<b>Total</b>	<b>55</b>	<b>85</b>	<b>95</b>	<b>45</b>

The following table details the fines collected or processed and the stipulations entered into during Calendar Year 2003:

**Table 39**  
**MARKET CONDUCT FINES COLLECTED & PROCESSED**  
**by Type of Investigation**  
**2003**

Type of Investigation	Number	Amount
Claims	11	\$807,000
Underwriting/Rating	5	202,700
Public Automobile	1	39,000
Desk Audits: Section 3425	10	178,750
Rating Complaints	2	60,000
<b>Total</b>	<b>29</b>	<b>\$1,287,450</b>
Penalties: Failure to Timely Pay N.F. Arbitration Awards	208	52,000
<b>Total Fines Collected/Penalties Processed</b>	<b>237</b>	<b>\$1,339,450</b>

**b. Penalties Imposed Under Insurance Law Section 3425**

Section 3425 of the New York Insurance Law limits the total number of non-renewals of personal automobile insurance policies that an insurer is allowed. Generally, an insurer is permitted to non-renew up to 2% of the total number of covered policies that the insurer had in force at the previous year-end in each rating territory in New York State. As a result of an analysis of non-renewal reports to the Superintendent required by Section 3425(l)(1), ten fines totaling \$178,750 were stipulated to and collected during calendar year 2003 (listed under Section 3425 "desk audits" in above table).

**c. Penalties for Failure to Pay No-Fault Arbitration Awards Timely**

The No-Fault Claims Administration Unit of the Property Bureau has received a significant number of complaints from applicants for no-fault arbitration. These complaints alleged that even after successfully arbitrating their entitlement to no-fault benefits or obtaining a conciliation of their dispute, they were not receiving all amounts due from insurers in a timely manner. The no-fault regulation requires insurers to pay within 30 days all amounts awarded.

The Department issued Circular Letter No. 4 (1992) reminding all insurers of their obligation to pay timely, and that with every request for enforcement, the Department would require insurers to either provide proof that full payment was made or an explanation as to why payment was not made.

Insurers were also advised that in accordance with Section 109(c)(1) of the Insurance Law, a penalty would be imposed on insurers for each complaint made where no justifiable reason for nonpayment or late payment was furnished to the Department. In addition, these complaints are recorded for the purpose of calculating the complaint ratios that form the basis of the Department's annual automobile complaint ranking. During calendar year 2003, the Department processed fines totaling \$52,000 from 64 insurers and self-insurers for their failure to pay arbitration awards in a timely manner in 208 instances.

#### **d. Overcharges Remitted to Policyholders**

As a result of the terms agreed to in stipulated settlements of market conduct underwriting and rating investigations, one insurer was required to perform re-rating reviews for specified periods. As a consequence of this review, this insurer refunded a total of \$513,627 in premium overcharges.

#### **e. Underpayments Remitted to Claimants**

As a result of findings of previous market conduct investigations verifying compliance with Insurance Department Regulations 64 and 68, one insurer signed a stipulation whereby it agreed to review all automobile no-fault and/or automobile physical damage claim files as designated in the stipulation, and remit all underpayments to insureds and/or claimants. As a result of the terms of the stipulation, this insurer remitted \$86,465.

#### **f. Insurance Internet Web Site Monitoring**

The Market Conduct Unit continued the monitoring and review of insurer Internet Web sites during 2003. In addition, as part of these reviews, the Unit has been verifying the accuracy of quotes generated online. As part of Circular Letter Number 31, dated October 29, 1998, the Department advised the industry of the general guidelines that would be followed when monitoring the marketing of insurance products on the Internet. Supplement Number 1 to Circular Letter 31 was issued May 28, 1999. This further advised the industry that Web based activities would be reviewed and/or monitored by the Department and that these reviews would be incorporated into the market conduct and financial review processes. Twenty-nine insurer Web sites were reviewed during the course of 2003. In general, the Web sites reviewed were found to be in substantial compliance with the Department's general guidelines. Additional insurer Web site reviews will be conducted in 2004.

#### **g. Insurance Information & Enforcement System (IIES)**

The IIES, developed by the New York State Department of Motor Vehicles (DMV), utilizes an insurance information database to monitor the insurance status of New York State registered vehicles. The system went into effect in 2000 and replaced the DMV's previous Financial Security reporting system. The purpose of this electronic on-line registry program is to ensure that all motor vehicles registered and driven in New York State have appropriate motor vehicle insurance in effect. IIES helps to identify, sanction and ultimately remove uninsured vehicles from New York's highways. Articles 6 and 8 of the Vehicle and Traffic Law require insurers to notify the Commissioner of Motor Vehicles of certain insurance policy transactions. Insurers must fully comply with the reporting requirements contained in Article 6 and 8 and in the regulations promulgated by the Commissioner of Motor Vehicles. All insurers writing automobile liability business in New York State are required to transmit the required policy transaction notices to DMV in an efficient, accurate and timely manner and in conformity with specifications set out in Part 34 of the DMV Commissioner's Regulations.

Section 317 of the New York Insurance Law authorizes the Superintendent to impose fines against insurers who fail to comply with the aforementioned reporting requirements. Insurers were warned to correct any compliance problems they were having with IIES and that the Department would begin taking disciplinary actions against those insurers who failed to comply with IIES reporting requirements. Circular Letter Number 3, dated January 23, 2001, was sent to all insurers authorized to write motor vehicle insurance, advising them that appropriate disciplinary action would be taken against any insurer who is not in compliance with IIES.

During 2003 the Department had bi-weekly meetings with the Department of Motor Vehicles to monitor and oversee the progress of the IIES program. The next step in the process is to conduct investigations into the quality and timeliness of the data being submitted by insurers to DMV. Based on information received from DMV, insurers that have been found to submit poor quality data and/or late

data will be subject to disciplinary action. It is expected that a series of investigations will be conducted during 2004.

#### **h. Privacy**

Title V of the Gramm-Leach-Bliley Act requires financial institutions, including insurers, to protect the privacy of consumers and customers. It also requires that all state insurance authorities establish appropriate consumer privacy standards for insurance providers. As a result, the Insurance Department promulgated Regulation 169 and 173, setting forth these standards. During calendar year 2003, the Market Conduct Unit continued its investigations of insurers to assess their policies and procedures in place to ensure compliance with privacy regulatory requirements. Twelve privacy investigations were initiated during 2003, eleven carried over from the prior year and eighteen were completed during 2003. In general, insurers investigated to date appear to be in compliance with the provisions of Regulations 169 and 173. Additional privacy investigations will be conducted in 2004.

#### **i. Focused Market Conduct Investigations**

In the aftermath of the events of September 11, 2001, the Department received complaints that some insurers were either refusing to write or renew commercial risks or, were improperly canceling or non-renewing such risks in New York State and, in particular, the New York metropolitan area. There were also allegations of possible unwarranted large premium increases. As a result, the Market Conduct Unit commenced a series of investigations into insurer compliance with Section 3426 of the Insurance Law. These investigations were specifically focused on determining the propriety of cancellation, non-renewal and conditional renewal notices (*i.e.*, premium increases of 10% or more) issued on commercial policies by insurers, especially since the terrorist attacks. In addition, a review of agency terminations changes in commissions and the percentage of commercial business insurers non-renewed in Manhattan during the past year was performed. While most insurers investigated were found to have continued to write business in New York State, including the New York metropolitan area, the majority of insurers investigated issued conditional renewal notices containing significant premium increases. Most of these conditional renewal notices were found to be improper. Most of the insurers indicated that this was due to increased reinsurance costs in the aftermath of the terrorist attacks. Some insurers were observed utilizing restrictive endorsements, especially on policies issued in the Free Trade Zone. Others were noted to have transferred risks to their higher priced companies within the group or moved policies to/from the Free Trade Zone in order to achieve a higher premium.

The Department has begun to hold meetings with these insurers regarding their lack of compliance with Section 3426-NYIL in the issuance of invalid conditional renewal notices. Fines are expected to be collected during calendar year 2004 for these offenses.

#### **j. Workers' Compensation Large Deductible Review**

The Market Conduct Unit commenced a series of investigations into the payment and subsequent reimbursement of benefits on large deductible workers' compensation policies. The focus of these investigations was to determine whether insurers who write these types of policies are in compliance with Section 3443(f) of the Insurance Law. That section provides that, if a workers' compensation policy large deductible is offered and accepted, the insurer is required to pay the deductible amount to the person or provider entitled to benefits and then seek reimbursement from the policyholder (employer) for the amount of the deductible. Two investigations were initiated during 2003 and two have been carried over from the previous year. The results of these initial investigations have been favorable to date. The Market Conduct Unit will continue to conduct these investigations in the future.



#### **k. New York Public Automobile Reviews**

In previous years, market conduct investigations were performed to address allegations that insurers of public automobile coverage, and in particular, livery coverage, were not charging filed rates, using unapproved rates and rating plans and were involved in improper marketing practices. During Calendar Year 2003, the Market Conduct Unit continued its efforts in following up on the Public Automobile marketplace. As a result of these reviews, while most public automobile insurers were, for the most part, found to be in substantial compliance with regulatory requirements, one insurer was fined \$39,000 for non-compliance in this area.

#### **l. Frauds Compliance Investigations**

Section 409 of the Insurance Law requires that every insurer writing at least 3,000 or more private passenger or commercial automobile, workers' compensation or individual, group or blanket accident and health insurance policies to file an insurance fraud prevention plan with the Superintendent. They must also create a separate full-time Special Investigations Unit and must meet other specific frauds prevention requirements outlined in Section 409 and Insurance Department Regulation 95. During Calendar year 2003, the Market Conduct Unit initiated a review of 12 insurers to determine whether they were following the requirements outlined in the statute and regulation. Twelve investigations continued from the prior year and 18 investigations were completed during 2003. Detailed questionnaires were submitted to these insurers which were then reviewed during the investigation in conjunction with additional documentation requested. Once all necessary material was received and analyzed it was submitted to the Department's Frauds Bureau for further review. The insurers investigated appear to be in compliance with Section 409 and Department Regulation 95.

#### **m. Electronic Audit Program - TeamMate**

The Market Conduct Unit has been developing a new computer program for the conversion of its auditing procedures, workpapers and procedural memos to an electronic auditing environment, specifically PriceWaterHouseCoopers TeamMate Audit Management System. This new computer program will provide greater consistency, efficiency and easy access.

An extensive amount of time and resources has been devoted to the development of this program. To date, a number of examiners have attended training seminars on the use of the program. It is expected that more examiners will receive training on the TeamMate project in 2004. It is anticipated that this program will be implemented in 2004 on a limited basis giving office based supervisors unlimited remote access to ongoing examinations. This program, once fully implemented, will facilitate consistency in audit procedures between the different examiners and will eliminate the use of paper files since all the data will be electronically stored.

## **20. Excess Line Insurance**

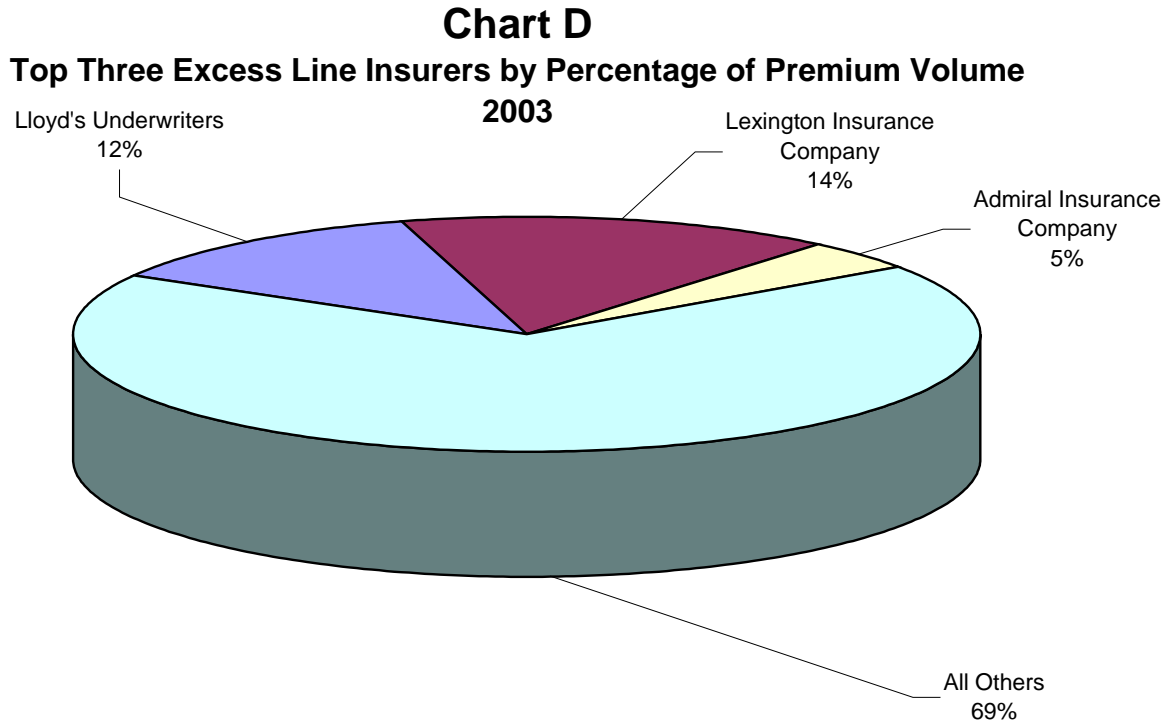
Potential insureds that cannot obtain coverage from companies licensed to write insurance in New York may, under circumstances prescribed in the New York Insurance Law and regulations, obtain such coverage from unlicensed companies through the auspices of a New York-licensed excess line broker.

Since insurers providing this coverage are not licensed by this Department, statistical data relating to the amount and nature of premiums written in the excess line market must be obtained from excess line brokers through tax statements required to be filed no later than March 15 of each year relating to business written during the previous calendar year. For calendar year 2003, total excess line gross premiums written on risks located or resident both in and out of New York State amounted to approximately \$2.716 billion, of which approximately \$2.097 billion was attributable to risks located or resident wholly in New York State.

The data pertaining to excess line business used in this report were obtained from statistical reports provided to the Superintendent by the Excess Line Association of New York (ELANY) pursuant to Section 2130 of the New York Insurance Law. ELANY obtains the information from affidavits required to be filed by excess line brokers under Section 2118 of the Insurance Law. There are 1,246 licensed excess line brokers and approximately 429 who are active and filed approximately 158,770 affidavits for the year 2003. Thirteen complaints and inquiries and 989 filings regarding excess line business were received in 2003.

In 2003, there were approximately 113 unauthorized insurers eligible to do business in New York pursuant to Regulation 41. This includes 78 foreign insurers; 34 alien insurers; and Lloyd's, with 39 syndicates. These insurers are required to file Form EL-1 annually by March 15. The filing requirement was changed in 1997 to include the use of computer diskettes and in 2002, changed to permit e-mail submission. In 2003, the Unit reviewed 85 EL-1 filings, 70 annual statements and 5 trust agreements.

The following is a chart of the percentage of total 2003 excess line premium writings attributable to the three largest excess line insurers in New York State.



#### a. Business Written in New York

Excess line premiums written in New York State increased from \$1.324 billion in 2002 to \$2.097 billion in 2003, a gain of 58.35%. The increase in premium volume appears to be a result of increased pricing caused primarily by the hardening of the insurance market, the terrorist attack on the World Trade Center and the ability to offer coverage not available in the authorized market. The largest dollar increase over the previous year occurred in the other liability line, up by \$475.5 million in 2003, of which \$116 million is from owners, landlords and tenants, \$92 million is from umbrella liability, and \$72 million is from manufacturers and contractors liability. The largest percentage increase occurred in the aircraft physical damage line, which although small in volume, was up by 1040% or \$2 million over the previous year, returning to the level it had been prior to the World Trade Center attack. Other increases included fire and allied lines, up by \$128.6 million, errors and omission, up by \$113.4 million; inland marine, up by \$13.1 million; auto liability, up by \$11.5 million; commercial multiple peril, up by \$11.4 million; fidelity and surety, up by \$9.8 million; other lines, up by \$7.8 million; malpractice, up by \$2.7 million; and aircraft physical damage up by \$2.6 million.

The largest dollar decline over the previous year occurred in the auto physical damage line, down \$1.9 million, a decrease of 9.9%. The largest percentage decline occurred in the burglary and theft, although small in volume was off by 34.3%.

**Table 40**  
**EXCESS LINE PREMIUMS WRITTEN**  
**Risks Located in New York State**  
**2000-2003**  
**(dollar amounts in thousands)**

<b>Line of business</b>	<b>2003</b>	<b>2002</b>	<b>2001</b>	<b>2000</b>
Fire and allied lines	\$425,417	\$296,786	\$54,777	\$46,707
Inland marine	43,462	30,308	26,181	27,099
Auto liability	15,629	4,154	7,243	2,188
Malpractice	12,089	9,392	5,683	1,808
Errors and omissions	334,685	221,245	159,651	196,987
Commercial multiple peril (excluding fire)	93,737	82,315	59,723	42,321
Other liability	1,079,015	603,313	276,432	158,356
Auto physical damage	17,163	19,055	18,491	16,920
Aircraft physical damage	2,651	233	2,736	1,889
Burglary and theft	3,613	5,503	3,722	4,225
Fidelity and surety	14,844	5,040	22,340	3,425
Other lines	54,794	46,964	48,418	16,059
<b>Total</b>	<b><u>\$2,097,100</u></b>	<b><u>\$1,324,307</u></b>	<b><u>\$685,398</u></b>	<b><u>\$517,984</u></b>
 Excess line premium as a percentage of property and casualty insurance premium written in New York	 6.45%*	 4.29%	 2.56%	 2.17%

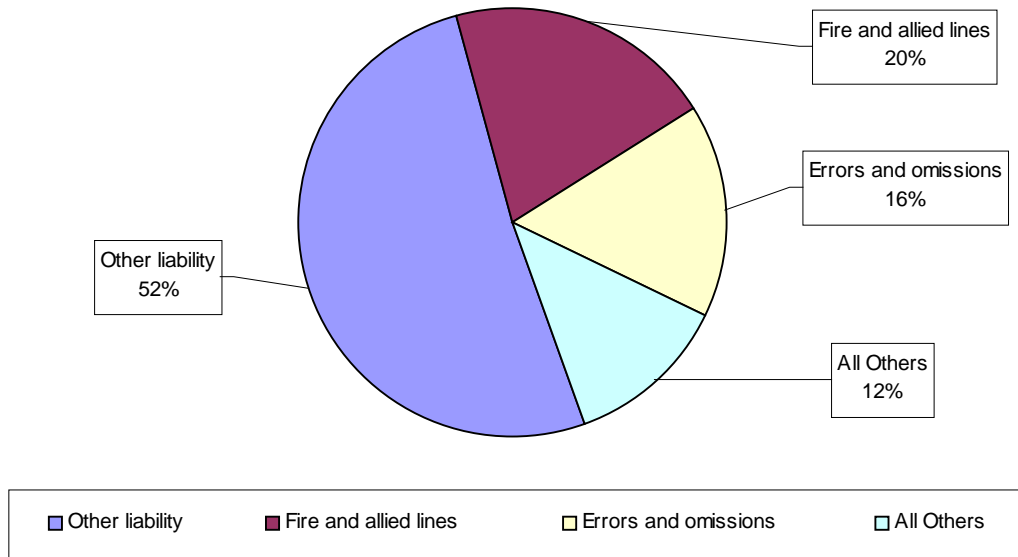
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\*Estimated

Source: Excess Line Association of New York

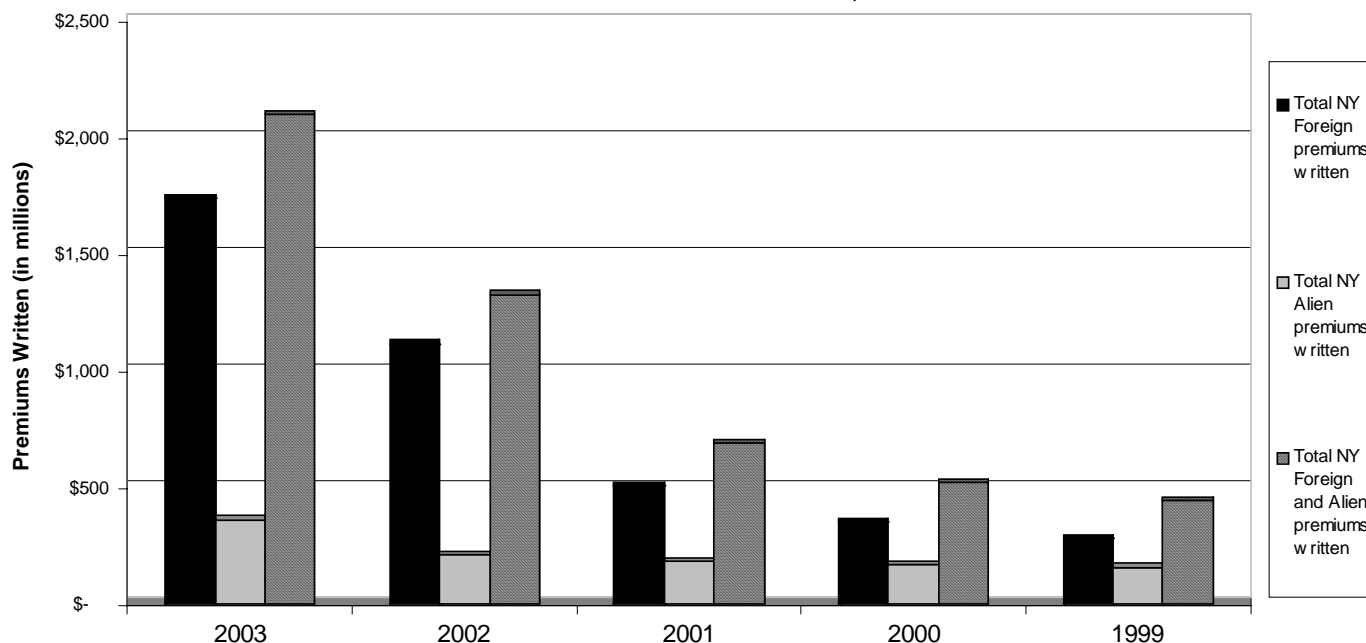
The pie chart below shows the three major lines of business written in the excess line market based on premium volume.

**CHART E**  
**Top Three Lines of Excess Line Business Written, NYS, 2003**



The following is a graph of excess line business for 1999 to 2003 by alien and foreign insurers.

**CHART F**  
**New York Excess Line Premiums, 1999-2003**



**b. Binding Authority**

Sections 2117 and 2118 of the Insurance Law were amended in 1997 to provide that an excess line broker, licensed pursuant to Section 2105 of the Insurance Law, may exercise binding authority, which the law defines as "...the authority to issue and deliver insurance policies on behalf of an insurer not licensed or authorized to do business in this state." Since the implementation of the amended statute, the Excess Line Association of New York (ELANY) has notified the Department that 75 excess line brokers have filed 190 binding authority agreements representing insurers not licensed or authorized to do business in this state. During calendar year 2003, the Excess Line Association of New York reviewed and accepted 23 new, renewed and/or amended binding authority agreements from New York licensed excess line.

**c. EL-1 Review**

All EL-1 filings were reviewed to determine that the information complied with the requirements pursuant to Department Regulation 41. This included a check to determine if excess line brokers listed on the reports were New York-licensed excess line brokers. Any direct procurement information listed on the EL-1 was forwarded to the New York State Department of Taxation and Finance to determine whether the excess line tax on these premiums had been paid by the respective policyholder.

#### **d. Ineligible Unauthorized Insurers**

A review of Schedule T of the annual statements filed with the NAIC revealed that there were several ineligible unauthorized insurers doing business in New York. These companies stated that the policies were direct procurement placements. Insureds were contacted to ensure that the direct procurement taxes were paid.

#### **e. Excess Line Investigations**

The Excess Line Unit received a complaint against two excess line brokers regarding improper calculation of the return premiums for cancellation of terrorism coverage with two unauthorized insurers. An investigation disclosed that one of the brokers placed the coverage with an ineligible excess line insurer in New York and filed late affidavits. The broker was fined \$7,100. The other broker did not file several affidavits and also filed an incorrect premium tax statement. The broker was fined \$4,550 for late affidavits and improperly filed premium tax statements and was assessed \$64,412 for unpaid taxes, interest and penalty. The ineligible unauthorized insurer has sent the complainant an additional check for \$291,528 representing return premium on terrorism coverage. In May 2004, the eligible unauthorized insurer returned \$196,224 in premium for the policy covering terrorism.

Another complaint was received from a United States representative of an alien insurer on behalf of multiple truckers against individuals of a licensed excess line brokerage for accepting payment for insurance coverage that ultimately was not procured. One of the sublicensee's license has been revoked. The Department's Office of General Counsel, in conjunction with Consumer Services have started revocation proceedings against another sublicensee of this brokerage involved in this matter.

We are also currently investigating a complaint regarding an excess line broker who added an extra 0.5% to the excess lines premium tax of 3.6% in order to cover his administrative costs. The average cost to each policyholder was only several dollars but is a significant amount in total considering the size of his portfolio. The broker has advised that he is no longer charging the extra 0.5% on a going forward basis. Since this is a large producer we are currently looking for other possible questionable charges to insureds.

Another current investigation involves a possible questionable steering of general liability risks in the authorized market to an affiliated carrier of the same group in the unauthorized market in order to circumvent the Department's position regarding mold and fungus exclusions. We are investigating the companies' culpability as well as the potential culpability of the managing agent.

Several brokers have contacted the Department regarding non-filing of affidavits. These brokers stated that the affidavits were discovered during an audit and were due to mergers with other brokerages. The brokers were required to pay fines for filing affidavits late and reporting inaccurate premium tax statements, and pay unpaid premium taxes with interest and penalty. For 2003, additional taxes, interest and penalty collected amounted to \$1,835,901 and fines collected amounted to \$3,575. An additional fine of \$19,450 is to be collected in 2004.

In addition, the Excess Lines Unit initiated an investigation involving excess line brokers who were consistently delinquent in paying stamping fees to ELANY. No monetary fines were imposed but all were given verbal warnings that if this pattern persisted, fines would be imposed. This investigation involved approximately twenty excess line brokers.

#### **f. Liability Risk Retention Act (LRRRA) of 1986 - Purchasing Groups**

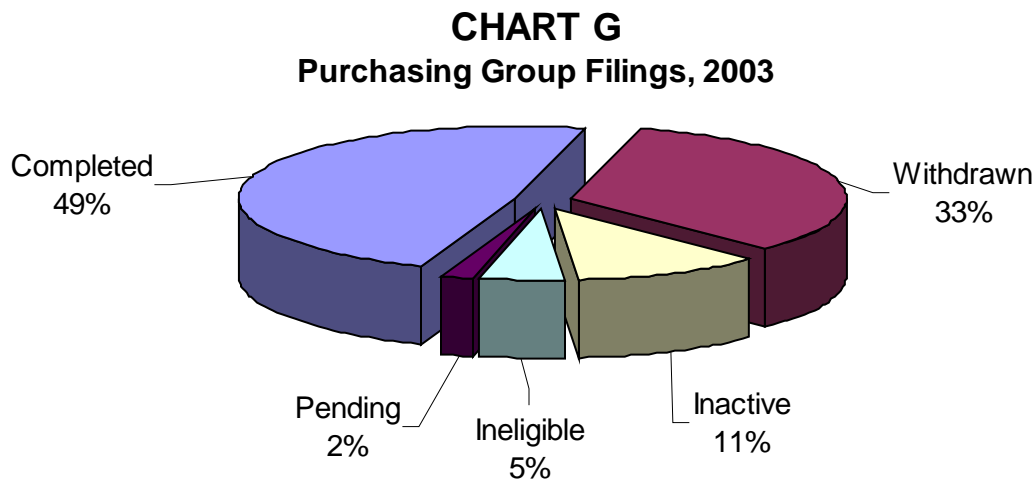
Purchasing groups are allowed, pursuant to the federal Liability Risk Retention Act of 1986, to buy commercial liability insurance on behalf of their members on a group basis. These groups are exempt

from any state insurance laws that hinder or prohibit group self-insurance programs and the purchase of liability insurance on a group basis.

Since the inception of the LRRRA, the Department has received notices of intent from 832 purchasing groups. Subsequently, 277 have withdrawn their notice of intent, 93 have notified the Department of their inactive status, and 41 have been given ineligible status by the Department due to failure to comply with all the requirements of the applicable laws and regulations. As of December 31, 2003, 33% of the remaining 421 purchasing groups (16 of which are in pending status) have named unlicensed companies as their intended insurers.

Some of the most common types of businesses and professions that have formed purchasing groups in the past year include real estate professionals, insurance professionals, entertainers, health care facilities and services, and manufacturers/dealers. Approximately 114 complaints and inquiries regarding purchasing groups were received in 2003.

The following chart shows the purchasing group filings as of December 31, 2003 by status category.



## 21. Consumer Guide for Automobile Insurance

On October 1, 2003, the Department published two editions of the 2003 Consumers Guide to Automobile Insurance, one for upstate New York residents and one for downstate residents. The guide is required by Section 337 of the Insurance Law to be updated annually. This comprehensive guide helps consumers determine how much auto insurance they need and explains all mandatory and optional coverages available in New York State. The guide contains lists of insurers, telephone numbers, and sample rates to facilitate comparison shopping, and advice regarding how to file a claim or make a complaint against an insurer is also provided. Copies of the guide were distributed to every Department of Motor Vehicles office and public library in the State. The guide is also available free of charge directly from the Insurance Department and can be accessed via the Department's Web site.



## 22. Circular Letters

### **Circular Letters Issued in 2003:**

**Circular Letter No. 2** was issued on January 24, 2003 to all authorized motor vehicle insurers, rate service organizations, NYAIP and insurer producer organizations. The Circular Letter provided guidance regarding rental vehicle coverage in New York State. It alerted the industry to amendments of Section 396-z of the General Business Law, allowing rental vehicle companies to sell "optional vehicle protection" to its renters at maximum daily rates of up to \$9 or up to \$12. It also required rental vehicle companies to advise prospective renters to examine their credit card protections and automobile insurance policies to determine if they have rental vehicle coverage. The statute was also amended to remove the \$100 limitation on liability that may be imposed by rental vehicle companies in New York State for damage to or loss of rental vehicles.

**Supplement No. 1 to Circular Letter No. 25 (2002)** was issued on February 19, 2003 to all to all property/casualty insurers and rate service organizations, NYPIUA, the State Insurance Fund, NYAIP and the Excess Line Association of New York. This Circular Letter provided additional guidance to insurers regarding filings made with the Department and the issuance of policy forms necessary to implement the provisions of the Terrorism Risk Insurance Act of 2002. A clear and conspicuous disclosure notice addressing the "Separate Line Item" charge for Terrorism Coverage must appear on the declarations page. In addition, insurers are reminded that all provisions of Section 3426 of the Insurance Law remain applicable to both policies in force as well as new and renewal business written in the admitted market.

**Circular Letter No. 5** was issued on February 19, 2003 to all authorized property/casualty insurers and insurer producer organizations. The Circular Letter advised insurers on the treatment of policyholders serving in active military duty regarding the continuation of insurance coverage and the designation of an adult third party to receive bills and other notices.

**Supplement No. 5 to Circular Letter No. 11 (1998)** was issued on March 21, 2003 to licensed property/casualty insurers and rate service organizations. This Circular Letter introduced the Review Standards Checklists that are required for all "Speed-To-Market" and SERFF filings and optional on all other filings. The use of the Review Standards Checklists, which list the categories of review standards that a filing will be expected to evidence, is intended as an aid or guide for insurer personnel in developing any filings to be submitted to the Department.

**Circular Letter No. 10** was issued on May 30, 2003 to all insurers authorized to transact Motor Vehicle Liability Insurance Business in New York. The Circular Letter clarified the revision to the Motor Vehicle Law Enforcement Fee. Section 9110 of the New York State Insurance Law (Motor Vehicle Law Enforcement Fee) was amended, effective June 1, 2003, whereby the annual fee, formerly set at \$1.00, was changed to five dollars (\$5) for each insured vehicle registered pursuant to the provisions of paragraph (b) of subdivision 1 of Section 401 of the New York State Vehicle and Traffic Law. Procedures for collection and monthly remittance by insurance companies to the Superintendent of Insurance were not changed.

**Circular Letter No. 11** was issued on June 16, 2003 to all authorized motor vehicle insurers, rate service organizations, NYAIP and insurer producer organizations. The Circular Letter clarified the consequences of driving while under the influence of alcohol or drugs. Section 312(1) of the Vehicle and Traffic Law requires insurers to provide insureds (upon issuance or renewal of a private passenger automobile insurance policy subject to Section 3425 of the Insurance Law) with an informational statement, outlining the legal and financial consequences of convictions for operating a motor vehicle while under the influence of alcohol or drugs (DWI Information Statement). Chapter 3 of the Laws of 2002 (and subsequent legislation), effective July 1, 2003, lowers the blood-alcohol content (BAC) standard (in the Vehicle and Traffic Law) necessary to sustain a conviction for driving while intoxicated

(DWI), from .10% to .08%. This Circular Letter provided a revised informational statement incorporating this amended statute.

**Supplement No. 1 to Circular Letter No. 10 (2003)** was issued on August 7, 2003 to all insurers authorized to transact Motor Vehicle Liability Insurance Business in New York. This Circular Letter was issued to provide additional guidance to insurers, clarifying certain issues that had been raised regarding the Motor Vehicle Law Enforcement Fee. The Department has also prepared responses to frequently asked questions, which should provide further assistance to insurers. This is provided on the Department's Web site.

**Circular Letter No. 12** was issued on August 14, 2003 to all authorized motor vehicle insurers, rate service organizations, and insurer producer organizations. The Circular Letter clarified the multi-tier, cancellation and nonrenewal provisions of non-business automobile insurance policies. It provided guidance regarding the application of certain provisions of Section 2349 and Section 3425 of the New York Insurance Law (NYIL) that apply to "automobile insurance" policies, as defined in Section 3425(a)(1), issued or renewed before and after the enactment of Chapter 85 of the Laws of 2003 on June 26, 2003. The affected policies cover motor vehicles used primarily for non-business purposes, other than policies issued by the New York Automobile Insurance Plan pursuant to NYIL Article 53. This Circular Letter supersedes Circular Letter No. 21 (2001) dated August 8, 2001 and the supplement thereto dated September 20, 2001. The enactment of the aforementioned statute reinstated the "2%" rule for nonrenewals and the one-year policy period for such policies.

**Circular Letter No. 14** was issued on December 4, 2003 to insurers licensed to write Motor Vehicle Physical Damage Insurance in New York State, motor vehicle self-insurers, and insurance producer and adjuster organizations. The purpose of the Circular Letter was to clarify that, as a result of the recent decision of the United States District Court, Section 2610 (b), which prohibits insurers from recommending or suggesting that repairs to a damaged vehicle (other than for a claim solely involving window glass) be made in a particular place or shop or by a particular concern unless expressly requested to do so by their insureds, will be enforced by the Department consistent with the interpretation of the statute by the New York Court of Appeals in *Allstate Insurance Co. v. Serio*, 98 N.Y.2d 198 (2002).

**Circular Letter 15 (2003)** was issued on September 22, 2003 to licensed property/casualty insurers, joint underwriting associations, rate service organizations, and the New York Automobile Insurance Plan. The Circular Letter designated January 1, 2004 as the date insurers should make form and rate filings through the use of the System for Electronic Rate and Form Filings (SERFF) in an effort to promote the modernization and operational efficiencies of market regulation.

**Circular Letter No. 18** was issued on December 4, 2003 to all motor vehicle self-insurers, and insurers licensed to write Motor Vehicle Automobile Insurance related to "No-Fault" insurance law in New York State. This Circular Letter advised that 16 previous Circular Letters were withdrawn due to being outdated, based on criteria indicated in Circular Letter No. 1 (2001).

**Circular Letter No. 19** was issued on November 24, 2003 to all authorized property/casualty insurers, rate service organizations, and insurer producer organizations. The Circular Letter advised of additional statutory requirements for cancellation and other notices, based on the enactment of Chapter 675 of the Laws of 2003, effective on February 12, 2004 (signed into law on October 15, 2003). Chapter 675 amended Section 3425 of the Insurance Law with respect to non-business automobile insurance policies and personal lines insurance policies, to require that a valid notice of cancellation for nonpayment of premium now requires the inclusion of a statement that clearly informs the insured of the amount due. The statute also provides that a notice of cancellation, reduction of limits, substitution of policy form, elimination of coverages, conditional renewal or of intention not to renew, or notice of the reasons for any such notice, that fails to include all provisions required by Section 3425, shall not be an effective notice for the purposes of Section 3425. In addition, a copy (or summary) of such notices

must be mailed, delivered or transmitted to the insured's authorized agent or broker within seven days of mailing to the named insured.

**Circular Letter No. 20** was issued on December 31, 2003 to all authorized motor vehicle insurers and insurance producer organizations. This Circular Letter updated and superseded all earlier Circular Letters advising motor vehicle insurers of Motor Vehicle Accident Prevention Course sponsors approved by the NYS Department of Motor Vehicles (DMV). Two new sponsors and updated information for some current sponsors was provided.

### **23. Individual Policyholder Complaints, Inquiries and Freedom of Information Requests**

Certain complaints and inquiries are processed independently of the Consumer Services Bureau. A total of 1,479 such complaints and inquiries were received by the Market Regulatory Section of the Property Bureau in 2003. This total consisted of 920 involving personal automobile insurance; 55 involving commercial automobile insurance; 124 involving homeowners insurance; 148 involving other liability insurance; 43 involving commercial multiple peril insurance; 28 involving medical malpractice insurance; 20 involving title insurance; and 141 involving other types of insurance (fire and allied lines, surety, inland marine, workers' compensation, etc.). In addition, the Market Regulatory Section processed 356 Freedom of Information (FOIL) requests on policy form and rate information.

### **24. Response to September 11**

#### **a. Support for a Federal Terrorism Backstop**

From an insurance perspective, the events of September 11 resulted in the largest property insurance loss event in our nation's history. These events, coupled with the hardening of the insurance market over the past few years, have raised significant issues for both the industry and its regulators, none more important than that of addressing the issue of comprehensive coverage for terrorist acts. Beginning just days after the tragic events, the New York Insurance Department strongly supported passage of a federal terrorism backstop package, noting that it was imperative that Congress take some meaningful action to avert further disruptions of the insurance marketplace and the national economy. After 14 months of negotiations between the House and Senate, the Terrorism Risk Insurance Act of 2002 (TRIA) passed both houses and President Bush signed it into law, effective November 26, 2002.

#### **b. Pre-TRIA Activities**

Post-September 11, but prior to passage of TRIA, the Department received 152 form filings for terrorism exclusions. The Department did not approve any of these exclusions, finding them to be an effort to pass the risk of terrorism entirely on to insureds. The Superintendent concluded that proposed terrorism exclusions were misleading and/or against public policy pursuant to Section 2307(b) of the New York Insurance Law. In testimony before Congress in February 2002, the Superintendent noted the serious regulatory concerns raised by the catastrophic exposure arising from potential terrorist attacks. He also noted the equally compelling public policy priority of protecting businesses and consumers from retaining the exposure themselves.

#### **c. TRIA – An Overview**

The Terrorism Risk Insurance Act of 2002 is a temporary federal property/casualty reinsurance program, due to expire on December 31, 2005, for losses resulting from specifically defined acts of terrorism. TRIA imposes industrywide limits and individual insurer deductibles and limits on terrorism losses. Insurers must make terrorism coverage for "insured losses" under the act available to their commercial insureds and inform them of the premiums for such coverage. Once the deductible is

satisfied, the federal government will cover 90% of remaining losses up to a combined aggregate program limit of \$100 billion annually.

With regard to the filing and approval of rates and forms, in accordance with TRIA, until December 31, 2003, rates and forms intended to provide terrorism risk insurance covered by TRIA were exempt from prior approval requirements. This preemption does not apply to rates and forms that exclude or limit coverage for terrorism risks or to any other rates or policy form provisions applicable to perils other than "insured losses" under TRIA. Even where state's authority is preempted, TRIA explicitly recognizes the state's role in ensuring that rates cannot be "excessive, inadequate or unfairly discriminatory" and allows for subsequent review of implemented forms. In reviewing rate filings, the Department has not permitted any insurer to engage in practices that violate the statutory rating standards. The Department carefully reviewed the activities of the Insurance Services Office, Inc. (ISO), a rate service organization, both in terms of the magnitude of their proposed rate and the methodology used to derive those rates. Moreover, terrorism exclusions have been reviewed to ensure that they are narrowly crafted, not misleading, nor violative of public policy. Within these parameters the Department worked with the industry and the federal government to make terrorism insurance coverage available and affordable.

#### **d. Department Circular Letter No. 25 (2002)**

Circular Letter No. 25 provides an overview of TRIA including its "make available" requirements, description of its notice provisions pertaining to nullification and reinstatement of exclusions, and the disclosure of the premium charged for covered acts of terrorism. Because New York did not previously approve terrorism exclusions or limitations, the nullification and reinstatement provisions were not relevant to policies in the admitted market. However, to the extent that such exclusions and limitations were in policies issued in the excess line market or in the Free Trade Zone, such provisions were applicable. The Circular Letter clarified that filing of policy forms and rates are preempted only with respect to coverage for terrorism risks; not for exclusions and limitations pertaining to acts of terrorism. The Department requires that such exclusions and limitations track the language of TRIA and that the insurer first satisfy the "make available" requirements of TRIA prior to implementation of such exclusion or limitation.

#### **e. Form and Rate Filings**

From November 26, 2002 through December 31, 2003 the Department received 433 terrorism related form filings and 367 disclosure notices outlining the provisions of TRIA. In addition, there were 651 rate and rule filings.

With respect to form filings for terrorism exclusions and limitations pertaining to other than insured losses covered under TRIA, Circular Letter No. 25 provided that filings for rating classifications identify the basis and rationale supporting the classification. The Department gives consideration to narrowly defined exclusionary provisions; however, insurers are not permitted to include language defining terrorism that might be interpreted as denying coverage for acts that have traditionally been insured under a policy's vandalism provisions. Similarly, exclusions for domestic acts of terrorism which are not covered under TRIA must be narrowly and precisely crafted in order to distinguish such acts from events that have traditionally been covered within the scope of the vandalism peril. No such exclusions have been approved to date.

Even with the federal backstop in place, insurers must meet significant deductible and coinsurance requirements under TRIA. The additional rate that insurers need to charge for losses covered by TRIA should be reflective of this exposure. The proposed rates and methodologies utilized to derive rates vary widely among insurers, ranging from pure judgment to the use of proprietary models. Rates based on modeling have not been accepted because the proprietary nature of models

results in lack of transparency, making it difficult for the Department to discharge its responsibility under Article 23 of the Insurance Law.

## **f. Market Analyses**

### **i. Availability Survey**

This annual survey of insurers continues to facilitate providing information to insurance consumers regarding the coverages available and directing them to the companies which have indicated that they are providing the specific kind of coverage needed. The difficult market conditions have made this service more important than in previous years. Since September 11, 2001 over 600 individuals and businesses have been assisted through information obtained in the survey.

### **ii. Market Conduct Examinations**

In the aftermath of the events of September 11, 2001, the Department received complaints that some insurers were either refusing to write or renew commercial risks or, were improperly canceling or non-renewing such risks in New York State and, in particular, the New York metropolitan area. There were also allegations of possible unwarranted large premium increases. As a result, the Market Conduct Unit commenced a series of investigations into insurer compliance with Section 3426 of the Insurance Law. These investigations were specifically focused on determining the propriety of cancellation, non-renewal and conditional renewal notices (*i.e.*, premium increases of 10% or more) issued on commercial policies by insurers, especially since the terrorist attacks. In addition, a review of agency terminations, changes in commissions and the percentage of commercial business insurers non-renewed in Manhattan during the past year was performed. While most insurers investigated were found to have continued to write business in New York State, including the New York metropolitan area, the majority of insurers investigated issued conditional renewal notices containing significant premium increases. Most of these conditional renewal notices were found to be improper. Most of the insurers indicated that this was due to increased reinsurance costs in the aftermath of the terrorist attacks. Some insurers were observed utilizing restrictive endorsements, especially on policies issued in the Free Trade Zone. Others were noted to have transferred risks to their higher priced companies within the group or moved policies to/from the Free Trade Zone in order to achieve a higher premium.

The Department has begun to hold meetings with these insurers regarding their lack of compliance with Section 3426 in the issuance of invalid conditional renewal notices. Fines are expected to be collected during calendar year 2004 for these offenses.

## **g. Financial Analyses**

### **i. Targeted Financial Analyses and Examinations**

The impact of the events of September 11 on individual insurers remains one of the determining factors for the Bureau when prioritizing its reviews of property/casualty companies. This results in a more timely financial analysis (desk audit) of those companies severely impacted by September 11. Ultimately, the results of the desk audit can lead to the selection of troubled companies for targeted financial examinations.

### **ii. Actuarial Analyses**

The Actuarial Unit continued to monitor the impact of the September 11 events on the loss and loss expense reserves of licensed insurers. The Unit analyzed the responses to Circular Letter No. 2 (2002) which required consideration of September 11 to be included in the Notes to the Annual Statement and the Statement of Actuarial Opinion (SAO). In addition, the Unit participated in meetings

with many insurers that addressed the impact of September 11 and reviewed reserve estimates included in SAOs and the underlying actuarial reports.

#### **h. Department's Disaster Response Plan**

In response to the September 11 attack the Department initiated its use of the Insurance Disaster Response Plan and the New York State Insurance Disaster Coalition, bringing together various companies and coordinating the insurance industry's response to the disaster.

On February 1, 2002 the Department issued Supplement Number 1 to Circular Letter No. 11 (2001), the purpose of this supplement was to update the "Pre-Disaster Data" reporting forms for reporting of 2001 calendar year data and to remind insurers of the April 1<sup>st</sup> deadline established in Circular Letter No. 11 (2001) for reporting of this data. Circular Letter No. 11 (2001) established an annual reporting requirement for "Pre-Disaster Data."

When Department Circular Letter No. 11 (2001) was issued on May 10, 2001, no one at the time could have envisioned the catastrophe that would soon bring all the elements of the New York State Insurance Disaster Coalition into play. By maintaining current insurer information, New York's response time to any future disaster will be expedited.

The Bureau's MARS (Market Analysis Regulatory Services) unit coordinates the effort to produce the "Pre-Disaster Survey," designed to collect data on New York State commercial and personal property policy counts and property exposures, by county. From this data a list is compiled of the top ten commercial and top ten personal property writers for each county. This list, which is compiled by insurer group, is used to identify the companies to be included in the "Emergency Response Coalition."

### **25. Casualty Actuarial Unit**

Casualty Actuarial reviews rate filings for Workers' Compensation insurance, Private Passenger Automobile insurance and Private Passenger and Commercial insurance offered through the Automobile Insurance Plan. All such filings are subject to prior approval. In terms of premium volume, Private Passenger Automobile and Workers' Compensation insurance are the largest property/casualty coverages, accounting for approximately \$12 billion of New York premium volume in 2003.

Additionally, the Casualty Actuarial Unit is a member of the Security Fund Task Force that calculates the property/casualty insurance security fund net value and contributions.

#### **a. Private Passenger Automobile Insurance**

The average change for insurers receiving rate changes in 2003 was approximately +9.6%. For these insurers, liability rates increased 14.6% on average while physical damage rates, primarily collision and theft coverages, decreased 2.2% on average. The insurers receiving rate changes in 2003 represent 53% of the total market for private passenger automobile insurance. The overall impact on the rate level for the entire market (including those auto insurers with no approved rate changes in 2003) was an average increase of 5.0%.

Insurers' private passenger automobile insurance rate submissions may include requests for changes in classification relativities, multi-tier rating plans, innovative rating rules or other types of modifications. These changes must be adequately justified.

In 2003, 69 private passenger automobile rate requests were implemented. The following table lists both the requested and implemented rate changes and provides the liability and physical damage components of such changes.

**Table 41  
PRIVATE PASSENGER AUTOMOBILE RATE FILINGS REVIEWED IN 2003<sup>1</sup>**

Date of Approval	Renewal Effective Date	Insurance Company or Insurance Group	Market Share <sup>2</sup> (%)	Overall Change Requested (%)	Liability Change Taken (%)	Physical Damage Change Taken (%)	Overall Change Taken (%)
1/23/03	4/1/03	United Services Automobile Association	0.92	7.60	22.50	-16.10	5.50
1/28/03	4/7/03	Property & Casualty Ins Co of Hartford	0.20	55.90	21.40	-2.00	15.00
1/31/03	4/1/03	Allmerica Financial: HIC; MBIC; CICOA	0.77	21.30	19.90	-5.40	12.00
2/4/03	4/1/03	GMAC Ins Group: NSIC; CIMIC; MICPCC	0.42	5.50	6.60	3.40	5.50
2/4/03	2/4/03	State-Wide Ins Co	0.25	9.10	14.10	-11.60	9.10
2/11/03	3/6/03	SAFECO Ins Co of Indiana <sup>3,4</sup>	0.00	0.00	0.00	0.00	0.00
2/11/03	5/14/03	Prudential: PPAC; PCIC	1.21	15.90	19.00	10.00	15.90
2/21/03	3/4/03	Michigan Millers Mutual Ins Co	0.07	25.00	14.00	13.70	13.90
2/24/03	3/23/03	Travelers: Farmington Casualty Co <sup>3</sup>	0.00	0.00	0.00	0.00	0.00
2/24/03	3/1/03	One Beacon: General Assurance Co <sup>3</sup>	0.08	0.00	0.00	0.00	0.00
2/26/03	4/28/03	State Farm Mutual Automobile Ins Co	10.27	11.10	17.10	-0.10	11.10
2/26/03	4/28/03	State Farm Fire & Casualty Co	1.15	20.80	19.80	2.50	14.80
2/27/03	4/1/03	Kemper Auto and Home: AMMIC; APIC	0.88	4.50	8.70	-3.70	4.50
3/5/03	3/17/03	Deerbrook Ins Co	0.12	56.90	22.90	0.00	18.00
3/5/03	4/15/03	Selective Ins Co	0.09	15.00	15.00	15.00	15.00
3/6/03	5/1/03	Farmers Ins Group: MCC; NICONY; ACOA	0.11	24.80	24.80	-0.30	14.90
3/21/03	7/1/03	Royal & Sunalliance: A&FIC; GIC; RICOA; RIC; SIC	0.94	4.70	8.60	-1.90	4.70
3/21/03	5/31/03	Met: Economy Premier Assurance Co PAK II	0.21	6.60	15.90	-9.60	4.50
3/21/03	4/1/03	Atlantic States Ins Co	0.03	17.80	19.50	0.00	11.50
3/21/03	4/18/03	Prudential General Ins Co	0.00	10.70	13.30	0.80	9.70
4/3/03	5/1/03	Blue Ridge Ins Co; Blue Ridge Indemnity Co	0.31	16.80	24.20	-4.40	15.00
4/7/03	4/14/03	Travelers: TCIC; TH&MIC	0.02	17.40	21.70	-2.70	15.00
4/9/03	7/22/03	Hartford Ins Co of the Midwest	0.81	33.00	16.70	-4.00	12.00
4/11/03	5/1/03	Erie Ins Co; Erie Ins Co of New York	0.46	21.40	23.40	1.70	13.80
4/22/03	6/14/03	Met P&C; Met Casualty Ins Co	1.49	8.10	7.70	0.00	5.20
5/8/03	5/26/03	Atlantic Mutual Insurance Companies	0.20	0.00	0.50	-0.20	0.10
5/12/03	5/16/03	Travelers: TIC; PIC; COFIC; TIC; SFIC; AICOHC; TICOA; TPCIC; TCCOC	4.67	7.00	13.30	-4.70	7.00
5/15/03	8/1/03	Encompass: CIC; FACCONY; GFIC; NBFICOI; FIC; BUIC	1.49	10.10	10.10	10.10	10.10
5/16/03	6/15/03	New York Central Mutual Fire Ins Co	3.00	6.20	7.80	-2.10	4.30
5/21/03	9/10/03	Merastar Ins Co	0.06	14.80	20.10	2.70	14.80
6/2/03	7/3/03	National General Ins Co	0.14	14.10	23.90	0.00	14.10
6/6/03	9/1/03	Merchants Mutual Insurance Co	0.08	20.60	24.90	-5.00	15.00
6/6/03	9/1/03	Merchants Ins Co of New Hampshire, Inc.	0.39	23.10	16.10	-8.90	8.20
6/20/03	7/27/03	Providence Washington Ins Co; Providence Washington Ins Co of NY	0.13	20.50	17.20	10.20	15.00
7/1/03	9/15/03	Liberty Mutual: The First Liberty Corporation	0.00	-10.00	-10.00	-10.00	-10.00
7/3/03	12/4/03	Argonaut Insurance Co	0.01	14.90	11.20	8.10	10.10
7/9/03	9/26/03	SAFECO: SICOA; SNIC; FNICOA; GICOA	0.17	14.70	17.70	11.80	14.70
7/11/03	10/1/03	AIPSO	9.55	58.30	21.20	-1.30	19.70
7/18/03	9/29/03	Trumbull Insurance Co	0.16	14.60	18.40	5.10	14.60
7/25/03	12/1/03	Progressive Halcyon Insurance Co <sup>3</sup>	0.00	0.00	0.00	0.00	0.00
8/1/03	9/26/03	West American Insurance Co	0.04	24.50	22.70	27.40	24.50
8/6/03	10/1/03	Electric Insurance Co	0.22	1.90	12.50	-11.90	1.90
8/11/03	10/1/03	Utica National Ins Group: UMIC; GAMIC; RFIC; UNAC	0.60	11.70	20.00	0.00	11.70
8/14/03	12/16/03	Fireman's Fund Ins Co; Associated Indemnity Corporation	0.27	10.20	16.20	1.70	10.20
8/28/03	12/1/03	Interboro Mutual Indemnity Ins Co	0.44	10.40	14.50	0.00	10.00
8/29/03	9/20/03	Sterling Ins Co	0.05	5.30	6.60	3.50	5.30
9/2/03	9/5/03	Travelers: Farmington Casualty Co	*	14.90	16.40	1.30	14.90
9/11/03	11/1/03	Peerless Ins Co; Excelsior Ins Co; The Netherlands Ins Co	0.39	8.10	7.80	8.40	8.10

**Table 41  
PRIVATE PASSENGER AUTOMOBILE RATE FILINGS REVIEWED IN 2003<sup>1</sup>**

Date of Approval	Renewal Effective Date	Insurance Company or Insurance Group	Market Share <sup>2</sup> (%)	Overall Change Requested (%)	Liability Change Taken (%)	Physical Damage Change Taken (%)	Overall Change Taken (%)
9/23/03	12/1/03	Fireman's Fund: NSC; AAIC; FFICOW	0.01	8.90	12.00	3.30	8.90
9/30/03	11/1/03	AIG: GE P&C Ins Co; GE Casualty Ins Co; GE Indemnity Ins Co	0.52	6.50	13.10	-10.10	6.50
10/7/03	11/10/03	AIG: GE Auto & Home Assurance Co	0.12	17.70	19.50	-4.70	12.60
10/7/03	12/1/03	Amica Mutual Insurance Co	1.03	6.50	14.70	-7.30	6.50
10/22/03	1/1/04	Utica National Insurance Co of Texas	0.02	11.70	15.20	1.10	11.70
10/24/03	12/27/03	Nationwide: NMIC; NMFIC; NP&CIC	3.63	4.80	3.40	9.00	4.80
10/27/03	11/7/03	Travelers: TICOI; TICOC	0.82	7.40	11.80	-1.00	7.40
10/28/03	1/1/04	State Farm Fire and Casualty	*	6.40	6.50	6.30	6.40
11/13/03	2/15/04	State Farm Mutual Insurance Co	*	-5.00	-4.00	-6.90	-5.00
11/14/03	1/31/04	Response Worldwide Direct Ins Co <sup>3</sup>	0.00	25.5	18.7	5.8	15.0
11/25/03	1/26/04	Great American: GASelC; GASpIC; GACIC; GAAC; GAIC; GAAIC	0.14	14.70	22.30	2.40	14.70
11/25/03	2/15/04	State Farm Fire and Casualty	*	0.80	1.40	-3.80	0.00
12/1/03	1/20/04	Countrywide Insurance Co	0.48	13.30	14.50	0.00	13.30
12/1/03	1/20/04	Hudson Insurance Co	0.05	8.10	8.50	0.00	8.10
12/2/03	2/1/04	Central Mutual Insurance Co	0.06	6.04	9.80	0.90	6.04
12/3/03	2/1/04	Harleysville: HICONY; HWIC	0.20	15.00	18.90	-4.90	9.70
12/3/03	3/1/04	Empire: EIC; AIC; CIC	0.12	19.90	18.90	-1.10	15.00
12/19/03	12/27/03	Nationwide: Nationwide Assurance Co	0.57	13.20	16.30	0.00	13.20
12/19/03	12/31/03	United Services Automobile Association	*	-3.00	-4.80	-1.50	-3.60
12/23/03	12/23/03	Esurance Insurance Co <sup>3,4</sup>	0.00	0.00	0.00	0.00	0.00
12/30/03	3/20/04	Allstate Indemnity Co	1.89	26.70	20.30	0.00	14.80

**2003 Rate Change Summary**

**Prior Approval Filings**

• Number of companies implementing rate changes:	69
• Average liability change for insurers receiving rate changes:	14.60%
• Percentage of total liability industry premium affected:	54.63%
• Impact on the entire market of the overall average liability rate change:	7.98%
• Average physical damage change for insurers receiving rate changes:	-2.17%
• Percentage of total physical damage industry premium affected:	48.21%
• Impact on the entire market of the overall average physical damage change:	-1.05%
• Average combined liability and physical damage change for insurers receiving rate changes:	9.56%
• Percentage of total industry premium affected:	52.53%
• Impact on the entire market of the overall average liability and physical damage rate change:	5.02%

<sup>1</sup> All rate filings (and classification changes) are subject to prior approval.

<sup>2</sup> These market shares are based on 2001 Annual Statement premiums.

<sup>3</sup> New Program

<sup>4</sup> Multi-Tier Program

\* Subsequent filing by this insurer in same year



**b. New York Automobile Insurance Plan Experience in 2001 and 2002**

**i. Earned Car Years**

An important indicator of the size of the Assigned Risk Plan is earned car years. This reflects the size of the Plan as measured by the duration of coverage. (One car insured for one year is one earned car year.) The number of private passenger automobiles (not including commercial autos) insured through the Plan increased 37.4% for liability and 71.2% for collision from 2001 to 2002. Table 42 shows a ten-year history for voluntary and assigned liability and assigned collision earned car years. This marks the second year in a row that assigned liability and collision earned car years increased from the previous year.

**Table 42  
LIABILITY AND COLLISION EARNED CAR YEARS  
Voluntary And Assigned Risk Markets  
1993 – 2002**

Calendar Year	Voluntary Liability	Percent Change from Previous Year	Assigned Risk Liability	Percent Change From Previous Year	Combined Liability	Percent Change from Previous Year	Assigned Risk Collision	Percent Change From Previous Year
1993	6,536,919		1,257,622		7,794,541		70,991	
1994	6,487,828	-0.8	1,276,617	1.5	7,764,445	-0.4	64,053	-9.8
1995	6,643,605	2.4	1,196,578	-6.3	7,840,183	1.0	62,517	-2.4
1996	6,662,881	0.3	970,552	-18.9	7,633,433	-2.6	51,547	-17.5
1997	7,049,333	5.8	744,973	-23.2	7,794,306	2.1	39,948	-22.5
1998	7,428,546	5.4	541,247	-27.3	7,969,793	2.3	23,988	-40.0
1999	8,031,017	8.1	324,355	-40.1	8,355,372	4.8	11,631	-51.5
2000	8,106,797	0.9	207,802	-35.9	8,314,599	-0.5	9,408	-19.1
2001	8,147,522	0.5	343,511	65.3	8,491,033	2.1	27,597	193.3
2002	8,463,417	3.9	472,092	37.4	8,935,509	5.2	47,234	71.2

**ii. Risks by Surcharge Category**

In 2002, there were 472,092 private passenger earned car years for liability and 47,234 for collision coverage insured through the Plan. Table 43 shows the distribution of New York private passenger liability and collision assigned risks by surcharge category for 2000, 2001 and 2002.

**Table 43  
DISTRIBUTION OF PRIVATE PASSENGER AUTOMOBILE ASSIGNED RISKS  
LIABILITY AND COLLISION COVERAGES  
by Discount or Surcharge Category , 2000 – 2002**

Discount or Surcharge Category	Liability			Collision		
	2000 (%)	2001 (%)	2002 (%)	2000 (%)	2001 (%)	2002 (%)
Total, all categories	100.0	100.0	100.0	100.0	100.0	100.0
Total Unsurcharged	64.8	57.3	56.9	59.3	52.4	52.5
3 Years Claim Free (1 or less with Plan) (Manual Rates)	36.1	44.7	42.7	36.3	44.5	40.9
Experience Discount						
4 Years (One or more with Plan) – 18% Credit	9.7	5.3	8.8	7.6	3.7	8.2
5 Years (Two or more with Plan) – 25% Credit	9.1	3.3	2.3	7.4	2.0	1.5
6 Years or more (3 or more with Plan) – 30% Credit	9.9	4.0	3.1	8.0	2.2	1.9
Total Surcharged	35.2	42.7	43.1	40.7	47.6	47.5
Inexperienced Operator Surcharge	18.0	20.5	20.3	13.6	16.7	16.2
Experience Surcharge						
15%	10.9	12.7	13.1	15.5	17.3	18.1
25%	0.1	0.3	0.3	0.1	0.3	0.2
35%	2.5	3.6	3.6	4.7	5.6	5.7
50%	1.3	1.8	1.8	1.7	2.2	2.0
75%	1.0	1.3	1.4	1.9	1.9	1.9
100%-150%	1.4	2.5	2.6	3.1	3.6	3.3

**iii. Risks by Rating Territory**

The proportions of all private passenger liability risks that are assigned risks, listed by rating territory for 2001 and 2002, are shown in Table 44. During 2002, 5.3% of all New York State private passenger automobiles were assigned risks as opposed to 4.0% in 2001. The number of voluntary risks increased 315,896 while the number of assigned risks increased by 128,579. The proportion of assigned risks was 10% or higher in 4 of the 70 rating territories in 2001 and was 10% or higher in 6 of the 70 in 2002. The highest 2002 ratio was 46.7% in the Bronx Territory and the lowest was 0.2% in the Corning Territory. Between 2001 and 2002 the number of Assigned Risks increased in all of New York’s 70 rating territories. The congested urban areas of New York City produced the highest assigned risk-to-voluntary ratios in the State.

Table 45 displays a seven-year history of the percentage of assigned-to-voluntary risks by territory, ranked from the highest to the lowest. All tables in this section are derived from data provided by Automobile Insurance Plan Services Office.

Territory	2001			2002			# Change	% Change	#Change	% Chng.	
	Assigned	Voluntary	Total	Assigned	Voluntary	Total	In A/R	In A/R	in Market	in Mrkt.	
01	Bronx Territory	22,836	34,094	56,930	28,041	32,033	60,074	5,205	22.8	3,144	5.5
03	Bronx Suburban Territory	22,051	159,092	181,143	28,371	173,702	202,073	6,320	28.7	20,930	11.6
05	Staten Island	10,352	205,222	215,574	14,717	226,672	241,389	4,365	42.2	25,815	12.0
07	Buffalo	4,934	105,413	110,347	7,226	112,065	119,291	2,292	46.5	8,944	8.1
08	Buffalo Semi-Suburban	2,902	192,276	195,178	4,512	192,609	197,121	1,610	55.5	1,943	1.0
09	Schenectady County	903	98,954	99,857	1,689	101,868	103,557	786	87.0	3,700	3.7
11	Rochester	9,941	393,645	403,586	14,120	402,076	416,196	4,179	42.0	12,610	3.1
12	Syracuse	3,041	214,261	217,302	5,034	219,764	224,798	1,993	65.5	7,496	3.4
13	Albany	1,966	157,221	159,187	3,240	162,728	165,968	1,274	64.8	6,781	4.3
14	Niagara Falls	1,115	68,277	69,392	1,972	69,221	71,193	857	76.9	1,801	2.6
15	Utica	291	61,915	62,206	588	62,839	63,427	297	101.9	1,221	2.0
16	Saratoga Springs Suburban	143	45,849	45,992	255	47,903	48,158	112	78.5	2,166	4.7
17	Kings County	29,236	325,033	354,269	31,507	342,642	374,149	2,271	7.8	19,880	5.6
18	Manhattan	22,244	130,793	153,037	26,939	139,551	166,490	4,695	21.1	13,453	8.8
19	Queens	10,002	46,440	56,442	11,799	49,990	61,789	1,797	18.0	5,347	9.5
20	Hempstead	17,963	422,488	440,451	27,865	450,141	478,006	9,902	55.1	37,555	8.5
21	North Hempstead	4,906	149,355	154,261	7,455	156,630	164,085	2,549	52.0	9,824	6.4
22	Oyster Bay	6,759	228,495	235,254	9,837	238,775	248,612	3,078	45.5	13,358	5.7
24	Rome	272	21,063	21,335	432	22,318	22,750	160	58.8	1,415	6.6
25	Auburn	119	24,572	24,691	191	25,064	25,255	72	60.9	564	2.3
27	Elmira	83	49,600	49,683	89	51,130	51,219	6	7.5	1,536	3.1
28	Binghamton	1,689	116,266	117,955	2,835	117,274	120,109	1,146	67.9	2,154	1.8
29	Gloversville	156	27,103	27,259	204	27,574	27,779	48	31.1	520	1.9
30	Saratoga Springs	77	21,060	21,137	130	22,678	22,808	53	68.3	1,671	7.9
31	Chautauqua County	515	83,474	83,989	844	85,109	85,953	329	63.8	1,964	2.3
32	Newburgh	1,028	64,054	65,082	1,901	67,197	69,098	873	85.0	4,016	6.2
33	Poughkeepsie	2,071	97,323	99,394	3,033	101,431	104,465	962	46.5	5,071	5.1
34	Troy	1,057	57,185	58,242	1,700	59,181	60,881	643	60.8	2,639	4.5
35	Amsterdam	70	20,261	20,331	181	21,569	21,751	111	159.0	1,420	7.0
36	Glens Falls	534	41,779	42,313	1,021	43,059	44,080	487	91.2	1,767	4.2
37	Oswego	669	31,410	32,079	1,152	32,980	34,132	483	72.2	2,053	6.4
38	Syracuse Suburban	147	57,057	57,204	278	59,177	59,455	131	89.3	2,251	3.9
39	Rochester Suburban	157	41,642	41,799	214	42,604	42,818	57	36.0	1,019	2.4
40	Corning	42	26,461	26,503	45	27,557	27,602	3	7.6	1,099	4.1
41	Erie County (Balance)	531	73,770	74,301	802	80,034	80,835	271	51.0	6,534	8.8
42	Buffalo Suburban	2,403	158,860	161,263	3,581	154,752	158,333	1,178	49.0	-2,930	-1.8
43	Niagara Falls Suburban	265	33,072	33,337	544	33,435	33,979	279	105.2	642	1.9
44	Broome County (Balance)	60	15,354	15,414	97	16,915	17,012	37	61.3	1,598	10.4

<b>Table 44: NY Private Passenger Automobile Exposures in Earned Car Years by Territory for the Voluntary and Assigned Risk Markets</b>											
<b>Territory</b>	2001			2002			# Change	% Change	#Change	% Chng.	
	Assigned	Voluntary	Total	Assigned	Voluntary	Total	In A/R	In A/R	in Market	in Mrkt.	
46 Putnam County	1,693	71,205	72,898	2,452	74,273	76,725	759	44.8	3,827	5.2	
47 Orleans County	241	25,578	25,819	427	26,054	26,481	186	77.2	662	2.6	
48 Monroe County (Balance)	133	18,605	18,738	206	19,527	19,733	73	54.7	995	5.3	
49 Niagara County (Balance)	126	32,630	32,756	245	33,056	33,301	119	94.5	545	1.7	
51 Ontario County, etc.	2,097	189,944	192,041	3,338	194,140	197,478	1,241	59.2	5,437	2.8	
52 Fort Plain, Herkimer	400	37,820	38,220	594	38,390	38,984	194	48.6	764	2.0	
54 Cortland County, etc.	2,936	190,038	192,974	4,175	194,065	198,239	1,239	42.2	5,265	2.7	
55 Queens Suburban	50,432	508,879	559,311	60,376	541,010	601,385	9,944	19.7	42,074	7.5	
56 Saratoga County (Balance)	132	25,815	25,947	243	28,267	28,510	111	84.3	2,563	9.9	
58 Dutchess County (Balance)	1,854	89,585	91,439	2,549	93,598	96,147	695	37.5	4,708	5.1	
59 Columbia County, etc.	904	77,525	78,429	1,437	80,398	81,835	533	58.9	3,406	4.3	
60 Genesee County	226	38,505	38,731	429	39,139	39,568	203	90.0	837	2.2	
61 Delaware County, etc.	2,058	131,914	133,972	3,086	134,302	137,388	1,028	50.0	3,416	2.6	
62 Highland, Kingston	2,142	77,610	79,752	3,146	81,767	84,913	1,004	46.9	5,161	6.5	
64 Middletown	4,215	140,718	144,933	6,471	149,355	155,826	2,256	53.5	10,893	7.5	
65 Ossining	5,463	177,412	182,875	8,144	183,673	191,817	2,681	49.1	8,942	4.9	
67 Clinton County, etc.	7,236	349,358	356,594	11,819	350,691	362,510	4,583	63.3	5,916	1.7	
68 Rockland County	3,695	177,793	181,488	5,826	184,099	189,925	2,131	57.7	8,437	4.6	
71 Saratoga County South	122	44,693	44,815	166	44,637	44,803	44	36.3	-12	0.0	
72 Albany County (Balance)	47	12,782	12,829	83	12,424	12,508	36	77.1	-321	-2.5	
73 Rensselaer County (Balance)	362	38,425	38,787	569	38,916	39,485	207	57.1	698	1.8	
74 Jefferson County	617	63,681	64,298	989	65,699	66,689	372	60.3	2,391	3.7	
75 Suffolk County West	22,874	483,380	506,254	35,319	508,052	543,372	12,445	54.4	37,118	7.3	
76 Suffolk County East	25,120	417,055	442,175	39,530	429,744	469,274	14,410	57.4	27,099	6.1	
81 Monticello-Liberty	143	11,144	11,287	212	12,549	12,761	69	48.4	1,474	13.1	
82 Sullivan County Central	340	12,739	13,079	494	13,871	14,366	154	45.4	1,287	9.8	
83 Sullivan County (Balance)	371	23,232	23,603	523	23,446	23,969	152	41.1	366	1.6	
84 Allegany County, etc.	2,470	180,756	183,226	4,063	183,949	188,012	1,593	64.5	4,786	2.6	
86 Oneida	287	41,348	41,635	432	41,632	42,064	145	50.7	429	1.0	
94 Mount Vernon and Yonkers	9,392	98,816	108,208	12,983	103,524	116,506	3,591	38.2	8,298	7.7	
95 White Plains	2,230	42,900	45,130	3,250	45,179	48,429	1,020	45.8	3,299	7.3	
97 New York City Suburban	9,625	215,447	225,072	14,072	221,743	235,815	4,447	46.2	10,743	4.8	
<b>Entire State</b>	<b>343,513</b>	<b>8,147,521</b>	<b>8,491,034</b>	<b>472,092</b>	<b>8,463,417</b>	<b>8,935,509</b>	<b>128,579</b>	<b>37.4</b>	<b>444,475</b>	<b>5.2</b>	

• Derived from data provided by the Automobile Insurance Plan Services Office. Subject to rounding.

**Table 45**  
**Percentage of Private Passenger Automobiles Insured Through the Automobile Insurance Plan, by Territory, 1996-2002**

Territory	1996		1997		1998		1999		2000		2001		2002	
	(%)	Rank	(%)	Rank	(%)	Rank	(%)	Rank	(%)	Rank	(%)	Rank	(%)	Rank
01 Bronx Territory	77.8	1	65.3	1	52.4	1	34.3	1	30.9	1	40.1	1	46.7	1
19 Queens	54.9	2	46.1	2	39.7	2	26.0	2	15.8	2	17.7	2	19.1	2
18 Manhattan	39.7	3	30.1	3	23.5	3	14.7	3	10.8	3	14.5	3	16.2	3
03 Bronx Suburban Territory	37.4	4	27.6	4	21.8	5	13.2	4	9.4	4	12.2	4	14.0	4
94 Mount Vernon and Yonkers	21.8	7	16.5	7	12.3	7	7.2	7	5.2	7	8.7	6	11.1	5
55 Queens Suburban	32.6	6	24.2	6	19.9	6	11.9	6	6.9	6	9.0	5	10.0	6
76 Suffolk County East	14.4	9	11.2	8	7.9	9	4.4	9	3.0	8	5.7	8	8.4	7
17 Kings County	36.9	5	25.8	5	22.3	4	13.1	5	6.9	5	8.3	7	8.4	8
95 White Plains	14.1	10	10.7	10	5.8	13	2.9	14	2.2	13	4.9	9	6.7	9
75 Suffolk County West	13.6	11	10.8	9	7.6	10	4.3	10	2.5	10	4.5	11	6.5	10
05 Staten Island	14.8	8	10.0	12	8.0	8	4.6	8	2.7	9	4.8	10	6.1	11
07 Buffalo	9.1	18	6.7	21	3.4	24	1.2	31	1.0	24	4.5	12	6.1	12
97 New York City Suburban	10.7	14	7.9	14	5.8	14	3.2	12	2.5	11	4.3	13	6.0	13
20 Hempstead	13.5	13	10.3	11	7.5	11	4.1	11	2.3	12	4.1	14	5.8	14
21 North Hempstead	10.0	16	7.6	16	5.4	15	3.1	13	1.9	14	3.2	15	4.5	15
65 Ossining	7.1	30	5.2	25	3.7	22	2.2	19	1.6	17	3.0	16	4.2	16
64 Middletown	9.0	19	6.9	18	4.3	17	2.3	18	1.7	16	2.9	17	4.2	17
22 Oyster Bay	8.9	20	6.8	19	4.7	16	2.8	15	1.9	15	2.9	18	4.0	18
62 Highland, Kingston	8.8	22	6.2	22	3.5	23	1.8	21	1.3	20	2.7	19	3.7	19
82 Sullivan County Central	13.6	12	9.9	13	5.9	12	2.8	16	1.5	18	2.6	20	3.4	20
11 Rochester	5.0	43	3.3	40	1.8	41	0.6	46	0.6	38	2.5	21	3.4	21
37 Oswego	8.9	21	7.2	17	4.2	19	1.7	23	0.9	26	2.1	23	3.4	22
67 Clinton County, etc.	7.0	31	4.5	32	2.7	31	1.4	26	1.0	23	2.0	26	3.3	23
46 Putnam County	7.4	26	5.5	23	3.9	21	2.3	17	1.5	19	2.3	22	3.2	24
68 Rockland County	7.3	29	4.7	30	2.7	32	1.2	30	0.8	31	2.0	25	3.1	25
33 Poughkeepsie	7.3	28	5.4	24	3.3	25	1.6	24	1.0	25	2.1	24	2.9	26
34 Troy	8.0	24	5.2	26	3.0	27	1.3	28	0.8	27	1.8	28	2.8	27
14 Niagara Falls	5.5	38	3.3	41	1.6	44	0.6	43	0.4	44	1.6	29	2.8	28
32 Newburgh	6.8	32	4.8	29	2.7	30	1.1	32	0.7	33	1.6	30	2.8	29
58 Dutchess County (Balance)	7.4	27	5.1	27	3.2	26	1.6	25	1.1	21	2.0	27	2.7	30
28 Binghamton	4.6	45	3.6	37	1.9	40	0.9	39	0.6	35	1.4	36	2.4	31
36 Glens Falls	7.6	25	4.6	31	2.8	28	1.0	34	0.5	40	1.3	41	2.3	32
08 Buffalo Semi-Suburban	3.6	58	2.7	47	1.5	45	0.7	41	0.6	37	1.5	35	2.3	33
42 Buffalo Suburban	4.1	52	2.7	49	1.7	42	0.9	36	0.6	34	1.5	34	2.3	34
61 Delaware County, etc.	6.5	33	4.2	34	2.5	33	1.2	29	0.8	28	1.5	32	2.2	35
12 Syracuse	4.6	46	3.2	42	1.4	49	0.5	53	0.4	48	1.4	37	2.2	36
83 Sullivan County (Balance)	9.6	17	6.8	20	4.2	18	2.1	20	1.1	22	1.6	31	2.2	37

<b>Table 45</b>														
<b>Percentage of Private Passenger Automobiles Insured Through the Automobile Insurance Plan, by Territory, 1996-2002</b>														
<b>Territory</b>	<b>1996</b>		<b>1997</b>		<b>1998</b>		<b>1999</b>		<b>2000</b>		<b>2001</b>		<b>2002</b>	
	(%)	Rank	(%)	Rank	(%)	Rank	(%)	Rank	(%)	Rank	(%)	Rank	(%)	Rank
84 Allegany County, etc.	5.5	40	3.4	39	1.9	38	0.9	38	0.6	36	1.3	38	2.2	38
54 Cortland County, etc.	5.5	41	3.5	38	2.1	37	1.1	33	0.8	30	1.5	33	2.1	39
13 Albany	5.9	36	3.8	36	2.1	35	1.0	35	0.5	39	1.2	42	2.0	40
24 Rome	3.7	56	2.6	53	1.2	53	0.5	52	0.4	46	1.3	39	1.9	41
59 Columbia County, etc.	6.4	34	4.2	33	2.7	29	1.3	27	0.7	32	1.2	43	1.8	42
51 Ontario County, etc.	5.2	42	3.2	43	1.9	39	0.8	40	0.5	42	1.1	44	1.7	43
81 Monticello-Liberty	10.5	15	7.7	15	4.0	20	1.7	22	0.8	29	1.3	40	1.7	44
09 Schenectady County	4.5	50	3.0	45	1.7	43	0.6	44	0.3	50	0.9	49	1.6	45
47 Orleans County	4.6	47	2.6	51	1.3	52	0.5	49	0.3	52	0.9	47	1.6	46
43 Niagara Falls Suburban	4.7	44	2.7	48	1.3	51	0.4	58	0.2	55	0.8	50	1.6	47
52 Fort Plain, Herkimer	5.5	39	2.9	46	1.4	50	0.5	50	0.5	43	1.0	45	1.5	48
74 Jefferson County	6.2	35	3.9	35	2.1	36	0.9	37	0.5	41	1.0	46	1.5	49
73 Rensselaer County (Balance)	4.6	48	2.4	55	1.5	46	0.6	45	0.4	45	0.9	48	1.4	50
60 Genesee County	3.2	64	1.9	59	0.8	60	0.4	55	0.3	51	0.6	55	1.1	51
48 Monroe County (Balance)	3.3	62	1.7	61	0.7	63	0.2	68	0.1	63	0.7	52	1.0	52
86 Oneida	3.9	54	2.6	52	1.1	55	0.5	51	0.4	47	0.7	53	1.0	53
41 Erie County (Balance)	4.1	51	2.6	50	1.4	48	0.6	48	0.3	53	0.7	51	1.0	54
31 Chautauqua County	5.8	37	3.1	44	1.4	47	0.6	47	0.3	54	0.6	54	1.0	55
15 Utica	2.5	65	1.6	63	0.7	65	0.2	64	0.2	59	0.5	59	0.9	56
56 Saratoga County (Balance)	4.5	49	2.1	57	0.9	58	0.3	61	0.1	62	0.5	57	0.9	57
35 Amsterdam	3.7	57	2.0	58	1.0	57	0.4	56	0.2	56	0.3	65	0.8	58
25 Auburn	4.1	53	2.5	54	1.1	54	0.3	60	0.2	60	0.5	58	0.8	59
49 Niagara County (Balance)	3.3	63	1.4	65	0.6	66	0.2	63	0.1	66	0.4	61	0.7	60
29 Gloversville	8.2	23	4.9	28	2.1	34	0.7	42	0.3	49	0.6	56	0.7	61
72 Albany County (Balance)	3.4	60	1.8	60	0.9	59	0.3	59	0.2	57	0.4	63	0.7	62
44 Broome County (Balance)	3.4	61	1.7	62	0.8	62	0.4	57	0.2	58	0.4	60	0.6	63
30 Saratoga Springs	3.9	55	2.3	56	1.1	56	0.5	54	0.2	61	0.4	64	0.6	64
16 Saratoga Springs Suburban	3.5	59	1.6	64	0.8	61	0.2	66	0.1	68	0.3	66	0.5	65
39 Rochester Suburban	2.4	66	1.3	66	0.5	68	0.2	65	0.1	67	0.4	62	0.5	66
38 Syracuse Suburban	2.1	69	1.3	67	0.7	64	0.3	62	0.1	64	0.3	68	0.5	67
71 Saratoga County South	2.2	67	1.2	68	0.6	67	0.2	67	0.1	65	0.3	67	0.4	68
27 Elmira	2.2	68	0.6	70	0.3	69	0.1	69	0.1	70	0.2	69	0.2	69
40 Corning	1.7	70	0.7	69	0.2	70	0.1	70	0.1	69	0.2	70	0.2	70
<b>Entire State</b>	<b>12.8</b>		<b>9.6</b>		<b>6.8</b>		<b>3.9</b>		<b>2.5</b>		<b>4.0</b>		<b>5.3</b>	

**c. Workers' Compensation Insurance**

On December 1, 2003, the annual Workers' Compensation rate revision became effective producing an increase in average rate level of 1.7%. Including the change in the New York State Assessment, the overall premium level for Workers' Compensation coverage increased by 2.9%.

In 2003 there was a small increase in premium level, only the second since 1995. Premium changes during the past eight years are shown below:

<b>Year</b>	<b>Net Change*</b>
1996	-18.2%
1997	-8.4%
1998	-6.0%
1999	3.9%
2000	0.0%
2001	-1.8%
2002	-1.2%
2003	2.9%

\*Net change includes rate level and assessment charge changes.

Note that the premium level effective December 1, 2003 is 26.9% lower than that in effect in 1995.

**Table 46**  
**WORKERS' COMPENSATION DIVIDEND CLASSIFICATION PLANS APPROVED**  
**2003**

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**Plan Types:**

- A = Flat
  - B = Sliding Scale/ Loss Ratio
  - C = Retention
- 

<b>COMPANY NAME</b>	<b>PLAN TYPE</b>	<b>APPROVAL DATE</b>
GNY Mutual Insurance Company	B	5/2/03
Greater New York	A,B	5/2/03
PMA Group	A	1/7/03
Strathmore Insurance Company	B	5/2/03

**Table 47  
WORKERS' COMPENSATION RATE HISTORY  
New York State, 1980-2003**

Effect. Date	Policy Year	Calendar Year	Law Amendments & Medical & Hospital Agreements		Wage & L/R Trend Factors	Expenses	Effect on Rate Level	Assessments			Cumulative Approved	
			Indemnity	Medical				WCB	SDF&RCF	Filed		Approved
7/80	-4.5%	-7.1%		0.0%	1.0133	-4.1%		-0.1%	-2.5%	-3.1%	-10.1%	-10.1%
10/80										2.9%	2.9%	-7.5%
7/81	-11.5%	-11.5%		7.7%	0.8600	-3.1%		-0.4%	0.3%	-14.3%	-20.4%	-26.4%
7/82	-4.6%	-11.6%		4.3%	0.9895	0.3%		0.1%	1.2%	-2.1%	-3.4%	-28.9%
7/83 <sup>1</sup>	-0.3%	-7.8%		19.5%	0.8807	-0.1%		0.1%	-4.1%	5.4%	-2.0%	-30.3%
7/84	6.6%	3.5%		7.8%	0.8979	3.8%		0.1%	2.6%	9.4%	8.1%	-24.6%
7/85 <sup>2</sup>	7.7%	0.9%		8.3%	0.9725	2.2%		-0.3%	-1.5%	14.2%	10.2%	-17.0%
7/86	-1.3%	-8.4%		3.8%	0.9257	3.0%		0.2%	1.0%	1.5%	-4.7%	-20.9%
7/87	7.5%	12.8%		2.2%	0.9134	0.4%		0.3%	0.5%	6.5%	5.1%	-16.9%
7/88	9.2%	12.2%		7.2%	0.9470	0.7%		-0.4%	-1.4%	28.3%	11.1%	-7.7%
7/89	17.6%	22.5%		2.0%	0.9254	0.7%		-0.3%	1.5%	28.5%	15.5%	6.6%
7/90	12.8%	13.5%	18.0%	3.4%	0.9478	0.4%		-0.4%	-0.7%	39.1%	29.4%	38.1%
7/91	23.4%	20.9%	3.7%	2.1%	0.9012	-4.2%		0.3%	4.1%	25.1%	15.3%	59.2%
7/92	20.5%	13.1%	4.2%	1.2%	0.9500	-0.3%		-0.4%	4.1% <sup>3</sup>	18.4%	15.6%	84.1%
7/93	12.0%	17.1%	1.0%		1.0010	0.0%		-0.3%	-1.0% <sup>3</sup>	18.7%	14.4%	110.6%
4/94	-4.9%	-0.1%		-1.9% <sup>4</sup>	1.0010	0.0%	-16.3% <sup>5</sup>		13.5% <sup>5</sup>	-5.0%	-5.0%	100.1%
10/94	8.0%	1.9%		0.8%	0.9640	-1.2%		1.4%	-3.1%	-1.6%	-1.7%	96.7%
10/95	-17.1%	-15.3%		0.05%	1.0960	0.8%		-8.4%	3.7%	-2.8%	-5.0%	86.9%
	<b>Pol. Yr.</b>	<b>Acc. Yr.</b>										
10/96	-14.9%	-16.5%		-3.2%	1.0430	0.0%		-14.9%	-0.2%	-15.1%	-18.2%	52.9%
10/97	-9.1%	-9.5%		0.0%	1.0140	-0.1%		-7.5%	-1.0%	-3.8%	-8.4%	40.1%
10/98	8.9%	2.9%		0.0%	0.9080	0.8%		-3.1%	-3.0%	-0.4%	-6.0%	31.7%
10/99	17.1%	8.5%		0.0%	0.9860	1.2%		0.0%	3.9%	17.0%	3.9%	36.8%
10/00	4.5%	-0.2%		0.0%	0.962	0.1%		-2.5%	2.6%	0.0%	0.0%	36.8%
10/01	0.4%	-3.5%		0.0%	1.020	-0.1%		0.4%	-1.8%	-1.4%	-1.8%	34.3%
10/02	3.4%	-2.5%		0.0%	0.961	0.5%		0.0%	-1.2%	8.1%	-1.2%	32.7%
12/03	14.5%	3.7%		0.0%	0.934	-0.1%		0.0%	1.7%	1.2%	2.9%	36.5%

<sup>1</sup> Includes Stock Security Fund Tax of 1.012.

<sup>2</sup> The Loss Constant Offset was removed in 1985.

<sup>3</sup> Includes OSHA assessment of 1.25%.

<sup>4</sup> Includes elimination of 13.0% Hospital Surcharge.

<sup>5</sup> Assessments are included in a fee. In April 1994, this produced an effect of -15.0% on the rate level.



**Table 48: WORKERS' COMPENSATION — RATE DEVIATIONS (Approved as of February 1, 2004)**

<b>Company Name</b>	<b>Effective Date</b>	<b>Downward Deviation</b>	<b>Company Name</b>	<b>Effective Date</b>	<b>Downward Deviation</b>
Ace Fire Underwriters Ins Co	03/23/95	10.0	EastGuard Ins Co	02/01/04	10.0
Ace Property & Casualty Ins Co	04/15/03	0.0	Erie Ins Co of New York	04/01/02	7.5
Admiral Ins Co (formerly FICO Ins Co)	05/17/96	15.0	Erie Insurance Company	11/01/96	5.0
AIU Ins Co	05/15/96	15.0	Fidelity & Deposit Co of Maryland	10/15/97	10.0
Alea North America Ins Co	04/17/03	5.0	Fidelity & Guaranty Ins Co	08/04/83	15.0
All America Ins Co	08/01/96	10.0	Fidelity & Guaranty Ins Underwriters Inc.	12/22/97	10.0
American Alternative Ins Corporation	06/01/03	0.0	Fire Districts of NY Mutual Ins Co	12/17/97	9.0
American Automobile Ins Co	06/13/83	16.0	Fire & Casualty Ins Co of CT	02/13/98	10.0
American Casualty Co of Reading, PA	03/01/01	15.0	Fireman's Fund Ins Co	02/15/85	10.0
American Economy Ins Co	06/01/96	10.0	Florists' Mutual Ins Co	08/01/98	10.0
American Employers' Ins Co	10/01/99	15.0	Fremont Indemnity Ins Co	10/28/97	15.0
American Fire & Casualty Co	10/25/01	10.0	Frontier Ins Co	04/07/98	10.0
American Guarantee & Liability Ins Co	04/15/01	10.0	General Security P&C Ins Co	06/03/99	10.0
American Manufacturers Mutual Ins Co	10/01/85	10.0	Globe Indemnity Co	03/01/03	10.0
American Protection Ins Co	06/02/93	15.0	Graphic Arts Mutual Ins Co	01/01/84	15.0
American-Zurich Ins Co	12/01/96	15.0	Great American Alliance Ins Co	10/01/01	10.0
AmGuard Ins Co	02/01/04	5.0	Great Amer. Assur Co (form. Agricultural Ins)	10/01/00	10.0
Argonaut-Midwest Ins Co	12/01/01	10.0	Great Northern Ins Co	08/12/85	7.0
Atlantic Mutual Ins Co	06/01/00	5.0	Guidant Mutual (formerly Preferred Risk Mut)	02/01/94	12.5
Atlantic Specialty Ins Co	08/01/96	15.0	Harleysville Worcester Ins Co	10/01/85	10.0
Automobile Ins Co of Hartford, CT	05/25/83	15.0	Hartford Casualty Ins Co	04/01/99	15.0
Bankers Standard Ins Co	03/23/95	15.0	Hartford Fire Ins Co	10/01/86	15.0
Blue Ridge Indemnity Co	06/01/01 <sup>1</sup>	10.0	Hartford Ins. Co. of the Midwest	05/02/86	10.0
Blue Ridge Indemnity Co	05/01/01 <sup>2</sup>	10.0	Hartford Underwriters Ins Co	04/01/99	5.0
Casualty Ins Co	10/28/97	15.0	Homeland Ins Co of NY (form. GA Ins of NY)	05/01/03	15.0
Centennial Ins Co	07/15/88	10.0	Indemnity Ins Co of North America	01/01/97	15.0
Centre Ins Co (formerly Business Ins Co)	02/01/97	15.0	Insurance Co of Greater New York	02/01/01	10.0
Centurion Ins Co	08/01/99	10.0	Kemper Employers Ins Co	05/01/01	10.0
Chubb Indemnity Co	05/01/96	15.0	Legion Ins Co	01/01/02	10.0
Church Mutual Ins Co.	12/01/03	0.0	Liberty Insurance Corporation	01/01/00	14.0
Cincinnati Ins Co	12/15/99	10.0	Liberty Mutual Fire Ins Co	01/01/00	5.0
Citizens Ins Co of America	10/01/01	10.0	Main Street America Assurance Co	11/11/02	7.5
Colonial American Casualty & Surety Co	10/15/97	10.0	Massachusetts Bay Ins Co	10/01/01	5.0
Commercial Compensation Ins Co	04/01/98	10.0	Merchants Ins Co of New Hampshire	01/01/02	10.0
Connecticut Indemnity Co	02/27/97	15.0	Michigan Millers Mutual Ins Co	06/01/98	10.0
Eastern Casualty Ins Co	03/19/01	10.0	Mountain Valley Indem Co (form. White Mts)	03/15/99	10.0

**Table 48: WORKERS' COMPENSATION — RATE DEVIATIONS (Approved as of February 1, 2004)**  
(continued)

<b>Company Name</b>	<b>Effective Date</b>	<b>Downward Deviation</b>	<b>Company Name</b>	<b>Effective Date</b>	
National Fire Ins Co of Hartford	03/01/04	0.0	Royal Indemnity Co	03/01/03	15.0
Netherlands Ins Co	04/01/97	15.0	Safeguard Ins Co	05/01/95	10.0
New Hampshire Ins Co	05/15/96	15.0	Selective Ins Co of South Carolina	09/01/01	10.0
Newark Ins Co	05/01/95	7.5	Selective Way Ins Co	03/01/02	5.0
NorGuard Ins Co	02/01/04	0.0	Sentry Select Ins Co (formerly John Deere)	08/01/97	10.0
North River Ins Co	01/01/02	10.0	Star Ins Co	06/01/03	0.0
Northern Assurance Co of America	05/01/03	0.0	State Farm Fire and Casualty Co	06/01/01	15.0
Northern Ins Co of New York	01/04/02	5.0	Strathmore Ins Co	01/01/01	15.0
Ohio Security Ins Co	10/25/01	10.0	St. Paul Mercury Ins Co	02/13/96	15.0
Old Republic Ins Co	08/01/01	9.1	TIG Ins Co	01/01/01	7.5
One Beacon Amer. Ins Co (form. Comm Union)	10/01/99	10.0	TIG Ins Co of New York	01/01/01	12.5
Oriska Ins Co	07/01/01	10.0	Trans Pacific Ins Co	09/01/02	10.0
Pacific Indemnity Co	01/13/83	15.0	Transcontinental Ins Co	03/01/04	10.0
Paramount Ins Co	10/03/83	15.0	Travelers Casualty & Surety Co of Illinois	08/12/85	15.0
Patriot General Ins Co	02/25/02	10.0	Travelers Indemnity Co of America	01/16/91	15.0
Peerless Ins Co	05/01/96	7.5	Travelers Indemnity Co of Connecticut	08/01/98	10.0
Penn Millers Ins Co	03/01/01	10.0	Truck Insurance Exchange	12/01/03	0.0
Pennsylvania Manufacturers Assn. Ins. Co	12/11/01	7.0	Ulico Casualty Co	09/10/02 <sup>3</sup>	0.0
Pennsylvania Manufacturers Indemnity Co	10/01/96	15.0	Ulico Casualty Co	06/24/96 <sup>4</sup>	10.0
PG Ins Co of NY (form. CGU Ins Co of NY)	09/01/01	10.0	Utica National Assurance Co	02/01/04	5.0
Preferred Professional Ins Co	08/31/01	10.0	Valley Forge Ins Co	03/01/01	10.0
Professional Liability Ins Co of America	04/09/01	10.0	Wausau Business Ins Co	06/10/96	15.0
Providence Washington Ins Co	04/03/01	10.0	Wausau Underwriters Ins Co	01/01/03	2.5
Republic-Franklin Ins Co	01/01/88	10.0			

<sup>1</sup> New Business <sup>2</sup> Renewal Business <sup>3</sup> ADR (Alternative Dispute Resolution) Policies <sup>4</sup> Non-ADR (Alternative Dispute Resolution) Policies.

**d. Property/Casualty Insurance Security Fund (PCISF) Net Value and Contributions**

Pursuant to Article 76 of the New York State Insurance Law, the Superintendent is required to annually determine the PCISF net value and any necessary PCISF contributions. To this end, there exists a Security Fund Task Force, consisting of members from different Bureaus in the Insurance Department, which formulates guidelines for calculating both the PCISF net value and the quarterly contributions. In order for the Superintendent to have the necessary flexibility to carry out the statutory obligations concerning the PCISF and the dynamic insurance market in general, the Task Force periodically reviews and revises the PCISF guidelines as circumstances warrant. A subgroup of this Task Force annually calculates the PCISF net value and any necessary quarterly contributions.

Prior to 1988, contributions were last required in 1973. In 1988, contributions resumed as a consequence of the Superintendent’s determination that the fund’s net value as of 12/31/87 had fallen below \$150 million. By statute, the quarterly contributions for the 1988 fund year were due on May 15, 1988, August 15, 1988, November 15, 1988 and February 15, 1989. Similarly contributions continued through 1992. For the 1993 fund year, the Superintendent determined that the PCISF net value was greater than \$150 million. Except for contributions that were due on February 15, 1993 from the prior fund year, no additional contributions were required in 1993. The same circumstances held true for the 1994 - 1997 fund years. In 1998, the Superintendent determined that the PCISF net value had once again fallen below \$150 million and contributions resumed. In 1999, however, the net value of the PCISF was determined to be greater than \$150 million, and in accordance with 7603 (C)(1), three additional contributions were due after this determination. In 2000, 2001, 2002 and 2003, the Superintendent determined that the PCISF net values had once again fallen below \$150 million and quarterly contributions were required.

Table 49 below displays the amount of the estimated PCISF contributions per quarter since contributions first resumed in the 1988 fund year. The variation from year to year in both the magnitude of the PCISF net value and the estimated quarterly contributions reflects, in part, the variability associated with the PCISF payouts for awards and expenses and the PCISF dividends (returns from estates in liquidation) over the years.

**Table 49  
PCISF CONTRIBUTIONS, 1988-2003\***

<b>Fund Year</b>	<b>Estimated Quarterly Contributions</b> (in millions)
1988	\$15.0
1989	7.5
1990	5.5
1991	25.0
1992	7.5
1993 – 97	0
1998	8.3
1999	4.0
2000	18.8
2001	3.4
2002	21.4
2003	23.5

\* During 1993, settlement was reached with respect to *Alliance of American Insurers et al. v. Chu et al.* The 1993 through 2003 fund year net values and contribution amounts described above reflect the impact of the settlement.

## **C. HEALTH BUREAU**

### **1. Entities Under Health Bureau Supervision**

The Health Bureau has responsibility for review and approval of accident and health insurance forms and rate adjustment filings made by any insurer licensed to write such insurance, including not-for-profit insurers, HMOs, several hundred commercial insurance companies licensed to do accident and health insurance business, life insurers or property/casualty insurers and fraternal benefit societies.

The Bureau had regulatory authority over all aspects of the fiscal solvency and market conduct of 90 insurers, HMOs, and other managed care organizations as of December 31, 2003. These are comprised of: 22 accident and health insurers, 1 life insurer (writing accident and health insurance only), 13 health service and medical and dental expense indemnity corporations, 1 Article 43 Insurance Law HMO, 23 Article 44 Public Health Law HMOs, 11 Article 47 Insurance Law municipal cooperative health benefits plans, 11 managed long term care plans and 8 continuing care retirement communities certified pursuant to Article 46 of the Public Health Law.

One life insurer (Anthem Health & Life, now known as The PerfectHealth Ins. Co.) and one P&C insurer (Arista Ins. Co., now known as Renaissance Health Ins. Co. of NY) each submitted an acquisition of control and conversion application during 2003. Two additional acquisition of control applications were also submitted for two Article 42 insurers during 2003. The acquisition of control and conversion approvals for the life and property & casualty insurers were granted during 2003. One of the acquisition of control applications was approved and one was still under review as of 12/31/03.

One foreign Article 42 Accident & Health insurer surrendered its license to the Department and formally withdrew from New York State in 2003 (Senate Ins. Co.). In 2003, AmeriHealth Health Plan, Inc. was acquired by ConnectiCare Capital LLC, and the HMO was renamed, "ConnectiCare of New York."

The Bureau is closely monitoring the financial condition of three distressed HMOs and one Article 42 company. One HMO commenced winding down its operations in 2003 and will eventually be liquidated.

Article 47 of the Insurance Law, enacted in 1994, permits the formation of municipal cooperative health benefit plans. Eleven plans are currently licensed, including the plan issued a Certificate of Authority in 2003. One plan voluntarily dissolved and one application is pending.

### **2. Accident and Health Insurers**

Twenty-one companies were licensed to transact only accident and health insurance at year-end 2002. The Bureau regulates one life insurer and the financial data of this life insurer is included in the following table:

**Table 50**  
**SELECTED ANNUAL STATEMENT DATA**  
**Accident and Health Insurers\***  
**2000-2002**  
**(dollar amounts in millions)**

	2002	2001	2000
Number of Insurers	22	22	21
Net premiums written	\$9,517.3	\$5,162.8	\$4,890.6
Admitted assets	9,324.7	7,465.9	8,675.7
Policy and contract claims	1,521.8	1,150.3	1,055.8
Other liabilities	4,048.4	3,227.3	4,668.0
Capital	30.4	28.4	30.6
Surplus	3,724.1	3,059.9	2,921.3
Ratio of premiums written to capital and surplus	2.5	1.7	1.7

\*Data includes one life insurer

Source: New York State Insurance Department

It should be noted that the large increases in 2002 net premiums written, assets and liabilities with no change in number of insurers were mainly due to the conversion of Empire Blue Cross Blue Shield (an Article 43 health service corporation) into a for-profit Article 42 Accident & Health insurer and then merged with its Article 42 Accident & Health subsidiary.

### 3. Article 43 and Article 44 Corporations

Article 43 of the Insurance Law governs various nonprofit health insurers and Article 44 of the Public Health Law governs health maintenance organizations (HMOs).

#### a. Subscriber Rate Changes

Chapter 504 of the Laws of 1995 established a procedure for premium rate changes for Article 43 and Article 44 corporations. This procedure is an alternative to the prior approval requirements of Section 4308(c) of the Insurance Law under specific conditions. This law permits an Article 43 or Article 44 corporation to submit a filing for a premium rate adjustment and such filing will be deemed approved upon a certification that the expected loss ratio will meet the minimum and maximum loss ratios prescribed in Insurance Law Section 4308(g). Premium adjustments using this methodology were previously limited to no more than 10% annually, but the annual cap was removed on January 1, 2000. During the year 2002, the number of filings were as follows:

Type of Company	Filings
HMOs	92
Article 43 Corporations	18
Article 42 Corporations	5

**b. Article 43 and Article 44 Corporations**

The following tables show aggregate figures on assets, liabilities, surplus funds, premium income and membership for years 2000-2002:

**Table 51**  
**HEALTH SERVICE CORPORATIONS\***  
**Selected Data, New York State**  
**2000-2002**  
**(dollar amounts in millions)**

	2002	2001	2000
Number of Companies	10	11	11
Admitted Assets	\$3,552.9	\$4,852.8	\$4,508.8
Liabilities	\$2,398.3	3,345.4	3,230.2
Surplus Funds	1,154.6	1,506.6	1,278.6
Net Premium Income:			
Hospital	\$5,879.3	\$7,816.6	\$6,594.2
Medical/Dental	3,614.9	4,698.0	4,692.8
Number of Contracts & Riders in Force:			
Hospital	1.5**	2.7**	2.7**
Medical/Dental	1.5**	1.9**	1.9**

\* Insurance Law Article 43 health service corporations are permitted by the provisions of Section 4301(e) of the New York Insurance Law to provide coverage for hospital service and medical and dental care. They are also granted certain additional powers to permit the development of comprehensive health care plans.

\*\* in millions

**Note:** See first footnote, Table 53

Source: New York State Insurance Department

**Table 52**  
**MEDICAL & DENTAL EXPENSE INDEMNITY CORPORATIONS**  
**Selected Data, New York State**  
**2000-2002**  
**(dollar amounts in millions)**

	2002	2001	2000
Number of Companies	3	3	3
Admitted Assets	\$31.6	\$26.8	\$26.9
Liabilities	17.7	15.1	16.9
Surplus Funds	13.9	11.7	10.0
Net Premium Income	28.0	24.7	23.0
Number of Contracts in Force	971	847	762

Source: New York State Insurance Department

**Table 53**  
**HEALTH MAINTENANCE ORGANIZATIONS**  
**That Are a Line of Business of a Health Service Corporation\***  
**Selected Data, New York State**  
**2000-2002**  
**(dollar amounts in millions)**

	<b>2002</b>	<b>2001</b>	<b>2000</b>
Number of Companies	3	4	4
Net Premium Income	\$5,458.7	\$6,048.6	\$4,641.0
Number of Participants	2.1**	2.5**	2.2**

\* Figures shown in this Table are included in the corresponding figures shown in the Table 51, "Health Service Corporations."

\*\* in millions

Source: New York State Insurance Department

**Table 54**  
**HEALTH MAINTENANCE ORGANIZATIONS**  
**That Are Not a Line of Business**  
**Selected Data, New York State**  
**2000-2002**  
**(dollar amounts in millions)**

	<b>2002</b>	<b>2001</b>	<b>2000</b>
Number of Companies	21	23	32
Admitted Assets	\$3,643.6	\$3,199.9	\$3,266.2
Liabilities	2,203.2	2,032.9	2,195.3
Surplus Funds	1,440.4	1,167.0	1,075.9
Net Premium Income	10,265.3	9,486.3	9,504.2
Number of Participants	3.8*	3.6*	4.4*

\* in millions

Source: New York State Insurance Department

**4. Examinations Conducted by the Health Bureau**

During the year 2003, the field unit of the Health Bureau conducted 28 examinations of regulated entities. The 2003 examinations, by regulated entity and type, are presented below:

	Total	Regularly Scheduled	
		Initiated in 2003	Prior to 2003
<b>By Regulated Entity</b>			
HMO	10	3	7
HMDI	4	3	1
Commercial	10	5	5
Muni-Coop	3	2	1
CCRC	1	0	1
<b>Total</b>	<b>28</b>	<b>13</b>	<b>15</b>
<b>By Type</b>			
Financial	10	5	5
Market Conduct	10	1	9
Combined	7	6	1
Other:			
Capital Increase*	0	0	0
On Organization**	1	1	0
<b>Total</b>	<b>28</b>	<b>13</b>	<b>15</b>

\* Examination conducted when insurer increases its capital.

\*\* Examination conducted when insurer is first incorporated in New York State.

**5. Review of Accident and Health Policy Form Submissions**

In 2003, the Health Bureau processed 1,411 accident and health policy form submissions. A submission consists of one or more policy forms and related supporting actuarial material.

**Table 55  
ACCIDENT & HEALTH  
Policy Form Submissions Processed\*  
2003**

Individual Accident and Health	212
Group Accident and Health	679
Blanket	8
Article 43 Organizations (group)	214
Article 43 Organizations (individual)	6
HMO	249
Healthy NY	37
Municipal Cooperatives	6
<b>Total</b>	<b>1,411</b>

\*Note: A submission contains one or more forms.

Of the 1,411 total submissions, 812 were approved for use in New York State; 145 submissions were disapproved, withdrawn, or closed for lack of company action. In addition, 293 submissions were filed by New York domestic insurers for use in states other than New York; 50 submissions were filed for reference purposes or otherwise processed and closed; and 111 submissions were closed pursuant to Circular Letter No. 14 (1997). This Circular Letter permits the Department to return all product and



rate submissions that are incomplete, that are not drafted to comply with New York's statutory and regulatory requirements, or that are poorly organized or difficult to understand.

Ten submissions were processed under the deemer provisions of Section 3201(b)(6) of the Insurance Law. All submissions were handled within the statutory time frames. No submissions were "deemed" approved. One hundred seventy-seven submissions were processed under the Health Bureau's optional fast track prior approval procedures.

## **6. Review of Rate Filings by the Accident and Health Rating Section**

Reviews of premium rates are performed in accordance with requirements in applicable sections of the Insurance Law and corresponding regulations, which vary based on the type of insurer and the nature of coverage. Rate reviews generally involve assuring that premiums are reasonable in relationship to benefits provided, and that premiums are not excessive, inadequate, or unfairly discriminatory. Such reviews encompass various types of individual, group, and blanket insurance coverages and include insurance products such as medical, prescription drug, Medicare supplement, dental, disability income, specified disease, long term care, accidental death and dismemberment and New York DBL.

The Accident and Health Rating Section received 1,467 rate filings and processed 1,416 rate filings during 2003. These included initial rate filings for new policy forms submitted by commercial insurers, Article 43 corporations, Article 44 HMOs, as well as rate adjustment filings for commercial insurers.

## **7. Inquiries and Complaints**

In response to formal written inquiries and complaints, the Bureau provided written answers to 212 consumer and 246 legislative inquiries and complaints concerning accident and health insurance and related issues in 2003. In addition to formal responses to written complaints and inquiries, the Health Bureau monitors a dedicated mailbox on the Department's Web site. On average, about 15 to 20 e-mail inquiries are received and responded to each week. In addition, the Bureau responds to over a thousand telephone inquiries each year.

## **8. The External Appeal Law and Program (Chapter 586 of the Laws of 1998)**

In 2003, New York's external appeal program continued to provide health care consumers with the right to obtain an independent, impartial review when health plans denied services as not medically necessary, experimental or investigational, or because the services were provided in a clinical trial. Since the program's inception on July 1, 1999, there have been over 7,000 external appeal requests.

To be eligible for an external appeal, the insured, the insured's designee, or in cases when there is a retrospective adverse determination, the insured's health care provider, must submit an external appeal request to the Insurance Department within 45 days of receipt of a final adverse determination from the first level of internal appeal with a health plan or upon waiver of the internal appeal process. The Insurance Department is responsible for reviewing external appeal requests for eligibility and completeness and for assigning requests to external appeal agents. External appeal agents must render decisions within 30 days for standard appeals, or within three days for expedited appeals if the patient's attending physician attests that a delay would pose an imminent or serious threat to the health of the patient.

External appeal agents are certified by the Insurance Department and the Health Department for two year periods and must meet certain certification standards. Currently the three certified external appeal agents that review external appeals in New York are Island Peer Review Organization (IPRO), Medical Care Management Corporation (MCMC) and Hayes Plus, all of which were re-certified in 2003 and have comprehensive panels of clinical peers available to review appeals.

Information about the external appeal program is available on the Insurance Department's Web site at [www.ins.state.ny.us](http://www.ins.state.ny.us). In addition, the Insurance Department operates a dedicated toll-free hotline (1-800-400-8882) to respond to questions and assist in the filing of external appeal requests. During the past four years of operation, the external appeal hotline handled over 20,000 calls.

Along with monitoring the number of hotline calls, the Insurance Department also tracks external appeal results for each year of operation of the program. In 2003, the Insurance Department received 1,803 external appeal requests. During the year, 239 external appeal requests were closed because health plans voluntarily reversed the denial during the external appeal process, 453 external appeal requests were determined to be ineligible for external appeal and 1,053 determinations were rendered by external appeal agents.

Table 56A lists the number of external appeal determinations that have been either upheld or overturned, categorized by type of appeal. Table 56B identifies external appeal results by agent. The tables reveal that 43% of health plan denials were overturned in whole or in part by external appeal agents and 56% were upheld by external appeal agents. An external appeal that is overturned in part refers to one that is decided partially in favor of the consumer. For example, an HMO may refuse to pay for a five-day hospital stay asserting that it was not medically necessary, but that ruling would be overturned in part if the external appeal agent determines three days were medically necessary and two were not.

**Table 56A  
EXTERNAL APPEAL DETERMINATIONS BY TYPE OF APPEAL**

Type of Denial	Total	Overtured	Overtured in Part	Upheld
Medical Necessity	938	317	75	546
Experimental/Investigational	111	54	1	56
Clinical Trial	4	2	0	2
<b>Total</b>	<b>1,053</b>	<b>373</b>	<b>76</b>	<b>604</b>

**Table 56B  
EXTERNAL APPEAL DETERMINATIONS BY AGENT  
January 1, 2003 — December 31, 2003**

Agent	Total	Overtured	Overtured in Part	Upheld
HAYES	374	127	21	226
I PRO	276	97	17	162
MCMC	403	149	38	216
<b>Total</b>	<b>1,053</b>	<b>373</b>	<b>76</b>	<b>604</b>

Note: See text for full names of external appeal agents.

## **9. U.S. Supreme Court Review of ERISA Preemption**

On November 3, 2003, the United States Supreme Court granted writs of certiorari in two cases, *Davila v Aetna Health Inc. et al.* (02-1845) and *Calad v CIGNA Healthcare of Texas, Inc. et al.* (03-83), involving a patient's right to sue a health plan over a "mixed eligibility and treatment decision" and possible Employee Retirement Income Security Act (ERISA) preemption. In *Davila*, the HMO denied the use of a pain medication until the insured had tried other less expensive drugs and the insured suffered internal bleeding. In *Calad*, the insured suffered a relapse after hospital coverage for a hysterectomy was denied.

In both cases, the patients commenced a suit in Texas state court under a Texas statute that creates a cause of action against insurers and HMOs that are negligent in health care decisions. The cases were removed to Federal District Court at the request of the HMOs. The plaintiffs requested that the cases be remanded to state court, but the federal court held that the cases should not be remanded because the state law claims are preempted by ERISA Section 502 (a). The Court of Appeals reversed the District Court's determinations and on November 3, 2003, the United States Supreme Court granted petitions for the case to be heard. The issue before the Court is whether such claims can be heard in state court or whether they are preempted by ERISA.

These cases have attracted widespread interest because the decision would not only impact Texas state law, but also other states as well. In addition, a writ of certiorari petition involving a similar N.Y. case, *Cicio v Vytra*, is still pending. In *Cicio*, the United States Court of Appeals for the Second Circuit addressed the mixed eligibility and treatment issues in relation to Vytra's denial of a stem cell transplant. The Second Circuit concluded that this mixed treatment and eligibility decision was not preempted by ERISA Sections 502 or 514.

## **10. Market Stabilization Mechanisms**

The Health Bureau oversees the operations of the New York Market Stabilization Pools. The Pools were initially established by Chapter 501 of the Laws of 1992 and associated Insurance Department Regulation 146 to stabilize premium rates in the individual, small group and Medicare supplement health insurance markets. The purpose of the Pools is to encourage insurers to remain in or enter the individual, small group and Medicare supplement health insurance markets, promote a marketplace where premiums do not unduly fluctuate, and ensure that insurers and HMOs are reasonably protected against unexpected significant shifts in the number of persons insured. The Pools collect annual revenues through contributions from HMOs and insurers in the individual, small group and Medicare supplement markets that insure a low proportion of high-risk, high-cost persons. Through the pool formula, these funds are then re-distributed to insurers and HMOs that insure a disproportionately large share of high-risk, high-cost persons in the same markets.

As originally constructed, Regulation 146 provided that the proportion of high-risk high-cost persons would be determined by comparison of the average demographic index of each carrier's members in a region against the average demographic index of all other carriers in the region. The Insurance Department's Health Bureau has been working extensively on the modification and restructuring of the original pooling mechanisms and revising the risk-sharing process by creating a new medical conditions/claims-based relative weighting mechanism for individual and small group health insurance. The new mechanism was established through the Fourth Amendment to Regulation 146, which was adopted May 22, 2002.

The Health Bureau prepared and distributed instructions for filing under the revised pooling mechanisms for periods from January 1999 forward. Circular Letter No. 20 (2002), issued October 31, 2002, provides instructions and prototype exhibits for carriers' filings under the revised risk adjustment mechanism for individual and small group coverages. Circular Letter No. 21 (2002), also issued October 31, 2002, provides instructions and timelines for Medicare supplement health insurance risk

adjustment. The latter was continued and re-established by the Superintendent in the form of a demographic-based pool, on the advice and recommendation of the Technical Advisory Committee convened under Section 3233 of the Insurance Law.

In December, 2002, the Health Bureau convened an information session to review instructions with pool participants' technical staffs and other interested parties. Representatives of approximately 30 insurers, HMOs and other interested parties attended. Issues and questions raised at the conference were summarized and posted to a Web page created on the Insurance Department's Web site. The Web page, "New York Risk Sharing Pools for Individual and Small Group Health Insurance: Questions and Answers on Reporting Instructions," contains a summary of all relevant questions and answers, as well as links to other pertinent online documents as well as templates constructed for carriers' use in submitting requested data to the pool administrator.

Data reports for the period from 1999 through January 2003 were submitted to the Pool administrator between mid-January and July, 2003 for the Specified Medical Condition Pools. Preliminary review of such data and compiled results made it clear that there were problems and inaccuracies in the data submitted by many pool members. The administrator made a detailed analysis of the reports and conducted targeted and limited on-site audits of those carriers whose data would have the greatest impact on pool calculations. The Department and the administrator have been working with carriers to remedy submissions so that appropriate billings and distributions will be made as soon as possible since pool collection and distributions cannot be made until the administrator receives accurate data from all participants.

Medicare Supplement Pool data was submitted by pool members, commencing in early 2003, for calendar years 2000-2002, as well as the ongoing quarterly submissions required for 2003 as outlined in Circular Letter No. 21. After compilation of such data, insurers made required contributions for 2000-2002, and resultant distributions to pool members entitled to receive funds were made during the summer of 2003. These distributions averaged approximately \$16 million for each of those three years. Contributions and disbursements continue on a quarterly basis for calendar year 2003 and beyond at a similar level.

## **11. Health Care Reform Act of 2000 – Individual Market Reform**

The Health Care Reform Act of 2000 (HCRA) requires the Insurance Department to administer the ongoing operations of a unique program designed to ensure that individual consumers have continued access to comprehensive health insurance. HCRA allocated \$130 million over a three and a half-year period commencing January 1, 2000 and ending July 1, 2003 to direct payment market reforms. In 2003, funding was renewed in 2003 to July 1, 2005. The funding is level at \$40 million per year for those years (i.e., a total of \$80 million for the period July 1, 2003 through July 1, 2005).

HCRA required the establishment of two state-funded stop loss funds which operate on a calendar year basis from which health maintenance organizations may receive reimbursement for certain claims paid on behalf of members covered under individual enrollee direct payment contracts. These stop loss funds are established for the purpose of stabilizing the premium rates for such individual standardized health insurance contracts for the benefit of both existing enrollees and currently uninsured individuals seeking to purchase health insurance coverage.

The Department is responsible for ensuring that the premium rates charged for the standardized direct payment contracts correctly account for the availability of stop loss funding. The Department works to (1) ensure that HMOs have appropriately adjusted for the stop loss funds in utilizing the file and use mechanism for effectuating rate increases, (2) monitor anticipated claims against the stop loss funds and (3) ensure that loss ratios for these products are satisfied.

The Department is also responsible for oversight of the distribution of the allocated funding to HMOs submitting valid claims for reimbursement from the stop loss funds. Beginning in the first year of the program, the Department hired a stop loss fund administrator to oversee this process. The Department has developed a quarterly reporting process to track expected expenditures from the stop loss pools.

Prior to April 1 of each year, health plans are required to submit their respective requests for reimbursement from the stop loss pools. The fund administrator conducts the necessary audits with respect to the data and once the administrator is satisfied as to the legitimacy and accuracy of the reimbursement requests, it tabulates and renders a comprehensive proposed distribution summary for Department review. The Department oversees the fund administrator in the processing of preliminary notifications and claims reimbursement requests, audits of data submissions, and preparation of pro-rata distribution schedules.

In 2003, the Department directed the administrator to conduct the necessary audit procedures with respect to 2002 reimbursement requests submitted by carriers and to tabulate and render a comprehensive proposed distribution summary for Department review. As in the prior year, the total reimbursement requests for calendar year 2002 exceeded the total funding available in both the standard direct payment business and the direct payment out-of-network (point of service) business. The fund administrator was directed to reduce the amounts requested on a pro-rata basis to match available funding in each of the respective funds. The total funding available, requests for reimbursement and pro-rata reductions were as follows:

	<u>Total Appropriation</u>	<u>Total Requested Reimbursement</u>	<u>Reimbursement Percentage</u>
Standard HMO Direct Payment	\$19,500,000	\$34,435,691	56.6%
Out-of Plan (POS) Direct Payment	\$19,500,000	\$35,881,072	54.3%

The schedule of payments for all participants was reviewed by the Health Bureau and transmitted to the Department of Health which has the responsibility for the distribution of funds appropriated under HCRA 2000.

## **12. Health Care Reform Act of 2000 – The Healthy NY Program**

The Health Care Reform Act of 2000 (HCRA) requires the Insurance Department to administer the Healthy NY program. The program is designed to bring health insurance coverage to a portion of New York's uninsured residents. In 2003, funding for Healthy NY was extended until July 1, 2005 as part of HCRA III. The funding is \$89.4 million for 2003, \$49.2 million for 2004 and \$44 million for the first half of 2005.

The Healthy NY program is a unique and ambitious approach to addressing the problem of the uninsured. The Department has been working since early 1999 to build and implement the components of the program and continues to work with the health plans and public to monitor the program and provide education and guidance.

The Healthy NY program attempts to address the problem of the uninsured through both a small employer-based approach and an individual approach. All HMOs licensed in New York State are required to sell a "scaled down" standardized comprehensive health insurance benefit package to qualifying small employers, sole proprietors and individuals. The eligibility criteria for the program differs significantly depending upon whether the applicant is a working uninsured individual, a sole proprietor or a small employer group. The Healthy NY product includes a unique rating structure

designed to combine the experience of participating individuals and small groups. The program also utilizes a state-funded stop loss feature designed to contain premium rates and limit the exposure of HMOs to excessive health care costs.

The major responsibilities of the Department in connection with implementation of the Healthy NY program for year 2003 included:

**a. Program Oversight**

The Insurance Department is solely responsible for the oversight of the Healthy NY program. Throughout calendar year 2003, the Department continued to provide education and guidance to the industry on program requirements. The Department continued to monitor the program for areas of potential improvement. The Department engaged in public awareness campaigns, as well as industry outreach, education, enhancements to the Department's Web site, and numerous other efforts. As the program continues to grow, the Department continues to respond to questions and to provide guidance to the health plans.

**b. Eligibility Issues and Education**

The Healthy NY program includes fairly complex eligibility rules that differ entirely for individuals, individual proprietors, and small employer groups. All HMOs must have staff fully versed in making eligibility determinations. The Department has provided and continues to provide extensive training and guidance to HMOs in this regard. Policy with respect to eligibility determinations continues to evolve. The Department continues to oversee and educate its Healthy NY consumer hotline that was established to address consumer questions and to provide support to the Consumer Services Bureau when Healthy NY issues arise.

**c. Program Enhancements**

In the Spring of 2003, the Department filed its second amendment to the Healthy NY regulations (Regulation 171). This second amendment resulted in changes in the eligibility rules, changes in benefits, and also reduced the Healthy NY premiums by an average of 17%, effective in July. These changes also eased administrative burdens for the health plans, and helped to simplify the recertification process for enrollees.

Eligibility requirements were amended in relation to the employment standard and past employer-provided coverage. The co-payment applicable to well-child visits was removed, and Healthy NY became available without the prescription drug benefit, at the choice of the applicant. An industry-wide conference call was held to assist the plans in integrating the program changes. In addition, the reimbursement corridors for the program were amended, increasing the amount of reimbursement to the HMOs, which in turn lowered premium rates.

**d. Related Documents**

The Department has provided extensive guidance to the HMOs to ensure standardized administration of the Healthy NY product. This has been facilitated by electronic guidance memos to designated contact staff at each HMO. This approach ensures wide dissemination of information concerning the program, and assists in standardization of its administration.

The Department has continued to enhance and update its Healthy NY consumer guide and booklet. This document describes the program and answers common questions on eligibility. It is available to callers of the Healthy NY hotline, consumers making inquiries to the Department, and is also mailed by the HMOs to interested callers. These guides as well as applications were revised this

year to describe the program changes that occurred in July. New model recertification forms were provided to the HMOs.

**e. Rating of the Healthy NY Product**

The Department is responsible for the review and approval of the rates for the Healthy NY product. Given the uniqueness of the Healthy NY product, it has been necessary for the Department to provide extensive guidance to insurers to ensure that the premium rates were established appropriately. Rates needed to account for the availability of stop loss funding. Rate increases must be monitored based on actual claim and stop loss experience.

The program enhancements effective in July 2003 required rate review by the Department to ensure that the new funding levels were taken into proper consideration. In addition, rate differentials were reviewed to ensure that the premium impact of the no-drug coverage option was calculated in a proper manner.

**f. Stop Loss Fund**

**i Administration**

The Department is responsible for oversight of the distribution of the allocated funding to HMOs submitting valid claims for reimbursement from the stop loss funds. 2003 was the third year covered by the Healthy NY program. HMOs are required to provide quarterly preliminary notifications of potentially eligible claims beginning with the first quarter of each calendar year. Reimbursement requests for year 2002 were due by April 1, 2003.

Each year, the Department must make application to the Department of Health for the release of the allocated stop loss funding and must distribute such funds to the eligible HMOs. The Department is responsible for the annual submission of a report on the affairs and operations of the stop loss funds to the Senate Finance Committee and the Assembly Ways and Means Committee.

**ii Modification of Stop Loss Reimbursement Corridor**

Insurance Department Regulation 171 originally provided stop loss reimbursement to carriers of 90% of all HNY claims between \$30,000 and \$100,000 paid on an individual within a calendar year. At this level, and with limited enrollment during 2002 as the program began growing, reimbursements for 2002, submitted April 1, 2003, totaled just under three-quarters of a million dollars. The Superintendent then modified the reimbursement corridor effective January 1, 2003, lowering the threshold and corridor, to provide stop loss reimbursement of claims in the \$5,000 - \$75,000 range. With the lower threshold and continued marked enrollment increases through 2003, the Administrator projects total calendar year stop loss reimbursements for 2003 in the \$13 million - \$15 million range. It is expected that with enrollment at its highest level at year-end and continuing to grow into 2004, stop loss reimbursements will increase substantially again in 2004.

**g. Tracking Maximum Enrollment in Healthy NY**

The Department continues to monitor enrollment in Healthy NY and, as enrollment climbs, estimate maximum enrollment in the program in order to suspend enrollment in the event that demand for the program exceeds available funding. The Department has been working to develop estimates of enrollment and the resulting calendar year paid stop loss claims for that enrollment, based on modeling of the variation of expected stop loss calendar year paid claims, by issue month, as the program continues to mature. A process has been established to track monthly enrollment in the Healthy NY program. Monitoring of actual enrollment by month will include adjusting maximum enrollment if necessary.

#### **h. Annual Study of the Healthy NY Program**

The Department is responsible for an annual study of the Healthy NY program which includes at least an examination of employer participation, an income profile of covered employees and qualified individuals, claims experience, and the impact of the program on the uninsured. The first annual study was finalized December 31, 2001. The Department worked with the selected vendor and finalized the 2003 report in December of 2003. Also in December, the Department readied a Request for Proposals for a new contractor to be hired in 2004, when the current vendor contract expires.

#### **i. Coordination with Other Public Programs.**

Healthy NY is designed to complement and build upon both the existing Child Health Plus program and the Family Health Plus program that was also authorized as part of HCRA of 2000. Extensive coordination with the Department of Health is necessary to ensure that the eligibility standards utilized by these programs mesh to the extent feasible. The Department is working to try to ensure that consumers receive information that facilitates their enrollment in the program that is most appropriate. Additionally, HCRA 2000 phased out several other public programs including the NYSHIP program for small business, the Voucher Insurance Program (VIP) and several other regional pilot programs in favor of Healthy NY. The Department has been working to ensure that a seamless transition to Healthy NY is available, including notification of the availability of Healthy NY.

#### **j. Consumer Issues**

The Department continued to respond to a significant volume of consumer questions and issues regarding the nature and operation of the Healthy NY program. The Department has worked to address consumer issues with the HMOs in order to ensure appropriate and correct resolution. An e-mail box linked to the Healthy NY Web site was established for consumers to contact the Department with questions. Department staff sent more than 1,650 e-mail responses to Healthy NY inquiries in 2003. A toll-free hotline provides consumers with information about the Healthy NY program. Additionally, Department staff responded directly to a very large volume of consumer telephone inquiries. The Department continues to receive an ever-increasing number of speaking requests emanating from small business groups, chambers of commerce, not-for-profit activists, educators, analysts, various state and federal legislators and other governmental agencies.

#### **k. Marketing and Outreach**

The Healthy NY statute allows for the expenditure of up to 10% of the program's funds on public education, radio and television outreach and facilitated enrollment strategies. Such marketing and outreach efforts are crucial to the success of the program. The Department has established a toll-free hotline to provide consumers with information about the Healthy NY program. The Department has also developed and distributed informational materials regarding the program and has made extensive information available on a Healthy NY Web site. The Department developed and distributed Healthy NY marketing materials and brochures. Public presentations were also conducted to reach many small businesses and chambers of commerce. Advertisements in print and television appeared throughout the year.

### **13. Child Health Plus**

During 2003, the Department continued its role of reviewing and approving subscriber contracts and premium rates for the Child Health Plus program, including a permissible premium increase for several participating health plans that elected to perform facilitated enrollment for the program. In addition, the Department worked with the Department of Health to assist two new health maintenance organizations, GHI HMO Select, Inc. and MVP Health Plan, Inc. to enter the market. Department staff also participated in meetings with the Department of Health, insurers and other interested parties to



discuss issues regarding the ongoing operation of the program. Finally, during 2003, the Department revised and approved eleven Child Health Plus rate adjustment submissions.

#### **14. Utilization Review Reports**

Article 49 of the Insurance Law requires health insurers and utilization review agents under contract with health insurers to biennially report to the Superintendent on utilization review activities. During 2003, nine new reports of insurers and utilization review agents were reviewed for compliance with Article 49 and placed on file with the Department and three existing reports were updated and renewed.

#### **15. Medicare + Choice**

The trend of Medicare + Choice plans leaving the New York market reversed itself in 2003. None of the HMOs issuing plans in New York terminated. In fact, one HMO removed its enrollment restriction and began to accept new enrollees. Another HMO expanded its service area into two additional counties. The Department added this information to its Web site to keep New Yorkers informed of all the available health insurance options. with the Centers for Medicare and Medicaid Services (CMS) also added a demonstration program for Medicare + Choice Preferred Provider Organizations (PPOs). There are four plans participating in the program. Information regarding the HMOs offering the Medicare + Choice PPO plans and the service areas is available on the Department's Web site. Prior to the announcement regarding changes in the Medicare + Choice market, the Health Bureau initiated contact CMS to obtain accurate, up-to-date information on possible terminating plans, the addition of new plans, the service areas, and the number of New York enrollees that may have been affected. The Bureau remained in contact with CMS and provided the assistance it requested in drafting the language to be sent to enrollees in the event of a plan's termination. Information detailing the protections provided by New York laws and the available health insurance alternatives for those to be affected by the withdrawals was added to the Department's Web site prior to the date by which the HMOs were required to notify enrollees of termination.

#### **16. Continuing Care Retirement Communities (CCRCs)**

The Insurance Department has a permanent seat on the Continuing Care Retirement Community Council. This council has the primary licensing and oversight authority for CCRCs. The Insurance Department has specific responsibility for the review of the contract and disclosure documents given to residents and prospective residents, as well as an initial determination of the financial feasibility of a proposed project and ongoing oversight of the fiscal solvency of communities. The Bureau's continuing oversight encompasses review of the rating structure of a community, adequacy of reserves and periodic onsite examinations of the financial condition of a community. To this end, the Department filed one report on the examination of a CCRC in 2003 and developed revisions to the Department's annual statement for financial filings.

There are now eight CCRCs in New York, each one with a Certificate of Authority issued by the CCRC Council. The Certificate of Authority that had been issued to Harbor Ridge, a CCRC that was under development but had not yet commenced construction, was determined null and void by the Department of Health and the CCRC Council. All escrow amounts held by the Bank of New York were returned to Harbor Ridge depositors.

In 2003, the Department received a Certificate of Authority application for a prospective CCRC in Erie County. This application is currently under review.

## **17. Long Term Care Insurance**

### **a. Tax-Qualified Long Term Care Insurance Marketed on an Indemnity Basis as Permitted by the Internal Revenue Code (IRC) Due to the Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA)**

During 2003, the Health Bureau noted that a new type of tax-qualified long term care insurance product was being developed by the insurance industry. Although the industry continues to sell tax-qualified long term care insurance products which limit benefit payouts to long term care expenses actually incurred for qualified long term care services, the insurance industry began to encourage the sale of the indemnity option for tax qualified long term care insurance available under pertinent provisions of the IRC. Several long term care insurance carriers submitted products for approval under this indemnity option in 2003.

In sum, benefits under this tax-qualified long term care insurance indemnity option are paid without regard to the type and amount of qualified long term care expenses incurred. If benefit payments under this indemnity option exceed expenses for qualified long term care services received, or if the benefits paid under this indemnity option exceed certain per diem limits prescribed in federal law, these excess benefit amounts may be taxed rather than receive favorable federal and New York State tax treatment under current federal and New York State laws. A tax-qualified long term care insurance policy prominently states that it is intended to comply with federal law so that favorable federal income tax treatment (and accompanying favorable New York State income tax treatment) can be given to the coverage. Therefore, the design of this indemnity option presented concerns to the Department due to the fact that certain possible claim scenarios could result in a sizeable tax bill for an insured contrary to how the tax-qualified long term care insurance product is labeled and marketed.

Toward the end of 2003, the Health Bureau began to consider appropriate guidelines and approval conditions for such indemnity long term care insurance products. The guidelines and conditions under consideration would provide disclosure for an insured purchasing such indemnity products and are based upon statutory authority granted to the Insurance Department by Sections 1117(g)(1) and (g)(2) (B) of the Insurance Law.

### **b. Long Term Care Insurance, the Partnership Program and Medicaid Reform**

During 2003 the Health Bureau worked in conjunction with the Governor's Office and the Health Department to examine ways of expanding and improving long term care insurance options in the marketplace. This process was conducted under the auspices of the Health Care Reform Working Group appointed by Governor Pataki which is dealing with Medicaid reform. The work was begun in August of 2003 and continues.

The Health Bureau worked upon issues such as modifying the New York State Partnership for Long Term Care insurance product design (in conjunction with the Health Department), considering reinsurance mechanisms for long term care insurance products, considering the feasibility of long term care savings accounts, encouraging employer and union participation in long term care insurance programs for employees/members and expanding tax incentives when long term care insurance premiums are paid by one family member for another family member actually covered by long term care insurance.

**c. Insurance Department Web site Postings to Enhance Faster Approvals of Long Term Care Insurance-Type Products (Speed to Market)**

During 2003, the Health Bureau developed and posted to the New York State Insurance Department Web site both product outlines and product checklists for long term care insurance-type products. Those product outlines and product checklists posted to the Web site included tax-qualified and non-Partnership long term care insurance, tax-qualified and non-Partnership nursing home and home care insurance, tax-qualified and non-Partnership nursing home insurance only and tax-qualified and non-Partnership home care insurance only. These materials are available to the long term care insurance industry to enhance their preparation of form and rate filings with a view toward obtaining fast yet accurate Insurance Department approvals.

**18. Medicare Supplement Insurance**

Empire HealthChoice Assurance Company provided refunds or premium credits totaling over \$23.3 million during 2003 to certain Medicare Supplement Plan B or Plan H insurance contractholders. This was the result of favorable experience; *i.e.*, the loss ratios on these plans during the years 2000 to 2002 were less than the 80% minimum threshold established in connection with applicable Insurance Law associated with the company's use of "file and use" procedures.

**19. Specified Disease Coverage**

Specified disease coverage became available in New York State effective April 15, 1998 pursuant to strict standards in Regulation 62. Prior to that date, the issuance of specified disease coverage was not permitted in New York State. As of the end of 2003, fifteen insurers had policies approved for issuance of specified disease coverage in New York State as individual, franchise and/or group coverage.

The Health Bureau during 2003 developed and posted to the New York State Insurance Department Web site both product outlines and product checklists for specified disease coverage. Those product outlines and product checklists posted to the Web site included recurring specified disease coverage and non-recurring ("lump sum") specified disease coverage. These materials are available to the insurance industry to enhance their preparation of form and rate filings with a view toward obtaining fast yet accurate Insurance Department approvals.

**20. Health Insurance Laws**

Two health insurance laws became effective during 2003, requiring the Health Bureau to approve policy forms and, where applicable, premium rates submitted by companies to conform to the new mandates or otherwise take action. The following is a brief description of those health insurance laws that took effect in 2003:

**a. Federal Trade Adjustment Assistance Reform Act of 2002 (TAARA)**

Effective July 29, 2003, the Insurance Law was amended to prohibit insurers and health maintenance organizations from imposing preexisting condition provisions on any individual or dependent of that individual who is eligible for the federal tax credit under TAARA and who has three months or more of creditable coverage.

## **b. Licensed Home Care Agencies**

Effective July 22, 2003, the Insurance Law was amended to continue coverage of home health care services provided by licensed home health care agencies, in addition to certified home health care agencies, in individual, group and Medicare Supplement insurance policies.

### **21. Financial Risk Transfer Agreement**

Insurance Department Regulation 164, "Financial Risk Transfer Agreements between Insurers and Health Care Providers" (11 NYCRR 101), was promulgated on August 21, 2001. This Regulation addresses an insurer's obligation to assess the financial responsibility and capability of health care providers (e.g., Independent Practice Associations) to perform their obligations under certain financial risk transfer agreements. It sets forth standards pursuant to which health care providers may adequately demonstrate such responsibility and capability to insurers. During 2003, the Bureau reviewed and approved 15 financial risk transfer agreements. Six such applications are pending and an additional five applications have been withdrawn or suspended, or have been determined not to be subject to the strict financial responsibility demonstration requirements of the Regulation until subsequently revised or renewed pursuant to the "grandfathering" provisions of the regulation. This particular provision of Regulation 164 sunsets on August 21, 2004, after which "grandfathered" Financial Risk Transfer Agreements between insurers and health care providers must be submitted to the Superintendent for review.

### **22. Federal Legislation: Association Health Plans**

During the 108<sup>th</sup> United States Congressional Session (2003-2004), the U.S. Senate and the U.S. House of Representatives each passed their own version of an Association Health Plan bill. The proposed legislation passed the U.S. House of Representatives in June 2003, H.R.660, and the Senate Bill, S 545, is, as of press time, still pending. This proposed legislation would allow trade and professional associations to offer federally licensed health plans, called Association Health Plans, to small groups. The plans would be exempt from state insurance regulation and would operate under the auspices of the United States Department of Labor. Proponents of the bill believe that it could lower the number of uninsured in the United States. Opponents have expressed concern that Association Health Plans could be marketed only to companies with healthier employees, which could lead to adverse selection and premium rate increases in the fully insured state-regulated insurance marketplace. The Health Bureau has been monitoring these bills due to their potential impact on New York.

### **23. Speed to Market of Accident & Health Insurance Products**

As part of the Department's initiative to improve the "speed to market" objective for insurance products, the Health Bureau announced changes to the "fast track" prior approval process in new Circular Letter No. 4 (2003). This provides for an optional expedited prior approval of submissions using a certification process that simplifies and streamlines the approval process. Submissions made under the new procedure are given priority over submissions made in the normal course of business.

Recognizing the significant differences among insurers that write accident and health insurance products (commercial insurers, Article 43 corporations and health maintenance organizations), the many different types of products that they offer and the differing frequency with which they make product filings, the Health Bureau has made available three different processes under the new procedure to meet these differing needs of the health insurance industry. They are:

- (1) Certified Policy Form Submission Based on a Checklist,
- (2) Certified Policy Form Submission Based on a Template, and
- (3) Certified Policy Form Submission Based on a Previously Approved Policy Form.

The new procedure involves the use of:

- a new standard transmittal form;
- product outlines and checklists;
- templates;
- underlining, black-lining or highlighting changes made to previously approved forms; and
- certifications of compliance.

The new transmittal form may be accessed from the Department's Web site and that includes a series of checkboxes and drop-down boxes that facilitates completion of the form. The Health Bureau has also developed a product outline and checklist for a number of accident and health insurance product offerings. The checklists identify required and optional provisions and provide space to specify the location in the policy form where the complying provisions are found. The checklists also include an actuarial section pertaining to the rate filing portion of a submission.

#### **24. September 11-Related Activities**

The Insurance Department approved changes to Affinity Health Plan's Sunrise Program that extends the program to July 31, 2005, as well as offers eligible enrollees an opportunity to apply for a six-month extension of coverage under the program when their initial twelve-month enrollment period ends. The Sunrise Program was initially approved by the Insurance Department in July 2002 as a temporary program established to provide health insurance for persons impacted by the World Trade Center disaster who met certain eligibility criteria. Premiums for the program are paid in full by the September 11 fund.

#### **25. Managed Long Term Care**

In 2003, the Health Bureau continued its practice of reviewing and approving forms and rates for private pay participants in approved managed long term care demonstrations/managed long term care plans. The Health Bureau also provided comments to the Health Department concerning advertisements and marketing materials of these demonstrations.

Although the Department of Health is the "lead agency" in the regulation of such demonstrations/plans, the Superintendent of Insurance is given distinct statutory duties in approving certain premium rates and enrollee contracts for such demonstrations/plans and in the review of the fiscal solvency for such demonstrations/plans under Section 4403-f of the Public Health Law (PHL). Pursuant to this statutory section, the Health Bureau approved forms and rates for two more demonstrations/plans in 2003, and reviewed for accuracy many types of marketing materials used by the demonstrations/plans to attract enrollees. The fiscal solvency for these demonstrations/plans was also reviewed and cleared by the Superintendent.

Pursuant to Section 4403-f (9) of the PHL, an interim report to the Governor, Temporary President of the Senate and Speaker of the Assembly on the results of managed long term care plans was due during 2003. The Health Bureau prepared the Insurance Department's section of the interim report, and sent it to the Health Department for inclusion in the entire report released in mid-2003. The Insurance Department section described regulatory actions initiated by the Superintendent concerning solvency, enrollee contracts, premium rates and marketing materials. Also described were Insurance Department regulatory actions mandated by Section 4403-f of the PHL involving written agreements with eleven approved managed long term care demonstrations.

## **26. Federal Tax Credit Initiative**

The federal Trade Adjustment Act of 2002 made a 65% health insurance tax credit available to certain eligible citizens. Those eligible for the tax credit include: (1) those who are receiving trade adjustment benefits because they have lost their jobs due to changes in international trade; and (2) retirees whose pensions had been taken over by the Pension Benefit Guarantee corporation. This credit is estimated to be available to approximately 11,000 New Yorkers or an estimated 22,000 covered lives (including dependents). The tax credit includes some unique features including a pre-payment feature whereby an eligible individual can request to receive the benefit of the tax credit up front to pay health insurance premiums as they become due. In the event prepayment is requested, the federal government makes payment directly to the insured's health insurance plan.

Because of limitations in the federal law, this tax credit could only be applied to limited forms of coverage without State action to develop State qualified health insurance coverage. In 2003, the Bureau made changes to the Healthy NY regulation in order to qualify Healthy NY coverage for the credit. We also worked with insurers to make a health insurance package with benefits mirroring the Healthy NY product available to those who did not meet Healthy NY's eligibility criteria. The content of these packages was negotiated with the federal government and these products were elected as qualifying health insurance products. The legislature also made changes to New York's standardized direct payment products in order to qualify them for the federal tax credit.

In order to implement the tax credit in New York, a regulation making changes to the Healthy NY product was enacted on an emergency basis. Changes to Healthy NY contracts and the two standardized individual health insurance contracts had to be developed and submitted by all HMOs in the State. Several insurers also developed insurance contracts mirroring Healthy NY benefits for those who were ineligible. All of these contracts required review and approval by the Department. Staff from the Healthy NY call center had to be trained to assume an expanded role in making information available about the tax credit and NYS qualifying products. Personnel from health plans had to be trained to register their firms with the federal government in order to ensure that direct payments are made to them. A federal grant to assist in the administration of the credit was applied for and received. A memorandum of understanding with our State Department of Labor was developed so they could effectively transfer funding to the Insurance Department.

## **27. Governor's Health Care Reform Task Force**

In 2003, the Governor appointed a Health Care Reform Working Group to assess New York's Health Care infrastructure. The task force is largely focused on Medicaid reforms that would assist the State in managing ever-increasing Medicaid expenditures. Medicaid is New York's second largest budget item (following public education) and unless the program is significantly reformed, future expenditures are expected to increase rapidly. In 2003, the Bureau provided this task force with expertise and assistance, particularly with respect to approaches to encouraging the purchase of long term care insurance coverage. This is likely to continue 2004.

## D. CONSUMER SERVICES BUREAU

### Introduction

What do a windstorm, a blackout, a snowmobile policy cancellation, and unlicensed health insurers have in common? All are catastrophes successfully responded to by the staff of the Consumer Services Bureau in the past year.

The timely response to these problems did not, however, interfere with the Bureau's daily responsibilities, namely handling consumer complaints, inquiries and phone calls. At the same time, the Bureau improved its workflow management by expanding its imaging system and allowing doctors and other providers to file prompt pay complaints on behalf of consumers through the Internet.

### 1. Consumer Complaints

The Consumer Services Bureau is responsible for responding to consumer complaints and inquiries and investigating the actions of licensed producers. The Bureau *closed* a total of 63,251 cases in 2003. Of these, 50,521 involved complaints against insurance companies regarding loss settlements or policy provisions, of which 37.7% (18,939) were automobile complaints, 51.7% (26,097) were accident and health complaints, 8.0% (4,070) were property and liability complaints and 3.0% (1,415) were life and annuity complaints. An additional 1,736 cases were closed when the complainants failed to furnish additional information deemed necessary in order to proceed with the case. Another 6,047 cases involved complaints against agents, brokers and adjusters. Written inquiries accounted for 2,736 cases and referrals accounted for 2,211 cases (See Chart G). Included in the total are 42 cases related to the World Trade Center Disaster. In total, the Bureau *received* 63,386 cases during 2003.

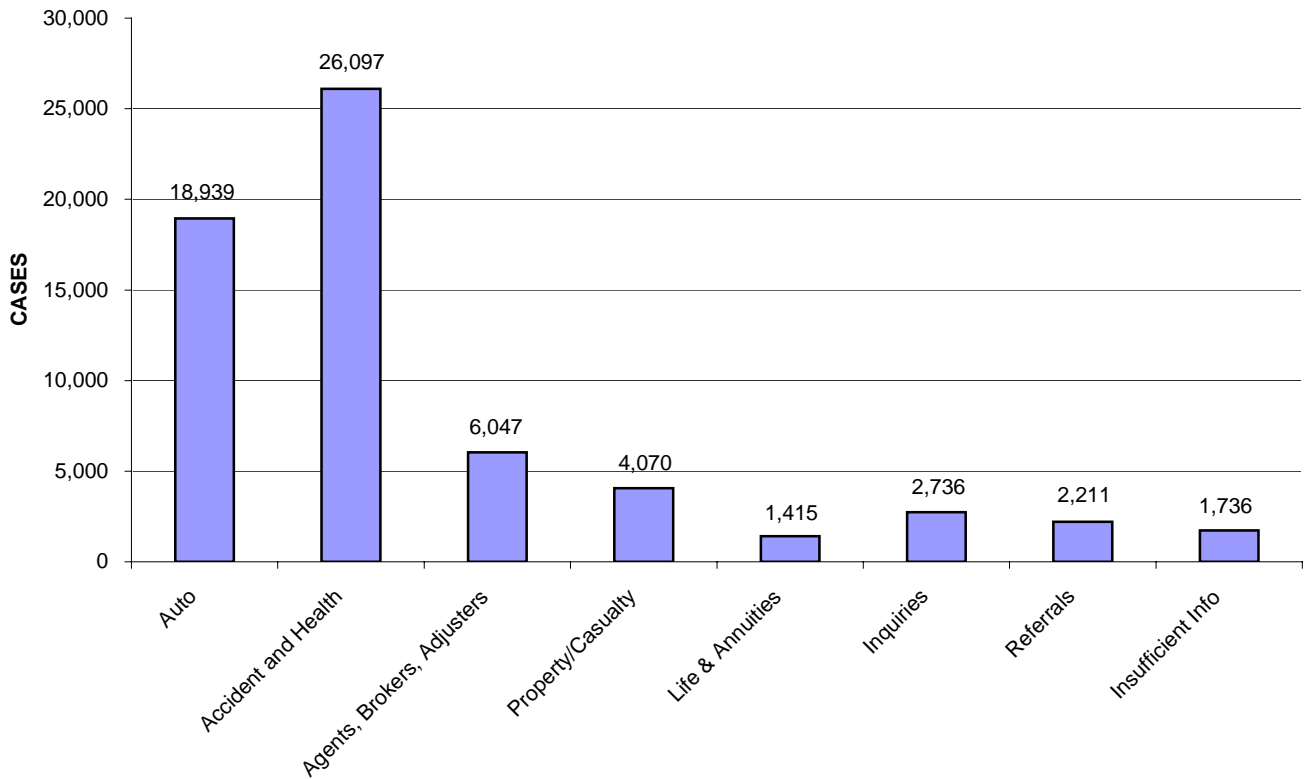
The Bureau responded to approximately 200,000 calls through the Albany and New York City information lines. The Bureau's telephone system is an "attendant system" which provides the caller with the option of selecting from a menu of topics, or speaking directly to an agency services representative. The Bureau initiated a call tracking system in the last quarter of 2002. The agency services representatives complete an automated computer screen template for each call they answer. The data is sorted and stored by the computer system so Bureau managers may more easily determine patterns of calls from consumers indicating an industry problem in a given area of the state. This system has proven helpful in determining the geographical area and severity of disasters occurring in New York State. The data allows for the more efficient use of state resources in response to disasters. The Bureau also maintains as part of its toll-free line access to a multi-lingual telephone service. This interpretive service, provided by AT&T Language Line Services, can translate 140 languages.

In addition, the Bureau maintained a toll-free line dedicated to providing information about the New York State Partnership for Long Term Care. The Partnership allows individuals to qualify for Medicaid after their long term care policy benefits are exhausted without divesting themselves of their assets. The Program thus encourages self-sufficiency by guaranteeing asset protection for policyholders.

In 2003, the Consumer Services Bureau received over 4,000 calls on the Partnership hotline. The Bureau also worked with the Partnership to update and streamline the information provided by the hotline's automated menu and to provide greater access to personnel who can respond directly to the public's concerns. The Bureau continues to work with the Partnership, the Health Bureau, the State Office of the Aging and Executive Bureau to update the Department's Web site, which provides links to licensed companies and additional information regarding long term care insurance via links to the Health Insurance Information Counseling and Assistance Program (HIICAP), and to the Partnership.

The Bureau also maintains a dedicated disaster toll-free hotline. When natural or man-made disasters strike, affected parties may call this toll-free line to obtain information concerning their specific insurance coverages. In 2003, the Bureau responded to questions related to the World Trade Center disaster, the August Northeast Blackout, Hurricane Isabel and various other summer and winter storms.

**Chart H: Total Complaints & Investigations Closed  
Consumer Services Bureau, 2003**



## 2. Prompt Payment Statute

Section 3224-a of the New York Insurance Law (a.k.a. the “Prompt Payment Law”) became effective January 22, 1998. Under the statute, insurers and HMOs are required to pay undisputed health insurance claims within 45 days of receipt.

The Consumer Services Bureau has committed significant resources to the investigation of complaints involving claims subject to the prompt payment statute. In addition, the Bureau has sought to ensure prompt payment to doctors, hospitals and insureds, and the compliance by health insurers and HMOs with all other provisions of this statute.

The Consumer Services Bureau continues to take enforcement action against health insurers and HMOs that violate the prompt payment statute. In 2003, \$418,120 in Prompt Pay fines were levied against health insurers and HMOs. These were the first fines imposed using a new methodology which considers not only the violations uncovered while investigating complaints, but also the number of claims processed by the insurer or HMO during a specific time period. This provides a more accurate picture of the overall performance of the insurer or HMO.



In addition, Bureau staff conducted outreach sessions for county medical societies and other large provider groups in order to educate them on their rights under the prompt payment statute and other laws that affect payment of health care claims.

### **3. External Review**

The external review program allows consumers to appeal their health plans' adverse determinations that services are not medically necessary or are considered experimental or investigational. Consumer Services Bureau personnel responded to almost 6,000 phone calls on the dedicated toll-free line. Consumer Services Bureau staff along with attorneys from the Health Bureau jointly perform the intake and screening of external appeal applications.

During 2003, the Department received 1,803 applications for external review (see Health Bureau section for more information on external review). During the year, the Consumer Services, Health, and Systems bureaus created an imaging system that tracks and stores applications for external review. The state-of-the-art system allows the Health and Consumer Services Bureaus to simultaneously view documents stored in the database, work on the files and discuss actions that need to be taken on applications. The Tracking System also allows staff to work on external appeal applications outside the office. Staff can access the database from a laptop to view documents, generate automatic letters, and fax applications to external review agents. This allows for a more efficient processing and screening of external review applications.

### **4. The Healthcare Roundtable**

The Healthcare Roundtable discussion group was developed to bring together health insurers and healthcare providers to reach consensus on issues of mutual concern. The Roundtable is comprised of staff from the Insurance Department, the NYS Department of Health and the following organizations:

- The New York Medical Society
- The Health Plan Association
- The Blue Cross Blue Shield Plans
- The Greater New York Hospital Association
- Healthcare Association of New York State
- American College of Obstetricians and Gynecologists

In 2003, an agreement was reached on the definition of what constitutes a clean claim. This definition has been accepted by the Medical Society, the hospital associations and the health insurance industry. This agreement resulted in the promulgation of Regulation 178 as an emergency measure.

The Healthcare Roundtable continues to look at issues that can be resolved outside the legislative arena. For example, Bureau staff meet with health care providers and insurers to discuss retroactive audits of providers' accounts. The Medical Society of the State of New York is concerned about the number of refund requests made to health care providers for services already performed and paid for by insurers and HMOs.

### **5. Investigations**

The Consumer Services Bureau continues to investigate unlicensed health insurance plans. These plans place the public at risk because they often do not meet the financial requirements prescribed by the New York State Insurance Law, including minimum levels of reserves available to meet the claims of plan members. While these plans are frequently able to offer unsuspecting consumers with lower premiums than licensed insurers, they often stop paying claims and leave members without the coverage they believed was in place.

One such case involved an association that formed a health plan for its members. The Plan, which operated out of Latham, NY, covered over 250 people and had approximately \$100,000 in assets available for claim payments, far less than what would be required for a licensed plan. The Consumer Services Bureau worked with the Department's Office of General Counsel and the New York State Attorney General to shut down the Plan.

On February 10, 2003, the State Supreme Court issued a Temporary Restraining Order against the Plan and it agreed to cease operations effective March 1, 2003. In August 2003, an Order of Settlement and Stipulation was executed. The settlement included civil fines of \$17,500 against the Plan; \$3,000 against the Plan administrator and \$8,500 against licensed agents for soliciting Plan memberships.

The Order also provided for a Plan receiver to marshal the assets of the Plan and prioritize the payment of claims. The Consumer Services Bureau has been working with this receiver and the Attorney General in order to ensure proper payment, from the Plan's assets, of all members' outstanding claims and gave them priority over all other Plan liabilities. This process should be completed by the spring of 2004.

The Consumer Services Bureau received nearly two dozen auto consumer complaints in 2003 against an insurance agency in Staten Island, NY. The Bureau determined the agency and its principals were conducting business without a license. It was also determined that checks that were received by the unlicensed agent from insurers and customers were altered and deposited in the agent's own accounts. The agent also issued bogus ID cards and certificates of insurance. Customers thought their insurance was paid up but later received bills from the carrier or found their coverage had been canceled for nonpayment of premium. As a result, a number of consumers were not covered for accidents and charged civil penalties by the Department of Motor Vehicles (DMV) for lack of coverage. The Bureau has since worked with the carriers and DMV in order to have the carriers accept payments made to this agency, and to have DMV rescind any penalties paid by the consumers.

As part of its investigation, the Bureau worked with the Department's Frauds Bureau, the New York City Police Department and Richmond County District Attorney's Office. The investigation led to the arrest in October 2003 of the unlicensed principal and his wife, who held an insurance license and was fronting for the husband. Both were charged with multiple felony counts including grand larceny and the unlicensed principal was also charged with forgery and falsifying business records. In addition, as a result of an administrative hearing conducted by the Office of General Counsel in December 2003, all licenses issued to the spouse were revoked.

In another case, a subsidiary of one our licensed insurers was fined \$25,000 for adjusting workers' compensation, automobile and general liability claims for New York State risks without being properly licensed. The New York Insurance laws permit subsidiaries to adjust claims for their own companies without being licensed. However, in this case, 682 claims were adjusted for other insurers, both licensed and self-insured entities.

## **6. Other Bureau Activities**

### **a. Complaints on the Internet**

In October 2001, the Consumer Services Bureau initiated a new online complaint process allowing consumers to file complaints on the Internet. Once the consumer submits an online complaint, a file number is assigned and confirmation of this case number is immediately transmitted to the consumer. This allows for the immediate tracking of the file as the complaint automatically routes through the Consumers' Information and Imaging Management System (CIIMS). In 2003, the Bureau received 7,605 online complaints.

The Bureau also implemented an upgrade to the imaging system used to process complaints. This upgrade enables prompt pay complaints to be handled more expeditiously by allowing doctors and other providers to file prompt pay complaints via the Department's Web site on behalf of insured patients. This upgrade will also allow insurers and HMOs to respond to these complaints via the Internet, creating greater efficiencies. In 2003, over 3,700 online complaint responses were received from insurers and HMOs.

#### **b. State & County Fairs, Conferences & Festivals**

Bureau examiners staffed the Department's information booth at the State Fair in Syracuse from August 21 through September 1, 2003. Examiners also staffed an information booth at the Erie County Fair from August 6 through August 17, 2003. At these booths, examiners answered consumer questions, took complaints and distributed the Department's various consumer guides and booklets. Over 75,000 publications and mementos were distributed to the public at these fairs. In 2003, computer compact disks were developed that provided the same information contained in most of the Department's publications, at a significantly reduced cost to the Department.

The Bureau also participated in and staffed information booths at the Black and Puerto Rican Legislators Annual Conference, Martin Luther King, Jr. Holiday Memorial Observance, the African-American Cultural Festival, the Puerto Rican/Hispanic Legislators Annual Conference (Somos El Futuro), the Department of Health's Health Fairs, Fire Prevention Week, State Emergency Management Office Disaster Preparedness Commission Fall Conference and the Internal Revenue Service's Small Business Information Forum.

#### **c. Department of Motor Vehicles Insurance Information Enforcement System (IIES)**

The Bureau continues to assist individuals, families and businesses in overcoming problems due to erroneous or untimely electronic submissions by their insurers to the Insurance Information and Enforcement System (IIES) maintained by the New York State Department of Motor Vehicles. (Auto insurers are required to inform the Department of Motor Vehicles of drivers whose coverage has lapsed.) Those insurers not filing timely reports to the Department of Motor Vehicles have been fined. The Bureau continues to investigate these complaints on an expedited basis.

#### **d. New York State Insurance Disaster Coalition**

The Bureau continues to be one of the lead members of the New York State Insurance Disaster Coalition. This coalition demonstrated its capabilities in coordinating the insurance industry's response to the World Trade Center Disaster. The coalition and the Insurance Emergency Operations Center have received nationwide recognition for the work accomplished during that disaster. A number of other state insurance departments are modeling their disaster response plans on New York State's disaster coalition.

The Bureau continues to receive complaints from those individuals, families and businesses affected by the World Trade Center Disaster as well as other natural disasters occurring in New York State during 2003. These complaints receive immediate and expedited treatment from Bureau examiners. Bureau examiners have facilitated settlement of a number of these cases by conducting meetings with consumers and their insurers to resolve disputed claims.

In response to the August 2003 Northeast Blackout, the Bureau initiated a partial activation of the Department's Disaster Response Plan. Bureau staff contacted disaster liaisons from various property insurance companies to obtain data concerning the numbers of claims and amounts of losses their insureds suffered. Since the reported losses were minimal due to the relatively short duration of the blackout, full activation of the Disaster Response Plan was not necessary.

The Disaster Response Plan was again activated in September in response to Hurricane Isabel. The ten largest writers of commercial and personal property insurance were contacted to assess their preparations for responding to the expected losses in New York State. Fortunately, due to the track of the storm, New York losses were again minimal and the Disaster Response Plan was deactivated. Those citizens affected by the storm who filed complaints with the Bureau received expedited handling and resolution of their complaints.

**e. Miscellaneous**

The Healthy NY Program became effective on January 1, 2001. This program is designed to make affordable health benefits accessible to New York State's small business owners and working uninsured individuals. The Bureau assisted consumers at all outreach functions and in phone inquiries with issues about enrollment, eligibility and covered benefits. In addition, the Bureau surveyed HMOs to ensure their compliance with the Healthy NY program for both small business and individual contracts.

The Bureau continues to conduct informational sessions in an effort to assist senior citizens and groups for whom Medicare supplement (Medigap) and long term care insurance were the issues of primary concern. Bureau staff participated in educational and training sessions including updating training materials for the Health Insurance Information Counseling and Assistance Program (HIICAP) and being members of the HIICAP consortium. The consortium is comprised of representatives from various state and federal agencies invited by the State Office for the Aging to provide technical assistance and training where necessary for HIICAP counselors statewide. Our participation in 2003 was important because of new federal legislation that will expand Medicare coverage to include a prescription drug benefit in 2004.

The Department is required to publish an Annual Consumer Guide to Health Insurers, which ranks insurers and HMOs based on complaints upheld by the Consumer Services Bureau, and contains a separate ranking based on upheld prompt payment complaints. Bureau staff not only review the information included in the guide for accuracy and completeness, but also meet with the Department of Health to gather quality assurance measures which are also required to be published in the guide. Bureau staff assists in the publication of the Annual Consumer Guide, the HMO Guide and the Interactive Guide to HMOs available on the Department's Web site.

In addition, Bureau staff conducts special outreach sessions for persons losing health insurance as a result of plant closings or the bankruptcy of major New York employers. Bureau staff, in collaboration with the New York State Department of Labor, provides vital information to employees regarding alternate health insurance benefits, including Healthy NY, available after termination of employment.

**f. Snowmobile Crisis**

For the second year in a row, the Consumer Services Bureau was called upon to assist the State's snowmobile clubs with obtaining trail liability insurance following the cancellation of the clubs' policies. This insurance is vital for the operation of the New York State snowmobile trail system and the maintenance of a recreational activity that is estimated to contribute over \$500 million annually to New York's economy.

In 2003, the Consumer Services Bureau produced a comprehensive insurer loss run history for over 150 snowmobile clubs. This data was a crucial part of the new insurer's decision to provide the insurance coverage. In addition, the Consumer Services Bureau and the Property Bureau provided the Office of Parks, Recreation and Historic Preservation with several analyses of the various proposals for coverage.

**Table 57**  
**CONSUMER SERVICES BUREAU COMPLAINTS AGAINST INSURANCE COMPANIES**  
**INVOLVING LOSS SETTLEMENTS OR POLICY PROVISIONS**  
**Closed in 2003**

<b>Line of Business</b>	<b>Total Processed</b>	<b>Upheld</b>	<b>Adjusted in Consumers Favor</b>	<b>Not Upheld</b>	<b>Prompt Pay Violation</b>	<b>Other Action Taken</b>
<b>Total</b>	<b>50,521</b>	<b>4,531</b>	<b>6,099</b>	<b>19,618</b>	<b>5,178</b>	<b>15,095</b>
<b>Life &amp; Annuities, Total</b>	1,415	177	178	779	N/A	281
Individual Life	1,103	126	145	614	N/A	218
Individual Annuity	143	33	15	68	N/A	27
Group Life & Annuity	150	15	15	86	N/A	34
Viatical Settlements	4	0	0	4	N/A	0
Credit Life	15	3	3	7	N/A	2
<b>Accident &amp; Health, Total</b>	26,097	807	2,783	10,004	5,178	7,325
Individual Accident & Health	231	25	37	111	18	40
Group Accident & Health	4,047	183	553	1,976	484	851
Article IX-C Corps	2,358	143	382	1,123	486	224
HMO	11,169	364	1,331	5,247	3,167	1,060
Medicare	1,794	1	9	19	2	1,763
Medigap	110	11	6	62	11	20
Long Term Care	54	7	5	32	0	10
Self-Insured Health Plan	3,046	6	9	22	0	3,009
Travel, Health	76	6	18	30	0	22
Health Alliance	2	1	0	1	0	0
Medicaid	2,675	30	361	1,171	1,005	108
Municipal Co-ops	16	2	3	9	0	2
Credit Disability/DBL Income	323	27	47	156	0	93
Healthy NY	58	1	18	31	1	7
Federal/Out-of-State Contracts	116	0	0	1	0	115
Child Health Plus	22	0	4	13	4	1
<b>Auto, Total</b>	18,939	3,114	2,485	7,279	N/A	6,061
Auto, Liability (B.I.)	3,116	435	588	1,714	N/A	379
Auto, Liability (P.D.)	2,986	183	592	1,016	N/A	1,195
Auto, Physical Damage	2,204	158	278	1,287	N/A	481
No-Fault	10,633	2,338	1,027	3,262	N/A	4,006
<b>Other Property &amp; Liability, Total</b>	4,070	433	653	1,556	N/A	1,428
Liability Other Than Auto	239	15	30	92	N/A	102
Professional Malpractice	34	2	2	17	N/A	13
Fire & Extended Coverage	65	6	17	21	N/A	21
Homeowners	1,713	112	258	785	N/A	558
Inland/Ocean Marine	53	2	6	24	N/A	21
Workers' Compensation	1,146	216	219	304	N/A	407
Commercial Multiple Peril	594	60	82	225	N/A	227
Burglary & Theft/Fidelity Surety	53	2	7	14	N/A	227
Flood	9	0	0	6	N/A	3
Title	54	8	11	22	N/A	13
GAP and Service Contracts	10	0	2	2	N/A	6

**Table 58**  
**CONSUMER SERVICES BUREAU INVESTIGATIONS AGAINST AGENTS AND BROKERS**  
**NOT INVOLVING LOSS SETTLEMENTS OR POLICY PROVISIONS**  
**Closed in 2003**

<b>Subject of Cases or Investigations</b>	<b>Total Processed</b>	<b>Fines and Revocations</b>	<b>Other Actions</b>	<b>Not Upheld</b>
<b>Total</b>	<b>6,047</b>	<b>518</b>	<b>4,540</b>	<b>989</b>
Application for License	3,573	82	3,465	6
Issuing Bad Checks	286	166	69	51
Misrepresentation of Coverage	217	27	68	122
Excess Comp Without Contract	43	2	14	27
Twisting	55	2	19	34
Violation of NYAIP/NYPIUA Rules	141	55	43	43
Return Premium-Producer	100	5	23	72
Other Violations of Insurance Law	153	22	73	58
Violations of Other Laws	36	2	19	15
Termination for Cause	57	9	43	5
Misleading Sales, Life and Medigap	52	1	28	23
Advertisements	21	0	10	11
Miscellaneous	371	53	99	219
Misappropriation of Funds	308	65	111	132
Service Contracts	102	0	94	8
Aiding Unauthorized Insurers	7	4	3	0
Inquiries	91	0	91	0
Other Investigations Received from Companies	57	10	21	26
Other	266	23	116	137
Officers and Directors	111	0	111	0

## **E. Insurance Frauds Bureau**

### **1. General Overview**

The Frauds Bureau gained new leadership in 2003 when Superintendent Serio made three appointments in January. The Superintendent named Charles A. Bardong Director of the Bureau, Nicholas DiMuro, Deputy Director and Hazel L. Stewart, Deputy Director and Counsel.

Mr. Bardong joined the Insurance Department from the Moreland Act Commission on New York City Schools where he was Chief Investigator. Nicholas DiMuro brings to the Department 30 years of training and experience with the New York City Police Department, last serving as Captain. Hazel Stewart came to the Insurance Department in July 2001 as Assistant Counsel in the Frauds Bureau. Prior to that, Ms. Stewart had 20 years of law enforcement experience with the New York City Police Department.

With new leadership in place and a dedicated, professional staff, the Bureau scored a record-setting 811 arrests in 2003. The Bureau also continued its team-building efforts with the industry and law enforcement agencies across the State.

#### **a. Multi-Agency Investigations**

The Frauds Bureau's statewide approach to combating insurance fraud was evident in the number of multi-agency investigations conducted with law enforcement agencies on the federal, state and local levels. The results of these efforts have been noteworthy. The Bureau continued to pool resources to a greater extent than at any time in the past and law enforcement officials from every branch of government regularly seek our assistance in the development and investigation of their cases.

In addition to insurer Special Investigations Unit staff, we have worked successfully with the State Insurance Fund and the Workers' Compensation Inspector General's Office on workers' compensation fraud. We have teamed up with the New York City Police Department's Fraudulent Accident Investigation Squad and their Auto Crime Division in the investigation of no-fault and other auto-related insurance fraud. We have also worked hand-in-hand with the FBI, the U.S. Attorney's Office, the New York State Attorney General's Office and the State Police and provided assistance to local police departments and sheriffs' offices throughout the State. In addition, routine contact and cooperation with District Attorney's Offices led to 324 convictions in Frauds Bureau cases in 2003.

A particular focus during the past year was the training of police recruits, since, as police officers, they are often the first to respond to the scene of an accident or other emergency. We provided training centered on the ways to recognize staged accidents and fraudulent identification cards and what to do when these situations arise. A number of training seminars were conducted for the New York City Police Department, as well as city and county police departments in many other communities.

#### **b. Working Group/Task Force Participation**

The Bureau is an active participant in numerous task forces and working groups throughout New York State. The groups are designed to foster a spirit of teamwork and cooperation among the many agencies that share similar goals.

The Bureau recently became a member of the Inter-County Arson Reduction Usernet System, or Project ICARUS, a regional anti-arson program in western New York. The Project was developed by the Buffalo Fire Department and Erie Community College in October 2003 and will enhance communication and information sharing among fire investigators throughout western New York. When

fully functional, the Project will allow fire investigators to share arsonist profiling and post their unsolved cases for review by multiple investigators.

## **2. 2003 Highlights**

- The Frauds Bureau gained new leadership in January with the appointment of a new Director and Deputy Director. In addition, the Bureau's Assistant Counsel was named Deputy Director and Counsel.
- The Frauds Bureau, with a total of 811 arrests, set a new record in 2003, topping last year's record by almost 15%. Moreover, arrests have shown a steady increase, rising by more than 108% over the past five years.
- The Frauds Bureau underwent a restructuring during 2003, combining the Auto and No-Fault units into one Organized/No-Fault/Auto Unit to make more effective use of its resources. In addition, a Supervising Investigator was named to the position of Statewide Auto Unit Coordinator.
- Awards were presented to two Frauds Bureau investigators in January by Roslynn R. Mausekopf, U.S. Attorney for the Eastern District of New York, in recognition of "their diligent investigation of a fraud scheme that led to 35 federal felony convictions."
- An investigation by the Frauds Bureau, the Suffolk District Attorney's Office, the National Insurance Crime Bureau and the State Police led to the indictment of 85 physicians, psychologists, chiropractors, attorneys, medical clinic owners and others in the first stage of what may be the largest no-fault fraud scheme ever prosecuted in New York State.
- In December, Director Bardong received the Manager of the Year 2003 Award from OneBeacon Insurance Company in recognition and appreciation of his leadership and commitment to fighting insurance fraud in New York State.
- The Bureau expanded a program that puts its investigators in prosecutors' offices to work side-by-side with their investigative staff. The initiative helps ensure Bureau cases are given due consideration. Thus far, eight DAs' offices are involved in the program and several others have expressed interest.
- In July, two Frauds Bureau investigators were named "Enforcement Officers of the Quarter" by OneBeacon Insurance Company for the successful collaboration on several insurance fraud cases with the insurer's Special Investigations Unit.
- A unanimous decision by the New York Court of Appeals on October 21 affirmed the Superintendent's rulemaking authority in promulgating a revised Regulation 68. Among other revisions, the new regulation reduces the time for filing a no-fault automobile insurance injury claim from 90 to 30 days and also reduces the time for submitting medical bills from 180 to 45 days.

## **3. Investigations**

The Frauds Bureau received 29,705 reports of suspected insurance fraud in 2003. Of that, 28,918 were received from licensees required to submit such reports to the Department, and 787 were received from other sources, such as consumers and anonymous tips. A total of 1,130 new cases were opened during the year, while investigations continued in numerous cases opened in prior years. During 2003, the Bureau referred 255 cases to prosecutorial agencies for criminal prosecution and



another 34 for civil settlement or referral to the Department's Office of General Counsel for civil proceedings.

#### **4. Arrests and Prosecutions**

The Frauds Bureau participated in investigations that led to the arrest of 811 individuals for insurance fraud and related crimes during 2003, outpacing last year's performance by nearly 15%. The number of arrests posted in 2003 sets a new record for the Bureau and represents an increase of more than 108% over the past five years. Criminal convictions obtained by prosecutors in Frauds Bureau cases reached 324 for the year. In addition, 311 individuals were sentenced in connection with Frauds Bureau cases.

Frauds Bureau activities led to stiff fines against 97 individuals who were sentenced to nearly \$7.5 million in court-ordered restitution during the past year. In 22 cases, individuals made voluntary restitution totaling more than \$143,000. In another 10 instances, insurers were able to achieve savings of almost \$420,000 in connection with fraudulent claims under investigation by the Bureau.

#### **5. Update: World Trade Center Fraud**

Since the tragic events of September 11, the Frauds Bureau has worked diligently to ensure that reports of suspected fraud related to the attacks receive prompt attention. In all, 78 World Trade Center-related claims have been opened for investigation – 21 involved life insurance; 20 were workers' compensation claims; 8 were auto related; and 29 were miscellaneous.

#### **6. Major Cases**

Several major investigations, as well as numerous arrests that resulted from the day-to-day investigations conducted by Frauds Bureau investigators, contributed to the record-breaking number of arrests during 2003. Several of these cases are summarized below.

##### **a. World Trade Center Scam**

A Broome County man turned himself in to a Frauds Bureau investigator for arrest on charges of attempting to defraud Combined Life Insurance Company of \$20,000. The defendant filed a life insurance claim stating that his daughter died in the attack of September 11. However, his ex-wife informed the Frauds Bureau's Syracuse Office that their daughter was alive and living outside New York State. The investigation that led to his arrest was conducted by the Frauds Bureau with the assistance of the Broome County Sheriff's Office and the Broome County DA's Office.

##### **b. 23-Count Indictment**

An investigation by the Frauds Bureau, the Nassau County DA's Office, the Department of Motor Vehicles and a number of insurers led to an indictment against a Long Island body shop, its owner/operator and its manager. According to the indictment, the defendants engaged in systematically inflating the damages to vehicles or failing to do the repair work for which they were paid. The nine incidents covered by the indictment included five claims involving vehicles insured by Progressive Insurance Company, in which the damages claimed by the defendants were inconsistent with the accidents those vehicles were involved in. In several instances, parts on the autos appeared to have been cut with a sharp object, while others seemed to have been damaged by repeated blows rather than the impact of an accident. Progressive estimates that the claims from these five incidents were inflated by more than \$10,000. The other incidents included two claims on vehicles insured by USAA Insurance Company totaling more than \$11,000 for repairs that were never done; a charge of over \$3,000 to CGU Insurance Company to replace a custom-made bar on a Lincoln Town Car although the

bar had not been damaged in the accident; and a charge of \$2,000 to Liberty Mutual Insurance Company for repairs on a Jeep Cherokee that were not done.

### **c. Staged Accident Leads to Murder Charge**

A Brooklyn man was accused of attempting to stage an accident that resulted in the death of a Queens grandmother. He was charged with murder in the 2<sup>nd</sup> degree, manslaughter in the 2<sup>nd</sup> degree, criminally negligent homicide and conspiracy to commit insurance fraud. It was alleged that the defendant intentionally drove his car into the victim's car, causing her to lose control and crash into a tree. Also arrested was a woman accused of assisting the Brooklyn man in fleeing the scene of the accident. She also allegedly had a fraudulent driver's license and welfare card. She was charged with forgery in the 2<sup>nd</sup> degree, criminal possession of a forged instrument in the 2<sup>nd</sup> degree, criminal possession of forged devices and hindering a prosecution in the 2<sup>nd</sup> degree. The Frauds Bureau, the Queens District Attorney's Office and the New York City Police Department's Fraudulent Accident Investigation Squad pooled resources in this investigation.

### **d. Team Effort Results in Multiple Arrests**

The Frauds Bureau teamed up with the Albany County DA's Office, the State Insurance Fund, the Workers' Compensation Inspector General's Office, the State Police, and the Albany and Colonie Police Departments in a roundup of nine individuals suspected of cheating the State's workers' compensation insurance system. The nine suspects, arrested as a result of Frauds Bureau investigations, were part of a larger sweep of 15 fraud arrests in cases representing more than \$1.1 million. The sweep was conducted over a three-week period in November and was the culmination of a six-month undercover operation.

### **e. Gotcha!**

In the first phase of an undercover investigation known as "Operation Gateway," 51 people, including one doctor, were arrested for their roles in a no-fault insurance fraud ring that defrauded insurers of tens of millions of dollars. The investigation began in August 2002 when the New York City Police Department received a tip about a fraud ring operating in New York City. In November 2002, the NYPD requested the Frauds Bureau's assistance in the investigation. In this scheme, runners were paid up to \$2,500 for each person they recruited to pose as a victim in an auto accident. Most of those arrested were recruits, each of whom was paid several hundred dollars to claim they were injured in an accident. The "victims" were then steered to medical facilities that were part of the scheme where unscrupulous doctors billed insurance companies for unnecessary treatment and lawyers filed bogus lawsuits. In this case, NYPD detectives, posing as insurance company representatives, contacted the suspects and told them they had been awarded an insurance settlement, but they had to go to a location in Queens to pick up the check in person. When they arrived, they were arrested and charged with fraud. The investigation was conducted by the Frauds Bureau, the NYPD, and the Brooklyn DA's Office.

## **7. Civil Enforcement**

Under the provisions of Section 403 of the Insurance Law enacted by the Legislature in 1992, the Insurance Department is authorized to impose civil penalties of up to \$5,000 plus the amount of the claim on individuals who commit fraudulent insurance acts. In addition, Section 2133 of the Insurance Law permits a fine of up to \$1,000 for possession of a fraudulent automobile identification card and up to \$5,000 for each additional card possessed. These civil penalties give the Bureau the authority to impose sanctions in cases where the monetary value is not sufficient to justify criminal prosecution, or in which the extremely high burden of proof required in criminal cases cannot be met.

**Table 59  
Civil Enforcement Program  
2000-2003**

	<b>2003</b>	<b>2002</b>	<b>2001</b>	<b>2000</b>
Total Fines Imposed	\$75,813	\$46,232	\$237,758	\$388,224
Settlements With IFB	\$62,931	\$22,995	\$180,013	\$305,718
Hearing Determinations	\$12,882	\$23,237	\$ 57,745	\$ 82,506
Cases*	21	16	32	41

\* Number of Cases in which the Frauds Bureau collected civil penalties or Office of General Counsel imposed civil penalties.

## **8. The Frauds Bureau Restructured**

In order to coordinate efforts to curb no-fault fraud, the Bureau combined what were the Auto and the No-Fault units into one Organized/No-Fault/Auto Unit with two Supervising Investigators – one to handle such investigations in the five boroughs of New York City and the second to handle investigations in other downstate areas.

One Supervising Investigator was assigned to a new statewide Arson Investigation Unit to target auto arson in New York State. Currently, all fire departments, with the exception of the New York City Fire Marshals, report all arson fires to the Office of Fire Prevention and Control. The staff of the new Arson Unit will have access to the files of the Office of Fire Prevention and Control. The New York City Fire Marshals have recently established an Auto Arson Unit and have invited the Frauds Bureau to participate in their efforts to combat auto arson. Toward that end, Department investigators will have access to their database, which includes all reports of suspected arson in New York City.

In addition, a Supervising Investigator was named to the position of Statewide Auto Unit Coordinator. Noting that insurance fraud is no longer a local problem, with patterns of no-fault and other auto-related fraud spreading from downstate to upstate, especially into the Buffalo and Rochester areas, it is important to have a Supervisor to track and monitor such trends and to coordinate fraud-fighting efforts throughout the State. The Statewide Auto Unit Coordinator meets regularly with all Bureau supervisors, both upstate and downstate, to evaluate how we can best expend our resources. He is also in regular contact with police officials across the State to discuss mutual concerns and to provide assistance as we work to combat no-fault/auto insurance fraud.

Due to the success of the Department of Motor Vehicles' bar-coding system for auto insurance identification cards, the need for a separate Fraudulent Cards Unit has significantly decreased. Therefore, the Bureau incorporated that Unit with the General Unit and reassigned that Unit's Supervisor and three investigators to the General, Medical and Organized/No-Fault/Auto Units.

## **9. No-Fault Insurance Fraud**

No-fault fraud is the most prevalent type of fraud reported to the Frauds Bureau, accounting for more than 58% of all reports of suspected fraud received in 2003. The Bureau's beefed-up Organized/No-Fault/Auto Unit will bring renewed focus to rooting out this insidious crime that costs New Yorkers billions of dollars in increased auto insurance premiums and higher costs for goods and services. The Unit works with the Attorney General's Auto Insurance Fraud Unit, as well as local prosecutors and law enforcement officials to prevent fraud and abuse. In addition, the Bureau's program to specifically train police officers around the State in ways to recognize staged accidents and

fraudulent auto identification cards, as well as the Outreach Program to heighten awareness in the wider community, will strengthen these efforts.

On the regulatory front, the Department won a major victory on October 21, 2003 when the New York State Court of Appeals unanimously affirmed the Superintendent's rulemaking authority in promulgating Regulation 68. Among other provisions, the Regulation reduced the time required for filing a no-fault injury claim from 90 to 30 days and also reduced the time for submitting medical bills from 180 to 45 days. These provisions will eliminate loopholes that have been exploited as opportunities for fraud and abuse. At the same time, the Regulation includes important new consumer safeguards that will ensure that legitimate claimants have their claims paid. For example, the Regulation relaxes the standard for accepting late claim filings. The previous rule stated that late filings were permitted only when written proof showed that compliance with a filing deadline was "impossible." The new standard excuses missed deadlines when there is a "clear and reasonable justification" for the delay. The decision ends the challenge to implementation of Regulation 68 brought by the Medical Society of the State of New York, the New York Trial Lawyers Association and others.

#### **10. Satellite Office in Brooklyn**

The Frauds Bureau and the Brooklyn Borough President established an Automobile Insurance Task Force in 2002 to advance innovative ways of reducing the incidence of fraud to help control auto insurance premiums in Brooklyn. As part of that effort, the Frauds Bureau has relocated a team of no-fault investigators from the Organized/No-Fault/Auto Unit in Manhattan to an office in downtown Brooklyn to work closely with the other members of the Task Force in combating no-fault fraud and abuse.

#### **11. Community Outreach**

The Community Outreach Program continues to be a priority for the Bureau. The program consists of a presentation that focuses on no-fault fraud but can be modified to target any type of insurance fraud. It is designed to heighten public awareness about insurance fraud and its impact on the community. Our Training Officer and investigators regularly conduct presentations for neighborhood groups and civic organizations in addition to insurance industry staff. Increasingly, the presentation is given to members of the New York City Police Department and other police departments around the State. Since police officers are often the first responders to auto accidents and other emergency situations, their ability to recognize insurance fraud can be crucial to an investigation. During 2003, Frauds Bureau staff conducted 54 training programs for over 5,000 individuals, including 3,500 police officers and detectives at 19 police departments.

#### **12. Frauds Bureau/Prosecutor Partnership**

The Frauds Bureau has expanded its initiative that puts our investigators in prosecutors' offices to work side-by-side with their investigative staff. This is an important way to help prosecutors recognize the importance of the crime of insurance fraud and to ensure that our cases receive a fair hearing. Many District Attorney's Offices across the State have received Department of Criminal Justice Services grant money to form auto insurance fraud units. The Bureau currently has two investigators in the Suffolk County DA's Office virtually full time. In addition, one investigator is in the Nassau County DA's Office two days a week; two investigators one day a week in Queens; and one investigator three days a week in Rockland, where he also works with investigators in the Putnam and Dutchess County DAs' offices. One investigator has also been placed in the Albany County DA's Office two to three days a week and one investigator two to three days a week in Westchester. The Bronx DA's Office has also expressed interest. Monroe County has recently received approval for a grant and Assistant District Attorney Jennifer Whitman has requested the assistance of the Frauds Bureau in setting up a program to address the significant auto fraud problem in Rochester. This partnership program is likely to continue to expand as more prosecutors apply for and receive grant money.

### **13. Staff Recognition Awards**

In December, Director Charles Bardong received the Manager of the Year 2003 Award from OneBeacon Insurance Company in recognition and appreciation of his leadership and commitment to fighting insurance fraud in New York State.

On January 9, 2003, Senior Investigator Gary Anderson and Investigator Christo Phillips of the Bureau's No-Fault Unit each received a plaque from Roslynn R. Mausekopf, the U.S. Attorney for the Eastern District of New York, in recognition of "their diligent investigation of the Medical Arts Clinic, Juliette Car Service and Lucien Insurance scheme, leading to 35 federal felony convictions." In October, the FBI presented these two investigators with awards for their successful investigation of this same case.

Associate Investigator August D'Aureli, Senior Investigator Gary Anderson and Investigator Arthur Masinski were also honored by Roslynn R. Mausekopf, the U.S. Attorney for the Eastern District of New York, in recognition of their outstanding investigation of a major no-fault case. For the successful collaboration on several insurance fraud cases with their Special Investigations Unit, OneBeacon Insurance Company, in July, named Auto Unit Investigator James Masterson and Workers' Compensation Unit Investigator Kristine Romani "Enforcement Officers of the Quarter."

### **14. Fraud Prevention Plans/Public Awareness Programs**

The Second Amendment to Regulation 95 required all insurers that meet certain criteria to submit to the Department a Fraud Prevention Plan that includes establishing a Special Investigations Unit (SIU). At year-end, 148 Plans were active. A Frauds Bureau examiner currently accompanies members of the Health Bureau on financial examinations of health insurers. The examiner meets with the insurer's SIU manager and reviews the company's Fraud Prevention Plan in order to determine whether the SIU is in compliance with the provisions of Regulation 95. The examiner also provides training to SIU staff on how best to implement their Plans and provide accurate and thorough information in the annual reports they are required to submit to the Department on January 15. The Frauds Bureau plans to expand these SIU reviews by also accompanying staff of the Property Bureau on their market conduct examinations of property/casualty insurers.

The Second Amendment to Regulation 95 also includes a requirement that insurers develop a public awareness program focused on the cost and frequency of insurance fraud. Major advertising campaigns, using newspapers, radio, television and billboards are carried out throughout the year by the New York Alliance Against Insurance Fraud, a coalition of more than 100 insurers that write property/casualty, life, health and disability insurance. The National Health Care Anti-Fraud Association and several individual insurance companies have also launched programs to heighten awareness and reduce public tolerance for insurance fraud. This message now reaches millions of New Yorkers. The success of the program can be measured in part by the number of calls the Bureau receives to its Hotline which has increased steadily since the inception of the program. Calls averaged 56 a week during 2003, compared with 50 a week in 2002 and 30 a week in 2001.

### **15. Directions for 2004**

#### **a. Web-Based Fraud Reporting**

Implementing a Web-based fraud reporting system is one of the Bureau's highest priorities. The system would allow insurers to report suspected incidents of insurance fraud via a Web site. The Bureau has established a working group with the Systems Bureau that meets weekly to discuss progress and resolve problems and our electronic reporting blueprint is in its final stages. Under the AT&T Global Network currently in use, about 69% of all reports received by the Bureau are submitted electronically. With a Web-based system, 100% electronic reporting is an achievable goal. Under the

proposed system, specified information fields must be completed for the report to be accepted. Thus, the system will enhance the effectiveness and accuracy of fraud reports and reduce staff time spent in follow-up with insurers. In all, the Bureau received 29,705 reports of suspected insurance fraud in 2003, up from 24,578 in the prior year.

#### **b. Nuisance Abatement**

The Frauds Bureau uses every means at its disposal in pursuit of those who perpetrate insurance fraud. Nuisance abatement is a civil remedy routinely used by the New York City Police Department to close a location that qualifies as a public nuisance, *i.e.*, a site of recurring illegal activity over a period of time, such as locations used for drugs, prostitution, fencing of stolen goods, etc. The Frauds Bureau is working with the New York City Police Department and insurers to use this civil remedy to shut down illegal locations such as chop shops and medical mills.

#### **c. Manual of Procedures**

The Bureau's Training Officer will update the Frauds Bureau Manual of Procedures based on the recommendations of the Department's Internal Auditor. The details of each financial function, development of a statistical tracking system for certain procedures, and a description of all databases and computer operations are among the new entries that will be included in the revised Manual to ensure that it is a complete and comprehensive document.

### **16. Legislation**

The Frauds Bureau requests and/or supports the following legislative changes:

- Providing the Superintendent of Insurance with the authority to establish standards for the public awareness programs that insurers are required to develop under the provisions of Regulation 95;
- Upgrading the status of Insurance Frauds Bureau investigators from peace officers to police officers, enabling them to act independently in the execution of such tasks as search and arrest warrants, court orders relating to electronic surveillance and summary arrests;
- Making it a crime to present materially false statements on an insurance application for personal lines insurance;
- Making it a felony for third parties, known as runners, to recruit patients and clients for health care providers and attorneys in insurance fraud schemes;
- Establishing a TIPS program;
- Requiring a periodic certification of continued eligibility by recipients of workers' compensation or disability benefits;
- Creating a class D felony for unlicensed activity by certain previously licensed individuals and entities that are no longer licensed at the time of the violation;
- Creating a class E felony for unlicensed activity by any individual;
- Subjecting unlicensed activity to civil penalties after notice and hearing before the Insurance Department;
- Providing for automatic revocation of licenses under Article 21 of the Insurance Law for conviction of the licensee for felony larceny or felony insurance fraud;
- Requiring that life insurance policy applications include a positive identification of the insured;
- Facilitating the collection of fraud data by providing that the Insurance Frauds Bureau shall act as the collection resource for such data;
- Increasing civil penalties for knowing possession, transfer or use of fraudulent insurance documents;

- Defining a new series of crimes relating to insurance fraud that involve false entries upon the books of account of insurers or in reports or documents submitted to regulatory officials or embezzlement from insurers, and also of new crimes involving threats or force or the use of threatening letters or communications to corruptly influence, obstruct or impede the proper administration of the Insurance Law;
- Prohibiting the participation in the insurance business of individuals who have been convicted of felonies involving dishonesty, breach of trust or other violations of Article 176 of the Penal Law unless such persons have obtained the written consent of the Superintendent of Insurance;
- Including the Superintendent of Insurance as a member *ex officio* of the Motor Vehicle Theft and Insurance Fraud Prevention Board and permitting State agencies to be eligible for grants from the fund administered by such Board;
- Amending Section 2111 of the Insurance Law to prohibit a revoked licensee from becoming employed in any capacity by an entity subject to the provisions of Article 21 without the prior written approval of the Superintendent;
- Increasing penalties in the Vehicle and Traffic Law to reduce the number of uninsured or unlicensed motorists driving in New York State;
- Requiring no-fault and workers' compensation insurers to provide explanations of benefits in response to claims filed for health care services under those programs;
- Modifying the reporting date for the Annual Frauds Report (pursuant to Section 405 of the Insurance Law) from January 15 to March 15 of each year; and
- Modifying the reporting date for insurer Special Investigations Units annual reports (pursuant to Section 409 of the Insurance Law) from January 15 to February 15 of each year.

Section 405 of the New York Insurance Law requires the Superintendent to submit to the Governor and the Legislature by January 15 of each year a comprehensive summary and assessment of the operations of the Frauds Bureau. The 2003 Insurance Frauds Bureau Annual Report is available on the Department's Web site at [www.ins.state.ny.us](http://www.ins.state.ny.us). Hard copies may be obtained through the Department's Publications Unit at 1-800-342-3736.

## F. LIQUIDATION BUREAU

The Liquidation Bureau, fulfilling the statutory responsibilities of the Superintendent of Insurance, is responsible for administering the affairs of insurance companies undergoing rehabilitation, liquidation and conservation. The Bureau also assists in the administration of New York's security funds which are used to pay claims remaining unpaid due to the inability of insurers to meet their policy obligations.

### Accomplishments

The year 2003 saw a substantial increase in the claim settlement activities of the Bureau. To address the need for the timely settlement of the new claims, the Bureau undertook an aggressive effort to outsource, when necessary, extensive claim activities for selected insurers to well established Third Party Administrators (TPAs), which the Bureau closely monitors. The following are insurers for which claim activities were outsourced: Group Council Mutual Insurance, Fremont Indemnity Company, Legion Insurance Company, Phico Insurance Company, Reliance Insurance Company, The Connecticut Surety Company,

The Bureau is committed to pursuing the latest developments in computer technology and is enhancing its management information reporting capabilities, particularly with respect to the above outsourced claim activities.

During the year, the Bureau concluded four domestic, two ancillary estates and one conservation. Five ancillaries were commenced, including Fremont Indemnity and Legion Indemnity Insurance and one conservation proceeding. The Bureau paid out \$168.8 million in dividends to security and guaranty funds, reinsurers and other general creditors and forwarded \$5.0 million of abandoned property to the New York State Office of the Comptroller.

In 2003 the Bureau also:

- Hired a new Chief Financial Officer who introduced a streamlined budget creation and analysis process that significantly reduced processing time, while improving budget item categorization and controls. The Bureau also commenced reporting New York Security Fund data to the National Conference of Insurance Guaranty Funds. In addition, an external audit was successfully completed for Finance and Reinsurance.
- Created five Estate Manager and Associate Estate Manager positions to oversee 6 of the 64 estates, giving them multi-divisional direct responsibility and accountability for all specific estate-related decisions. This has enhanced efficiency in the decision-making process for these estates.
- Continued its rehabilitation effort of Frontier Insurance Company.
- Created three new divisions: (1) Communications and Training, (2) Fraud, and (3) Investment
- Settled 1,860 claims and closed 25,459 claims without payment:
  - Achieved a 51% reduction in claims on diary as of 12/31/02
  - Assigned 4,439 files to Liquidation Bureau examiners during the year
  - Reduced overall claim count by 32% from year-end 2002
    - Year-end count for 2002 was 19,299
    - Year-end count for 2003 was 13,226
- Developed the Claims Legal Score Card, an evaluation tool to help identify outside counsel under-performance.



- Designed and implemented the first phase of a training program for Bureau claims employees and Third Party Administrators on identification of potential fraud cases and how to make referrals for investigation while developing a relationship between the new Bureau Fraud Unit and the New York Insurance Department's Frauds Bureau. In addition, the Bureau can now, electronically forward suspected fraud cases to the Department's Frauds Bureau.
- Developed a new investment policy intended to enhance returns without compromising our mission as Liquidator. The goal is to capture a higher return on investments to benefit creditors, while easing the burden on New York State Security Funds.
- Collected \$79,319,912 of reinsurance during 2003. Net recoverables as of December 31, 2003, for all estates with a reinsurance involvement totaled \$417,085,025. Included within the collections made by the Division are commutation recoveries. The Reinsurance Division collected \$24,794,170 by way of commutations during the year 2003. Commutations in the amount of \$1,991,481 were pending as of December 31, 2003.
- Secured approximately \$18 million of Early Access Funds for the Workers' Compensation Security Fund from Reliance Insurance Company, which is in Liquidation.
- Submitted 51 schedules requesting Court approval of 1,126 items recommended for allowances totaling \$49,791,511. Recommended 403 creditor claims for allowance in the amount of \$32,872,778.
- Coordinated mailing of over 12,500 notices to creditors advising of Court hearings in reference to Court Reports filed for the following estates Horizon, HUM, Ideal Mutual, Whiting National, and two other estates.
- Processed 9,130 Return Premium claims for Reliance Insurance Company policyholders and 8,327 Return Premium claims for New York Merchant Bakers policyholders.
- Implemented Tracking System to monitor cash receipts, disbursements and transfer of funds for the processing of claims by TPA.
- Reduced the number of temporary employees hired through outside agencies from a high of 58 employees on January 1, 2003, to a low of 17 at year-end. Arranged Ethics Commission Training for 67 Bureau employees.
- Created strategic positions and hired staff for the following positions in the new divisions: Director of Communications and Training, Director of Fraud Division, and Assistant Director of Fraud Division, Director of Investments Division
- Human Resources worked steadily with the Operations Division and the Communications and Training Division to revise the Bureau's performance appraisal format so as to focus more directly on the goals of improved performance measurement and accountability. As a result, we have instituted training of key managers, supervisors, and employees. This training will occur prior to implementation of the new form and process in 2004. Instituted multi-divisional review and overhaul of current Employee Evaluation System in response to employee concerns about the existing process. Also streamlined Seminar and Training Application and Management processes.
- Established the nylb.org domain and purchased 10-year renewable rights for additional domains.

**Note:** See Section VIII A(5) of this Report for the 2002 Rehabilitation, Liquidation, Ancillary Receivership and Conservation Proceedings.

## **G. INFORMATION SYSTEMS & TECHNOLOGY BUREAU**

The Information Systems & Technology Bureau (Systems) provides information technology products and services to approximately 950 Insurance Department employees and also supports the Department's technical infrastructure. Systems' clients include insurers, the public, federal, state and local agencies, other insurance regulators, actuaries, clerks, insurance examiners, frauds investigators, risk management specialists, real estate appraisers, lawyers, researchers and statisticians.

In addition to providing the technical infrastructure, the Bureau provides a variety of support services including consulting, troubleshooting, training, maintenance and research and development. Systems develops custom client/server, Web-based, and workflow applications while maintaining legacy mainframe systems. The Bureau uses sophisticated enabling technologies such as scanning, imaging and workflow.

The Bureau consists of several units, many of which encompass multiple sections: Financial Services; Applications Services; Data Base Administration/Data Communications; Technical Services; Operations and Production; and the Projects Office.

The Financial Services Unit (FSU) works with computer applications that are specifically designed to handle, process and analyze thousands of insurer financial statements. FSU is responsible for the automation, verification, troubleshooting, updating and maintenance of the annual statement, the supplement and other electronic data capture projects, which form the Department's integrated financial database. The FSU assists clients with the NAIC's and the Department's automated financial analysis tools used for monitoring insurer solvency, liquidity and profitability.

The Applications Services Unit (ASU) develops, enhances, maintains, purchases, supports and customizes all applications that do not fall under the FSU. These include systems that support the Department's administration and bureau operations and aid in fulfilling regulatory requirements. Major applications development initiatives and modifications are implemented to incorporate changes in the New York State Insurance Law, rules and regulations and to respond to industry crises. Other projects and changes are initiated as a result of updated business procedures or the need to eliminate inefficient/ineffective and/or duplicate procedures. The unit also is responsible for managing the integrated financial general ledger and accounts receivable systems

The Data Base Administration/Data Communications Unit (DBA/DCU), Technical Services Unit (TSU) and the Operations & Production Unit (OPU) are responsible for the Department's technical infrastructure. Collectively these units are responsible for data communications, database administration, network installation and maintenance, servers, Local Area Networks, Wide Area Networks, Virtual Private Network (VPNs) and microcomputer equipment. Staff perform network monitoring, backup and recovery services, antivirus protection, and install and maintain all third-party software.

The Systems Bureau operates numerous servers, which comprise the Department's Local Area Network (LAN), and Wide Area Network (WAN) environment. Components of the network include file and print servers, Domino mail and applications servers, Sybase servers, fax servers and imaging/document management servers. Other application servers include, but are not limited to, batch-processing servers, Web applications servers, antivirus management servers, test and development servers, etc. TSU supports four Microsoft networks, all connected via a WAN: Albany, New York City, Buffalo, and Mineola. The smaller upstate satellite offices (Rochester, Oneonta and Syracuse) are also connected via the Department's Virtual Private Network.

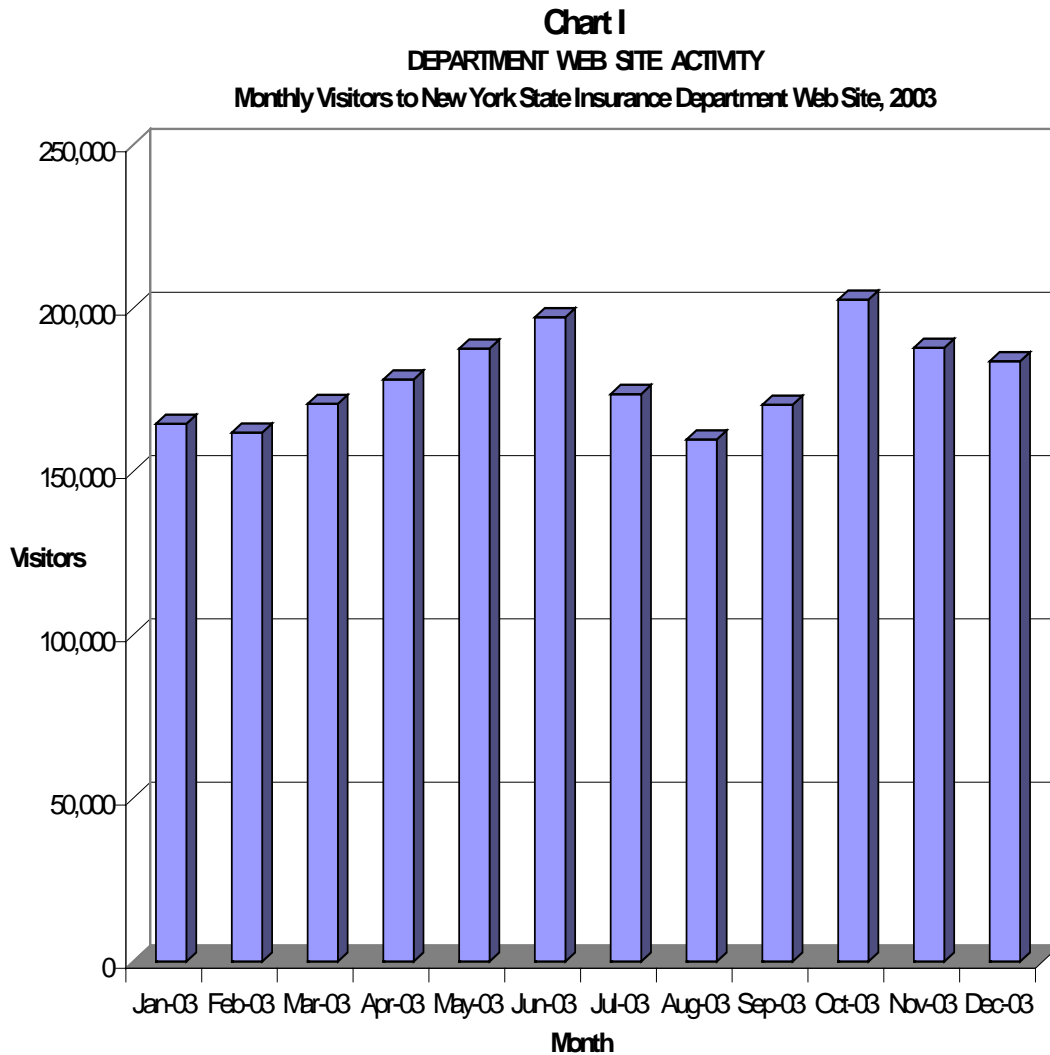
The Operations and Production Unit (OPU) is responsible for production and for the Computer Operations, and Help Center functions. The Help Center is the first line of support in assisting the client

base, and encompasses a wide range of significant responsibilities and functions. Effective change control is the essential ingredient for an effective Operations and Production environment.

The Project Office makes use of the team approach to accomplish large, complex projects as well as those of a special or unique nature. Examples include Enterprise Portal development, workflow/imaging development, Web site and Intranet development, field examination IT support, agency moves, Systems' Disaster Recovery/Business Continuity planning, e-commerce/e-government, joint agency initiatives, Lotus Notes development, Consumer Imaging and Information Management System (CIIMS) and Licensing Information Online Network (LION), and NAIC electronic initiatives.

### 1. Web Site

The Department's Web site continued to play a vital role in communicating and providing services to its diverse constituencies. Much of the Department's activities are in some way reflected on the pages of this Site. An improved method of measuring Web site activity was adopted at the start of 2003. During the year, 2,142,916 visitors came to the pages of the Site. These visits, by month, are displayed in the following chart.



The Web site continued to receive praise from consumers, the insurance industry, and other groups during 2003. We take pride in the Site's depth of content, relevancy, and speed with which it is

updated. Steps were taken during 2003 to ensure continuous coverage of the Site. As a result, our Web Team is now capable of updating the Site at any time - as circumstances dictate. Many New York Information Network alerts (see first bullet item, below) were posted during "off" hours. The movement of the Site to a cost-effective yet reliable Internet Service Provider at the beginning of the year proved highly successful. A back-up server was positioned for improved business continuity and disaster recovery options as well.

Over the course of the year, the following major new items were incorporated into the Department's Web site:

- The New York Information Network (NYIN) Web site, a password protected area to facilitate secure, sensitive communication, between the Department and its regulated entities.
- Information about Hurricane Isabel, targeted for both the general public as well as Insurance Disaster Coalition entities.
- Online capturing of Loss Data Reports on Hurricane Isabel through a Web based Form submitted through the Internet.
- The Captive Insurers Web site, which presents a different "look" that distinguishes it from the main Web site, with its own unique domain names.
- Continued improvements to the Healthy NY Web site.
- Continued enhancements to the Interactive Company Directory, providing real-time access to information about our regulated entities.
- The 2003 Interactive New York Consumer Guide to HMOs.
- Comprehensive, up-to-date information about Long Term Care Insurance.
- Redesigned Office of General Counsel Section, include a comprehensive Listing of all Withdrawn Circular Letters.
- Redesigned Publications Section that makes ordering Department Publications clearer and easier for the average consumer.
- Redesigned Consumer Health Insurance Resource Center.
- A new Procurement Opportunities Section.
- The complete set of Annual Statement and New York Supplement Filing Instructions and Forms.
- Encryption of e-mail addresses to prevent e-mail address "mining" and reduce spam coming into Department mailboxes.

A great deal of other content was added during the course of this very busy year. A brief listing includes: Insurance Frauds information and statistics; proposed regulations, emergency and final adoptions; Office of General Counsel selected opinions; circular letters; news releases; Department speeches; numerous up-to-date publications and reports; company examination reports; product outlines and checklists; DMV company codes and up-to-date health insurance and Medicare Supplement rates.

## **2. Intranet**

The Department's Intranet was completely redesigned during 2003 using new Web development tools. It continues to be a strategic internal communication facility that contains a wide range of content relevant to Department staff. Major items added during 2003 include:

- Redesigned Examiner Resource Center that includes a facility to allow regulatory staff to view electronic Supplement Annual and Quarterly submissions.
- An improved online Help Center that provides technology-related information and answers to commonly asked questions.

- The Department Ethics Guide; Plain Language Version of the New York State Ethics Law and a link to the Governor's Office of Employee Relations Online Ethics Guide.
- A comprehensive Records Retention Program Section that includes Records Management/Retention Procedures and a database driven listings of records.
- A poignant remembrance about a former Insurance Department colleague, Jim Gardiner, who retired in 2002 and passed away in 2003 at the age of 96.

In addition to the redesign and the items noted, a great deal of additional content was added during the course of this year. A brief list includes: up-to-date examination schedules of insurance companies; Department staff accomplishments; updated Employee Handbook and the General Administration Manual, now distributed solely in electronic format.

### **3. Annual Statement Filings**

The year 2003 was significant as the Department continued to expand the processes already in place that have changed the way Annual Statement filings are received and utilized. The Department is committed to the concept of electronic filing of insurer financial statements via the National Association of Insurance Commissioners (NAIC) Web site. In the past year there have been significant increases in the number of companies filing over the Internet and the speed at which those filings are made available. There was a 30% increase in the first week in the number of companies filing their New York Supplements over the Internet. In addition over 90% of the licensed New York companies were available to staff in the NAIC I-SITE application by the fourth business day after they were due on March 6. In 2002 the number of required copies of Annual Statement filings was reduced from two to one. The one hard copy eliminated was replaced by the electronic filing. During 2003 the Department eliminated the hard copy paper requirements for Management Discussion and SVO forms for all foreign companies. The Adobe Acrobat PDF filing available on the NAIC Web site is the sole source of this information for the Department.

### **4. Imaging/Workflow**

The Consumers Imaging and Information Management System (CIIMS) has been in production since November 1998. A Web Complaint function added in October 2001 allowed individuals to submit complaints online. Functionality to receive complaints from participating providers was added in May 2003. An enhancement to allow companies to respond to provider complaints online went into limited production in May 2003. This system will be expanded to other companies in the future. Systems continues to work with the Consumer Services Bureau to improve the original design of the system, increase functionality, and make the application more efficient and productive.

The Health Bureau continues to employ imaging to manage the form and rate filing process. The images are captured when received and the application allows for the tracking and management of the process. During the past year, the Bureau increased Web offerings by allowing the transmittal forms to be completed and then printed as cover sheets. This functionality is to be expanded to allow on-line submission of transmittals in the coming year. The rating section also has plans to replace the volumes of hard copy rate manuals with images. This will facilitate concurrent access to information and allow copies to be stored off-site.

The Life Bureau is similarly employing imaging in their processing, and is also scanning former submissions to eliminate paper. Similarly, the Property Bureau now images closed submissions so that the paper can be discarded and concurrent retrieval is possible. They plan to be scanning current submissions by the end of next year. They also have plans to image the rate manuals included in the auto rate comparisons to expedite the retrieval of specific information.

The year 2003 saw the continued expansion of Lotus Domino as a strategic software platform to develop workflow applications. These applications are designed to replace existing mainframe or manual Department processes. Following is a summary of the portfolio of Domino applications either released into production or production applications that continue to be supported and enhanced.

- The External Appeals Tracking System records activity on an External Appeals request from the point of receipt by the Department, through its various health plan and external appeal agent contacts, to its final determination. With the introduction of the standard letter and imaging components in 1Q03, External Appeals Tracking System is now a paperless workflow process.
- The FOIL Tracking System records the activity of a FOIL request from its receipt by the Office of General Counsel, through the assigned bureaus for request resolution.
- The ASR Phone Tracking System records all incoming calls received by the Department's Consumer Services Bureau hot lines. Information obtained from the caller enables Department management staff to trend incoming calls and obtain real-time statistics on emerging situations.
- The Legislative Tracking System enables the Office of Legislative Affairs to track the receipt and subsequent activity and status of inquiries received from various legislative sources.
- The Purchase Tracking System provides the Department with an electronic means to process requests for procurement from Department staff. This application follows the purchasing process from the initiation of a purchase requisition, through the issuance of a purchase order, to receipt of the requested items, and finally, the payment of the vendor. Included in the Purchase Tracking System is a Round Robin component that allows staff to electronically track the sign-off approval process of contracts, requests for procurement and statements of work.

Released in 2003:

- The Litigation Tracking System enables the Office of General Counsel to track the ongoing case activity on their court and non-court cases.
- The Capital Markets Tracking System includes an electronic workflow for all assignments handled by the Capital Markets Bureau.
- The Property Filing Tracking System provides an electronic tracking application for the approval process of filings received by the Property Bureau.

## **5. E-Commerce**

Licensing Services staff continued to work with the Systems Bureau to build upon existing functionality within the Licensing Information Online Network (LION). Throughout the year, the Department expanded online capabilities to better meet the needs of producers, insurance companies and Continuing Education providers. In addition to producers renewing or obtaining their licenses online and companies making appointments electronically, companies may now make terminations online and CE Providers can submit course completion information in this manner. These additions supplement the advances that the Department has made to meet the needs of the insurance industry.

The success of the Department's Licensing initiatives is evidenced by the increased usage of the online functionality from 2002 to 2003. Most notably, the Life Agent renewal process was completed on schedule with 93% of the 91,924 renewals being completed online. The credit card payment option brought \$4,074,961 into the Department electronically. Additionally, 97% of company appointments were accomplished electronically, either through NAIC PIN or the Department Web site. The number of online applications for original licensing more than doubled from 2,328 in 2002 to 5,866 in 2003. The number of nonresident licensing applications processed through the NAIC's National Insurance Producer Registry for non-resident brokers and agents increased from 338 (6/02-12/02) to 3,519 in 2003.

## **6. Sybase Enterprise Portal**

2003 saw the expansion of Central File, an application developed with Sybase Enterprise Portal (EP) technology that provides Department staff access to company-specific data that may reside in various areas, on disparate platforms, and with different owners. EP security restricts access to only those assets a user is authenticated to view.

Among the enhancements to Central File in 2003 were the following:

- Enhanced search capabilities that now include searching based on a name string consisting of the first few letters of the company's name or DMV code.
- Directors and Officers Report #1 features a drop-down drill-down functionality displaying data from the Licensing Database for licensed entities including a cross reference to the Consumer Database Case number for certain entities.
- Three Health Bureau reports for the Experience Filings, Section 52.44A & Section 52.44 A&B.
- Addition of HMO and Point of Service to Health Bureau Rating Reports.
- A Detailed Complaints report.
- Availability of Electronic New York Supplement from 2000 through Quarterly 2003 Filing.
- Summary/Industry Reports for: HIDE (Community Rating) exhibits; Accident & Health Experience Reports; Disability Benefits Law reports; Medicare Comparison reports from 1994-2003.
- 16 Life Bureau Reports on Distribution of Life Policy Form Submission by Standards or Methods.
- 3 Property Bureau Reports – Speed-to-Market Reports refreshed on a weekly basis.

Central File fulfills the requirement of a centralized information (management) portal repository whereby Department personnel can access/search all organizational information through one application from multiple, disparate data stores, both structured and unstructured, through a browser-based Graphical User Interface (GUI). These data sources include Microsoft Access, Excel and Word files along with Adobe PDF files and application data residing in Sybase databases. Of particular note in 2003 was the addition of a "Save As" function that allows the saving of a report in HTML, Text or Excel format. In early 2004 we will be enhancing the Office of General Counsel's Opinions to provide highlighting to the formatted text for the full-text search. Central File and the Enterprise Portal continue to provide the framework for Java based application development both internally and for web based applications. The Bureau's focus in 2004 will be placing outward facing applications under the security umbrella of EP.

## **7. Infrastructure**

Systems continues to enhance, expand and harden the Department's infrastructure. Numerous initiatives have been implemented towards this end. A Systems Disaster Preparedness Team meets regularly to identify and further improve the infrastructure and its ability to withstand and recover from disasters.

## H. CAPITAL MARKETS BUREAU

### 1. General Overview

Established in 1999, the Capital Markets Bureau continued to expand its investment and risk management oversight activities in 2003. Its principal function is to provide the Insurance Department with analysis and recommended actions on matters affecting the regulation of capital markets and risk management activities of New York-licensed life, property/casualty and health insurers, and health maintenance organizations. In addition, the Bureau is increasingly involved in the supervision of public retirement systems. Last year, the Bureau met its objectives by:

- furnishing examination support;
- applying financial analytics to investment portfolios of insurers;
- identifying investment/capital concerns and recommending follow-up actions;
- conducting training for the Department's staff in capital markets and asset/liability dynamics as they pertain to insurers;
- participating in special projects associated with major emerging industry and legislative issues;
- responding to requests by the Life, Property, Health, Office of General Counsel and Executive Bureaus for diverse analytical support;
- interfacing with external entities, including other regulatory bodies, investment firms, risk management consultants, third-party asset managers, and rating agencies;
- leading and participating in various NAIC Working Groups and Task Forces; and
- reviewing new and amended Derivative Use Plans from insurers and monitoring derivative activity of insurers.

The Bureau employed its broadened financial analysis framework designed to assess the investment performance of life and property/casualty insurers. The methodology, highlighting key investment ratios and credit quality assessments, primarily utilized financial information from the NAIC and Bloomberg databases. Its formulae identified insurers that were outside the normative range of their sector's financial measurements. The investment portfolios of these identified insurers were then subject to additional analysis by the Bureau. If areas of concern remained following this targeted assessment, the Bureau then solicited additional information on the companies' investment management criteria and objectives. If necessary, meetings or teleconferences with the affected companies were arranged to gain additional insight into the make-up of their portfolios, and investment rationales and approaches. Moreover, the analysis of quarterly data was better integrated into the reviews distributed to the Bureaus.

The Bureau also worked in conjunction with the Life Bureau to embark on refining a framework for evaluating the diverse investments held by the sizable public pension funds in New York State. Ongoing development and enhancement of key measures and review standards will take place in 2004.

In addition, last year, the Capital Markets Bureau increased its participation in on-site examinations, provided both in-house and off-site training programs, routinely disseminated news and information that served to enhance examiner understanding of the financial markets, and completed various Bureau-specific special projects. Moreover, risk management specialists conducted meetings and teleconferences with select third-party asset managers responsible for investing in fixed income securities and managing derivatives for insurers. These exchanges provided additional data and details governing these managers' oversight, compliance practices and interface with client-insurers as well as generated more information on the establishment of and adherence to investment guidelines. Meetings and teleconferences with rating agencies and investment banks were also held to solicit and exchange information relative to the capital markets activities of insurance companies.



## 2. 2003 Highlights

### a. Capital Markets Bureau Reviews

The Bureau performed capital markets reviews on insurance companies selected for “Priority One” desk audits by the Life, Property and Health Bureaus. In addition, it targeted for more extensive evaluation a number of other companies whose measurements/investment parameters were at marked variance with their sector’s norms. Following supplemental assessment, certain targeted companies were required to provide more information on investment policy, performance expectations and related data. The staff refined the template for transferring certain annual and quarterly investment data from applicable NAIC investment schedules for further analysis in conjunction with the Annual Statement and periodic reviews, and pre-exam and 4<sup>th</sup> quarter meetings.

The reviews culminated in reports submitted to the bureaus. These reports featured the application of Bloomberg analytics to generate value-at-risk calculations and fixed income measurements, including duration computations and average investment yields, and when available, incorporated analysis of quarterly data. Additionally, shifts in average credit quality of bond portfolios were highlighted. If applicable, the reports also included profiles on the equity portfolio and derivative usage. Depending on the outcome of the analysis, the Capital Markets specialists recommended further action to the financial examination staff.

The Bureau developed various databases to facilitate sector and special situation analysis to assess the degree of impact on insurers’ capital adequacy of the volatility of the equity market and the range of credit conditions associated with the fixed income sector. This monitoring exercise served to address the prevailing risk management and capital market concerns in a changing economic and industry environment. In 2003, in addition to keeping abreast of shifting quality of certain fixed income investments and the rebound in the equity market, the Bureau oversaw the use of derivatives and the suitability of asset allocations. In order to augment the Bureau’s in-house metrics and identify analytical frameworks that would further enhance the efficiency of the evaluation of diverse portfolios, the staff periodically met with companies specializing in developing sophisticated risk measurement systems.

**Table 60  
ANALYTICAL EVALUATIONS AND REPORTS  
2003**

Type of Insurer	Priority 1 Desk Audits	Pre-Exam Reports	Targeted Evaluations	4 <sup>th</sup> Quarter Meetings
Health	7	2	—	8
Life	39	18	38	19
Property	39	51	55	11

The Bureau continued to review filings of new Derivative Use Plans (DUPs) as well as amendments to approved DUPs of life and property/casualty insurance companies. Prior to approval, the Bureau conferred with the Property and Life Bureaus on companies whose DUPs initially did not meet the established regulatory standards so that appropriate modifications by these companies could be made. Also, when a company made changes in the type, management, or oversight of its derivative activity, the Bureau reviewed its DUP amendment submission.

In 2003, risk management specialists examined 67 new DUPs, with 52 of these affiliated with two major property/casualty groups, CNA and Travelers. The proposed derivative usage largely reflected a range of swaps and options across various asset classes. Additionally, the Bureau evaluated 14 amended DUPs, with 5 associated with one property/casualty group.

**Table 61**  
**DERIVATIVE USE PLAN (DUP) REVIEWS**  
**2003**

TYPE OF REVIEW	LIFE	PROPERTY
New DUPs	10	57
Amended DUPs	6	8

### **b. Examination Participation**

Last year, the Capital Markets Bureau was active in utilizing its formulated risk-focused examination procedures applicable to capital markets oversight. It increased its exam participation by taking part in seven examinations, three for the Property Bureau, three for the Life Bureau, and one for the Health Bureau. This exam participation was largely on a targeted basis, focusing on specific areas of risk either detected by the Bureau in its review of financial statements or identified by the examiner-in-charge of the engagement. In certain instances, particular attention was given to derivatives, asset allocation and quality, asset turnover, investments differing from the typical sector profile and the composition of Schedule BA assets, often comprising hedge and venture capital funds.

In order to refine the preparation process for near-term exams, the Bureau scheduled along with Department examination staff on-site company meetings with the insurer's senior management and external auditor at the commencement of an exam. This exercise served to facilitate understanding of management's strategic goals, to familiarize the Department with the auditor's evaluative approach, and to permit leveraging off the work performed by the CPA firm, minimizing duplication of assessment efforts and resulting in a more risk-focused regulatory exam.

### **c. Training Initiatives**

The Capital Markets Bureau conducted multi-level training principally for the Department's examination, legal and actuarial staff. The training was comprised of courses in investment portfolio assessment, hedge funds, and general capital markets dynamics. Courses were structured to address different facets of capital markets content. Several courses were delivered in-house by Bureau staff, while one was presented by an outside vendor.

The Bureau continued to promote the participation of the financial analytical staff of the Department in teleconferences, investor briefings, and meetings held by the various rating agencies. Moreover, it maintained its relationships with the leading insurance equity analysts, ensuring critical access to their industry and company research.

**Table 62**  
**MAJOR CAPITAL MARKETS TRAINING PROGRAMS**  
**2003**

<b>Course</b>	<b>Attendees during Year</b>
Introduction to Capital Markets	30
Rating agencies' Briefings	42
In-house Service Training	129
In-house Capital Markets Forums	116

#### **d. Special Projects**

The Bureau was involved in a number of special projects stemming from a variety of events, including the changes in capital market dynamics, key legislative initiatives, and September 11. The Bureau staff conducted research on and evaluated a wide range of technical topics, developing capital markets concerns, and transactions, such as:

- deteriorating conditions of the medical malpractice segment;
- the continuing impact of the equity market and low interest rate environment on prospects for annuity products;
- the funding of trusts by non-U.S. insurers to back business written in the United States;
- securitization of insurance-linked assets;
- monitoring, in conjunction with Life Bureau actuaries, insurers' capital markets operations, and asset/liability risks via a risk matrix;
- structured transactions, including principal protected notes and their treatment when considered impaired;
- high yield debt allocation in investment portfolios;
- select alternative investments, such as hedge funds;
- charitable investment trusts proposals;
- certain derivative transactions, including those associated with pools of GNMA and FNMA securities; and
- tracking post-September 11 industry's losses and capital-raising efforts on a global basis.

Monitoring of the financial impact of September 11 on New York State insurers continued last year, with attention given to litigation and federal reimbursement issues. Articles, reports and associative Bureau commentary on developing news regarding such matters were disseminated in the Department.

#### **e. Other Activities**

Through the Capital Markets Bureau, New York State represented state insurance regulators and the National Association of Insurance Commissioners (NAIC) on the Joint Forum's Working Group #3 on Risk Assessment and Capital. This particular working group is studying credit risk transfer (CRT) among financial services organizations, and includes representatives from the Federal Reserve, the Office of the Comptroller of the Currency, the Securities Exchange Commission, the Bank for International Settlements and regulatory authorities of several foreign countries, including the United

Kingdom, Germany, France, and Japan. In 2004, further research will be done on the usage of CRT products, primarily credit default swaps and collateralized debt obligations. Surveys of various insurers and their respective involvement in CRT markets will be completed during 2004.

In addition, the Capital Markets Bureau contributed to the formulation of legislative and regulatory proposals. These included (1) the addition of Section 110 to the Insurance Law by Chapter 687 enabling the Department to participate in a greater number of multi-state examinations while protecting documents shared with the Department by other states; (2) issues related to increasing the number of licensed captive insurers; (3) securities maintenance and transfer for admitted assets; and (4) Amendments to Article 69 regarding financial guaranty insurance proposed in late 2003.

The staff also gave capital markets presentations at diverse venues. These venues included a leading New York investment bank's investor conference on Variable Annuity Guaranteed Life Benefits (VAGLB), a credit derivative conference sponsored by the American Conference Institute and Stroock & Stroock & Lavan LLP, an NAIC Conference of Commissioners from the Northeastern Zone, and a Society of Actuaries conference on risk management. In addition, a risk management specialist moderated a panel of securities analysts at the mid-year meeting of the Casualty Actuaries of Greater New York.

The Bureau continued to participate in various other Working Groups/Task Forces of the NAIC on behalf of the Department. In 2003, Bureau representatives served as chair of the Securities Valuation Office (SVO) Oversight Working Group, Custodial Assets Working Group, and the Insurance Securitization Working Group and as co-chair of the Risk Assessment Working Group. A Bureau representative also served as vice-chair of the Valuation of Securities Task Force.

Last year, New York State served as chair of the SVO Oversight Working Group (SVOOWG). The group approved a number of initiatives to bolster the efficiency and effectiveness of the NAIC's Securities Valuation Office. A key initiative eliminated the necessity of the SVO rating fixed income securities that already had ratings assigned by nationally recognized statistical rating organizations (NRSROs). The adoption of this measure served to leverage the rating infrastructure and credit expertise of NRSROs and to reduce the SVO filing requirements of insurers. Refinements in the SVO rating appeal process were adopted and their efficacy will be assessed in the near term. Additional attention to enhancing the value of the SVO to the insurance regulatory community through research and technical work will continue to be a priority in 2004.

During 2003, as co-chair of the Risk Assessment Working Group, New York was instrumental in the development of the proposed Risk-focused Surveillance Framework (the "Framework"). Released for exposure in December, the Framework was presented to the Risk Assessment Working Group for their consideration in incorporating an enhanced risk assessment component within the financial solvency oversight function performed by U.S. insurance regulators. The Framework details a structured methodology designed to verify the financial condition as reported by insurance companies on statutory financial statements and to allow for the use of this methodology to establish a forward-looking view on the risk profile of insurers. The Framework is expected to direct regulators to the areas of greatest risk to the financial solvency of an insurer. This more defined process to assess prospective risk will enable state insurance regulators to be more proactive and better positioned to identify and respond to a broad range of challenges to an insurer's financial stability. Work on completing and implementing the Framework will continue through 2004.

Other NAIC groups of note in which Bureau staff participated are the Invested Asset Working Group, the NAIC/AICPA Working Group, the Examination White Paper Focus Group, and the Financial Condition Committee.

## I. CAPTIVE INSURANCE GROUP

### 1. General Overview

On August 7, 1997, Governor George E. Pataki signed into law Chapter 389 of the Laws of 1997, which permits the formation and operation of captive insurance companies (captives) in New York State via a new Article 70 of the Insurance Law and other amendments to the Insurance Law and the Tax Law. The Law became effective December 5, 1997.

Captive insurance companies are insurers owned by the insureds and organized for the main purpose of self-funding the owner's risk. Captives are often referred to as one of the "alternative insurance mechanisms." As of December 31, 2003, there were eighteen captive insurance companies authorized in New York. These eighteen captive insurers had total assets of \$3.8 billion, total liabilities of \$1.1 billion and capital and surplus of \$2.7 billion. In addition, these captive insurers had total income of \$315.1 million, paid taxes of \$16 million and had net premium written of \$399.2 million.

There has been explosive growth in captive formation in the past year. In addition, Superintendent Serio has created a dedicated captive group, responsible for the licensing of all captive insurers in New York. The group provides a direct link to decision-makers, promises a streamlined licensing process and the easing of administrative burdens after licensing with regulation that is distinct from the regulation of traditional insurance companies.

### 2. Legislative Proposals

The Department has proposed revisions to the current law to address certain restrictions that have hindered the growth of New York captives. Governor Pataki has submitted revised legislation to the New York Legislature to effectuate these changes. They include:

- Reducing the threshold level for a parent to form a pure captive to \$25 million of net worth or annual revenue. The bill also provides flexibility for the Superintendent to approve other thresholds if the parent demonstrates that it is otherwise qualified to form and operate a captive as a subsidiary;
- Reducing the threshold level for entry into a group captive to \$25,000 in annual premiums, 25 employees and a full-time risk manager for each member;
- Broadening the definition of "affiliated companies" to enable the parent's contractors and subcontractors to be insured by the captive;
- Authorizing sponsored captive insurance companies (*i.e.*, rent-a-captive), in which separate cells are set up for each company participating in this arrangement; and,
- Allowing public entities (municipalities, authorities and others) to form pure or group captives as public benefit corporations or Not-for-Profit corporations that would be exempt from state and local fees, taxes or assessments.

These changes would enhance the appeal of New York as a domicile for the new wave of captive insurer formations. The Department will still be able to adequately regulate these insurers under the framework established by Article 70 of the Insurance Law. Since New York is a leading global business center, the New York State Insurance Department is committed to establishing an appropriate regulatory environment for the operation of captive insurers. New York offers domiciled captive insurers tax rates competitive with other captive jurisdictions, minimal investment restrictions and the authority to write almost all types of property/casualty coverages.

## **J. TRAINING & PROFESSIONAL DEVELOPMENT**

Staff training is a core priority for the Department. Newly hired examiner trainees are required to participate in a two-year training program consisting of a combination of lectures, seminars, workshops and classroom instruction in addition to their regular work assignments. In 2003, 25 trainees successfully completed the training program and became insurance examiners and 28 new employees entered the program.

Professional development of seasoned examiners is encouraged through on-the-job training and attendance at Department-wide and bureau-wide seminars. In 2003, examiners attended two Department-wide off-site seminars on current issues facing the Department and the insurance industry and seven bureau seminars. In addition, examiners attended NAIC-sponsored training classes and pursued professional designations.

## **K. MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORP.**

### **1. General Overview**

The Motor Vehicle Accident Indemnification Corporation (MVAIC) was originally created to provide compensation for injuries to persons who, through no fault of their own, were involved in accidents with hit-and-run drivers, operators of stolen vehicles or uninsured motorists. This law became effective on January 1, 1959. The tort law has since been amended so that comparative negligence is now the law of the State of New York. In that respect, MVAIC's obligations to provide compensation have changed.

Qualified claimants (persons who are residents of the State of New York or of another state that has a similar program, and who do not own automobiles or are not resident relatives of a household where there is an insured vehicle) receive maximum benefits under the No-Fault Law.

As a result of the enactment of Section 5221 of the Insurance Law, effective December 1, 1977, the Corporation also became involved in the payment of no-fault, first-party benefits as of that date. It should be noted that the Corporation must provide for the payment of such first-party benefits only to qualified persons who have complied with all the applicable requirements of Article 52 of the Insurance Law. Amendment 19 to Regulation 68, effective September 1, 1985, permits MVAIC to arbitrate no-fault cases thus eliminating the necessity of commencing Declaratory Judgment Actions in unresolved coverage questions.

In June 1995, the New York State Legislature amended Section 1 Paragraph 1 of subsection (f) of Section 3420 of the Insurance Law to increase the New York financial responsibility limits from \$10,000 per person, \$20,000 per accident to \$25,000 per person and \$50,000 per accident. These limits are equally applicable to uninsured claims submitted to MVAIC. This law took effect January 1, 1996.

### **2. Recent Legislation and Regulations:**

- Chapter 511 Laws of 1999 – This law increased the self-insured assessment per vehicle from \$1.50 to \$3.50. The New York State Department of Motor Vehicles will continue to handle the self-insured fees.
- Amended Regulation 68 (No-fault) – After a protracted court battle, Amended Regulation 68 became effective in April 2002. The Regulation contains numerous fraud-fighting provisions, such as a reduction in the time frame within which health care providers are permitted to submit medical bills to their insurance carriers and a reduction in the time frame in which no-fault claims can be filed with insurers. For a more comprehensive update of Regulation 68, see Section IIB (Subsection 17: Automobile Insurance) of this Annual Report.

### **3. 2003 Activity**

During 2003, MVAIC opened 3,614 new cases. A total of 3,139 cases were settled with payment in 2003 at a moving average cost per claim of \$9,089. In 2001 and 2002, the moving average cost per claim was \$8,093 and \$9,441, respectively. An additional 2,018 cases were closed without payment for various reasons, including the discovery of applicable automobile insurance, the abandonment of claims and findings that MVAIC was not liable. The number of pending claims at the close of 2003 was 3,469.

The Motor Vehicle Accident Indemnification Corporation is funded through levies on insurance companies transacting automobile liability insurance in the State of New York in accordance with Section 5207 of the Insurance Law.

Other sources of funds include fees collected from self-insurers by the New York State Department of Motor Vehicles under Sections 316 and 370-4 of the Vehicle and Traffic Law, investment income, and subrogation recoveries.

**Table 63**  
**SOURCES OF FUNDS**  
**Motor Vehicle Accident Indemnification Corporation**  
**2001-2003**

<b>Source</b>	<b>2003</b>	<b>2002</b>	<b>2001</b>
Net assessments	\$34,742,079	\$31,521,831	\$21,000,000 *
Self-insurers' fees	231,298	229,705	193,448
Investment income/profit/loss/other	2,144,438	2,861,731	3,669,958
Subrogation recoveries	2,175,378	2,077,610	2,839,077
<b>Total</b>	<b>\$39,293,193</b>	<b>\$36,690,877</b>	<b>\$27,702,483</b>

\*Originally assessed for \$28.0 million; waived 4th quarter assessment; total annual assessment--\$21.0 million.

Source: Motor Vehicle Accident Indemnification Corporation



**Table 64**  
**TRANSACTIONS**  
**Motor Vehicle Accident Indemnification Corporation**  
**2001-2003**

Transaction	2003	2002	2001
<b>Number of Cases</b>			
Pending at beginning of year <sup>a</sup>	3,836	5,301	5,937
Total opened cases <sup>a</sup>	4,790	4,334	3,978
Reported tort and no-fault	3,614	3,324	3,404
Reopened	1,176	1,010	574
Total closed cases <sup>a</sup>	5,157	5,799	4,614
Cases closed without payment	2,018	2,257	1,882
Settled cases with payment (No-fault and tort)	3,139	3,542	2,732
Pending at end of year <sup>a</sup>	3,469	3,836	5,301
<b>Payments of Settled Claims (Before Subrogation)</b>			
Payments to claimants (no-fault & tort)	22,285,868	\$26,575,573	\$23,529,405
Allocated expense <sup>b</sup>	3,813,821	3,897,165	3,560,779
<b>Reserves Year-End (in 000s)</b>			
Total reserves <sup>c</sup>	\$58,066	\$54,075	\$50,704
On pending claims	24,166	25,785	25,898
On claims (IBNR)	20,900	21,073	18,000
Special expense reserve	5,500	6,959	6,547
Unallocated claims expense	7,500	258	259

<sup>a</sup> When both tort and PIP are involved, a separate case is established for each.

<sup>b</sup> The corporation also expended \$6,521,916 in 2003, \$5,967,603 in 2002, and \$5,676,878 in 2001 for operations and maintenance (unallocated expenses).

<sup>c</sup> There was a \$1,732,932 surplus in 2003. In 2002, there was no surplus and in 2001, the surplus was \$1,863,954. In 2003, the Corporation established a \$2.4 million reserve in accordance with the Financial Standards Accounting Board's FAS 106 (Insurance Benefits for Retirees/Revised). In 2002, this reserve was \$2.0 million; in 2001, it was \$1.565 million.

Source: Motor Vehicle Accident Indemnification Corporation

The following table distributes, by type of case, the 3,614 claims newly reported during 2003. Uninsured New York automobile drivers represent 61.04% of the total reported cases compared to 64.62% for the previous year, a decrease of 3.58 percentage points.

**Table 65**  
**NEWLY REPORTED CASES, BY TYPE**  
**Motor Vehicle Accident Indemnification Corporation**  
**2003**

<b>Type of Case<sup>a</sup></b>	<b>Number of Cases</b>	<b>Percent of Total</b>
No-fault (PIP) and Tort <sup>b</sup>	3,614	100.00%
Uninsured out-of-state automobiles	275	7.61
Uninsured hit-and-run drivers	1,121	31.02
Uninsured New York automobiles	2,206	61.04
Stolen automobiles	11	0.30
Insurance inapplicable to the accident	1	0.03

<sup>a</sup> This classification of case by type is made at the time a claim is received. On subsequent investigation, many of these cases are closed without payment, while others are reclassified because the initial determination was not supported by the facts.

<sup>b</sup> When both tort and PIP are involved, a separate case is established for each.  
 Source: Motor Vehicle Accident Indemnification Corporation

The following table distributes, by type of case, those cases settled with payment in 2003. Unidentified hit-and-run drivers represented 39.5% of all cases, but accounted for 55.01% of the total amount paid. This is attributable to the large proportion of these cases involving pedestrians in which the incidence of severe injuries and fatalities is relatively high.

**Table 66**  
**SETTLED CASES WITH PAYMENT, BY TYPE**  
**Motor Vehicle Accident Indemnification Corporation**  
**2003**  
(dollar amounts in thousands)

Type of Case	Number of Cases	Percent of Total	Amount Paid*	Percent of Total
<b>Total</b>	3,139	100.00%	\$22,286	100.00%
Uninsured out-of-state autos	261	8.32	1,977	8.87
Unidentified hit/run drivers	1,240	39.50	12,261	55.01
Uninsured New York automobiles	1,548	49.32	7,505	33.68
Stolen automobiles	17	0.54	221	0.99
Automobiles operated without consent of the owner	2	0.06	33	0.15
Insured autos where insurance is inapplicable to the accident	60	1.91	224	1.01
Unregistered automobiles	11	0.35	65	0.29

\*Includes PIP partial payments. Excludes subrogation received on cases previously settled and allocated loss adjustment expenses.

Source: Motor Vehicle Accident Indemnification Corporation

### III. Insurance Legislation Enacted

(Legislation is presented in numeric order based on 2003 Chapter Law)

This portion of the report covers bills enacted during the 2003 Session amending the Insurance Law. Where a bill amends laws other than the Insurance Law, only provisions of interest are noted. *These brief descriptions of the laws are intended only to provide highlights of the legislation and should under no circumstances be used in place of the full text of the law or regarded as interpretation of legislative intent or of Insurance Department policy.*

**Chapter 28 of the Laws of 2003** amends Chapter 65 of the Laws of 1998 (amending the Insurance Law to authorize insurers to offer prepaid legal services plans and legal services insurance) as follows:

- Section 1 of the bill repeals Section 17 of Chapter 65 of the Laws of 1998, which section would have repealed Section 1116 of the Insurance Law effective April 1, 2003. Section 1116 of the Insurance Law currently authorizes the writing of prepaid legal services plans and legal services insurance.
- Section 2 of the bill amends Section 18 of Chapter 65 of the Laws of 1998 to repeal those provisions of such section that would have repealed Section 1116 of the Insurance Law effective April 1, 2003.
- Section 3 of the bill addresses certain technical issues that relate to the repeal of a statute that repeals a prior statute.

**Chapter 85 of the Laws of 2003** amends the Insurance Law and Chapter 42 of the Laws of 1996 (amending the insurance law extending the expiration date of provisions relating to the New York property insurance underwriting association) as follows:

- Section 1 of the bill provides that the bill shall be known as the "Property/Casualty Insurance Availability Act."
- Sections 2, 3 and 4 of the bill amend Sections 5411 and 5412 of the Insurance Law and Section 13 of Chapter 42 of the Laws of 1996 to restore the provisions of the New York Property Insurance Underwriting Association (NYPIUA); to extend the provisions of Section 2351 of the Insurance Law, which provide for multi-tier rating of homeowners insurance policies; and to extend the provisions of Section 3425 of the Insurance Law pertaining to withdrawal by an insurer from the homeowners insurance market, which had expired on April 30, 2003, and to extend such provisions to April 30, 2004.
- Section 5 of the bill amends Section 2328 of the Insurance Law, which pertains to rate filing requirements for for-hire vehicles, to restore the prior approval requirement for rate increases and file and use standard for rate decreases, which had expired on August 2, 2001, and to extend such provisions until June 30, 2006. This bill section also restores the provisions of Section 2329 of the Insurance Law, pertaining to excess profits associated with certain motor vehicle insurance policies, which had expired on August 2, 2001, and extends such provisions until June 30, 2006.
- Section 6 of the bill amends Section 3425 of the Insurance Law to restore the 2% non-renewal rule for private passenger auto insurance, which had expired on August 2, 2001, and extend such provisions until June 30, 2006.

- Section 7 of the bill amends Section 3425 of the Insurance Law to require the Superintendent to submit a report to the legislature on the 2% non-renewal rule by March 15, 2006. The report shall include information related to new insureds, non-renewed insureds and business written by territory and by class, including age and sex.
- Section 7-a of the bill amends Section 2305 of the Insurance Law to add private passenger automobile insurance to the lines of business the rates for which are subject to prior approval, thereby making such prior approval provisions permanent.
- Section 8 of the bill amends Section 2305 of the Insurance Law by restoring, until June 30, 2006, "file and use"/open competition rating requirements for property and casualty lines of business not specifically subject to prior approval.
- Section 9 of the bill amends Section 2342 of the Insurance Law to restore and extend until June 30, 2006 the following sections of the Insurance Law: 2305(a) (prior approval is not required except as provided in 2305(b) or in 2308); section 2307(c) (permits the Superintendent to waive prior approval requirements for forms, classifications, or territories for the kinds of insurance where prior approval is not required); 2308 (permits the Superintendent to impose prior approval rating requirements for any territory for any kind of p/c insurance if warranted by market conditions); 2310(a) (informational filings required to be filed prior to use); 2316 (prohibition of anti-competitive behavior); 2320 (enforcement and penalties where prior approval is not required); 2323 (profitability and rates of return where prior approval is not required); 2326 (evaluation of competitive rating provisions) 2335 (motor vehicle insurance rates; prohibition of surcharges for certain traffic infractions); 2336(b) (passive restraint discount); and 2341(requirement that the Superintendent appoint a consumers advisory council and a business advisory council).
- Section 10 of the bill amends Section 2344 of the Insurance Law, which pertains to the flex-rating requirements for certain property and casualty commercial lines markets, to restore such provisions, which had expired on August 2, 2001, and to extend such provisions until June 30, 2006.

**Chapter 95 of the Laws of 2003** amends Chapter 650 of the laws of 1998 (amending the Insurance Law relating to authorizing domestic life, property/casualty, reciprocal, mortgage guaranty, co-operative property/casualty and financial guaranty insurers to enter into derivative transactions) as follows:

- Section 1 of the bill extends the current June 30, 2003 sunset on the current statutes authorizing most types of insurers to enter into derivative and replication transactions in accordance with written derivative use plans developed by an investment committee of the insurer's board of directors, which plan is then prior-approved by the Superintendent of Insurance, to June 30, 2005.

**Chapter 105 of the Laws of 2003** amends Chapter 557 of the Laws of 2001 (amending the General Business Law, the Public Health Law and the Insurance Law relating to clarifying provisions pertaining to pre-need funeral services) as follows:

- Section 1 of the bill amends Section 6 of Chapter 557 of the Laws of 2001, which amended the General Business Law, the Public Health Law and the Insurance Law, in relation to clarifying provisions pertaining to pre-need funeral services. Under this bill, Sections 3 and 4 of Chapter 557 will expire and be deemed repealed on June 2, 2007, while the remaining sections will be made permanent.

**Chapter 119 of the Laws of 2003** amends Chapter 266 of the Laws of 1986 (amending the civil practice law and rules and other laws relating to malpractice and professional medical conduct) and Chapter 63 of the Laws of 2001 (amending chapter 20 of the laws of 2001 amending the military law and other laws relating to making appropriations for the support of government), as follows:

- Section 1 of the bill amends Section 18(1)(a) of Chapter 266 of the Laws of 1986 to extend the excess medical malpractice program through June 30, 2004.
- Section 2 and 3 of the bill make conforming amendments to Section 18(3) and Section 18(8), respectively, of Chapter 266 of the Laws of 1986, to extend these provisions of the excess program for one additional year, to June 30, 2004.
- Section 4 of the bill amends Section 40 of Chapter 266 of the Laws of 1986 to continue the authority of the Superintendent of Insurance to “establish” rates for policies providing coverage for physicians and surgeons medical malpractice for the period ending June 30, 2004 (rather than June 30, 2003). In addition, this section is amended to extend the date for the 8% surcharge to June 30, 2005.
- Section 5 of the bill amends Section 5 and Section 6(a) and (e) of Part J of Chapter 63 of the Laws of 2001 to require the Superintendent and the Commissioner of Health to determine no later than June 15, 2004 the amount of funds available in the hospital excess liability pool and whether such funds are sufficient for the purposes of purchasing excess insurance coverage for eligible participating physicians and dentists during the period July 1, 2003 to June 30, 2004.

**Chapter 164 of the Laws of 2003** amends a number of various laws, including the Insurance Law, as follows:

- Section 15 of the bill amends Section 1102(e)(2) of the Insurance Law, which provisions currently authorize the Superintendent to refuse to issue a license to any corporation doing an insurance business in New York State if he or she finds that the officer or director of such corporate entity, as the case may be, has been convicted of a crime involving fraud, dishonesty or moral turpitude, or is an untrustworthy person. The amendment would permit the Superintendent to fingerprint those officers and directors of the insurer that are applying for licensure, as well as those officers and directors being added to an insurer already licensed, and to submit such fingerprints to DCJS and the FBI for state and national criminal history checks. The criminal history records would then be used by the Superintendent to assist him or her in making such findings.
- Section 16 of the bill amends Section 2108(d)(2) of the Insurance Law to provide that the fingerprints submitted to the Superintendent by those persons applying for any type of adjuster license under such section may be compared to fingerprints filed with the FBI.
- Section 17 of the bill amends Section 6802(g) of the Insurance Law to provide that the Superintendent may, as part of performing his or her investigation of each person applying for a license to act as a bail bondsman, and each member, shareholder, officer and director, as the case may be, of a firm or corporation applying for a license to engage in the bail bond business, forward the fingerprints of such persons submitted under such section to DCJS and the FBI for state and national criminal history checks.
- Sections 18 and 19 of the bill amend Sections 7802(f) and 7803(a) of the Insurance Law to provide that the Superintendent may, as part of performing his or her investigation of

each person applying for a license to act as a viatical settlement broker, and each officer, employee, stockholder and partner of any entity applying for a license to act as a viatical settlement company, require the fingerprinting of license applicants and submit such fingerprints to DCJS and the FBI for state and national criminal history checks. In addition, such fingerprints and criminal history checks may be used by the Superintendent to determine whether such licenses, once issued, should be suspended, revoked or not renewed due to misconduct as set forth in paragraphs one through four of Section 7803(a).

**Chapter 170 of the Laws of 2003** amends Chapter 557 of the Laws of 2000 (amending the Insurance Law relating to coverage for home care services) as follows:

- Section 1 of the bill amends Chapter 557 of the Laws of 2000 to make permanent the ability of licensed home care services agencies to seek reimbursement for home health care services under group insurance and individual accident and health insurance policies. Chapter 557 amended Insurance Law Sections 3216(i)(6)(A), 3221(k)(1)(C) and (D), and 4303(a)(3)(A), (B) and (C). The law authorizing licensed home care services agencies to receive direct reimbursement is set to expire on December 31, 2003. Unless this authorization is extended, only certified home health agencies would be entitled to seek insurance reimbursement.

**Chapter 188 of the Laws of 2003** amends the Insurance Law and the Tax Law as follows:

- Section 1 of the bill amends Section 7002(a) of the Insurance Law to change the definition of the term “affiliates” to “affiliated companies” and to define affiliated companies as companies in the same corporate system as an industrial insured by virtue of common ownership, control, operation or management. As the term relates to a city with a population of one million or more, affiliated companies include any statutory subsidiary, affiliate, contractor, subcontractor and consultant of any tier of such city for liability related to or arising out of activities in or near the World Trade Center site in response to the terrorist attacks of September 11, 2001.
- The bill also amends the definition in Section 7002(e) of “industrial insured” (which are the entities permitted to form pure and group captive insurance companies) to include a city with a population of one million or more persons. When filing an application to form a pure captive insurance company, such city must submit written notice of such filing to the Governor, the Temporary President of the Senate and the Speaker of the Assembly. The bill amends Section 7002(g) of the Insurance Law to provide that a city with a population of one million or more persons shall not be a member of an industrial insured group.
- Section 2 of the bill amends Section 7003(a) of the Insurance Law to provide that a pure captive insurance company formed by a city with a population of one million or more persons may insure or provide reinsurance for its parent, statutory subsidiaries and affiliated companies only for liability related to or arising out of activities in or near the World Trade Center site in response to the terrorist attacks of September 11, 2001.
- Section 3 of the bill adds a new paragraph 5 to subsection (c) of Section 7003 of the Insurance Law to provide that in the case of a pure captive insurance company formed by a city with a population of one million or more persons to insure such city and its affiliated companies for liability relating to or arising out of activities in or near the World Trade Center site in response to the attacks of September 11, 2001, the Superintendent shall consider, in addition to other statutory requirements, such factors as the unique risk insured by such captive and the source and limits of the premium payments together with

any limitations on the acceptance of claims and the payment of accepted claims where such limitations provide an equitable basis for the allocation of assets of such company to pay claims.

- Section 4 of the bill amends Section 7005(a) of the Insurance Law to provide that a city with a population of one million or more persons may form a pure captive insurance company as a public benefit corporation or a not-for-profit corporation for the purpose of providing insurance that is retroactive to September 11, 2001, for risks incurred by such City and its affiliated companies arising out of activities in or near the World Trade Center site in response to the September 11, 2001 terrorist attacks. Any such captive shall be exempt from all state and local taxes. The members or directors of such corporation shall be appointed by or with the approval of the mayor of such city. The bill also provides immunity from personal liability to certain personnel of such city and such captive while exercising or carrying out the city's or captive's powers under Article 70 of the Insurance Law.
- Sections 5 and 6 of the bill amend section 1502-b and 1500(a), respectively, of the Tax Law to exempt from the payment of certain fees, taxes or assessments any captive insurance company formed by a city with a population of one million or more persons.
- Section 7 of the bill amends Section 108(a) of the Insurance Law to provide that the Business Corporation Law shall not apply to a captive insurance company formed under the Not-For-Profit Corporation Law.

**Chapter 241 of the Laws of 2003** amends Chapter 3 of the Laws of 1997 (amending the banking law relating to authorizing the banking board to permit banks and trust companies to exercise the rights of national banks) and the Banking and the Insurance Law as follows:

- Section 1 of the bill extends the provisions of sections 1, 3, 4 and 5 of Chapter 3 of the Laws of 1997, known as the "wild card" law, from the current expiration date of September 10, 2003 to September 10, 2007. These sections authorize the Banking Board to grant powers of national banks to state commercial banks. Chapter 3 also enacted certain provisions governing the sale of insurance products by banks.
- Section 2 of the bill amends Section 14-h of the Banking Law to make the "wild card" provisions applicable to state-chartered thrift institutions thereby providing parity between the powers of state-chartered savings banks and savings and loan associations and federal savings associations. The amendments to Section 14-h also contain provisions governing the sale of insurance by such banks. The new provisions of Section 14-h track the existing provisions of Section 14-g, which deal with the wild card authority for commercial banks. The provisions in regard to the sale of insurance include special disclosure requirements, anti-tying provisions and a requirement to maintain separate and distinct books and records relating to insurance transactions.
- Sections 3 and 4 of the bill amend Sections 2123 and 2502 of the Insurance Law to provide that the existing requirements governing the sale of insurance by banks, trust companies, national banks, savings banks and savings and loan associations shall also apply to federal savings associations.
- Section 5 of the bill provides for an immediate effective date and that the amendments made by bill sections 3 and 4 shall expire and be deemed repealed on the same date as sections 1, 3, 4 and 5 of Chapter 3 of the Laws of 1997 as amended. The amendments to Section 14-h of the Banking Law made by section 2 of the bill shall not affect the



expiration of such section as provided by Section 6 of Chapter 392 of the Laws of 1998 and shall be deemed to expire therewith.

**Chapter 260 of the Laws of 2003** amends the Insurance Law as follows:

- Sections 1 and 2 of the bill generally amend subsection (b) of section 3232, and subsection (b) of Section 4318, of the Insurance Law to provide that no pre-existing condition exclusion can apply to individuals who are eligible for a tax credit pursuant to the federal Trade Adjustment Assistance Reform Act of 2002 or their dependents if they have 3 months or more of creditable coverage.
- Section 3 of the bill adds a new Section 341 to the Insurance Law to require the Superintendent of Insurance to, within 15 days of the effective date of the bill, elect New York's standardized direct payment health insurance products and New York's Healthy NY product as qualifying coverage eligible for the tax credit.

**Chapter 284 of the Laws of 2003** amends the Insurance Law as follows:

- Section 1 of the bill amends Section 3207 of the Insurance Law to increase the limits on the amount of insurance on the life of a minor under the age of 14½ years. Specifically, the bill removes the current monetary limitations of Section 3207(b) which restrict the amount of life insurance upon the life of a minor ranging from \$1,000 to \$5,000 depending upon the specific age of the minor. It also removes the provision found in Section 3207(b)(2) which allows the amount of insurance to increase with the age of the minor provided the increase, together with all other insurance in force, does not exceed either the monetary limits noted above or the greater of \$10,000 or 50% of the amount of insurance in force on the person effectuating the coverage for minors under the age 14½ (for minors under the age of 4½, the coverage limits are \$5,000 or 25% of the amount of insurance in force on the person effectuating the coverage).
- In place of these different dollar amounts, the bill amends Section 3207(c) to provide a uniform limitation for minors under the age of 14 ½ years. The statute already requires that the person effectuating the policy must have an insurable interest in the life of the minor or by a person upon whom such minor is dependent for support and maintenance. The new monetary limit on the life of the minor is increased to the greater of \$25,000 or 50% of the amount of life insurance in force upon the life of the person effectuating the insurance for minors under the age of 14 ½ (for minors under the age of 4½, the coverage limit is the greater of \$25,000 or 25% of the amount of insurance in force on the person effectuating coverage).
- Finally, the bill amends the current Sections 3207(d) and (e) to remove references to more than one monetary limit.

**Chapter 311 of the Laws of 2003** amends the Workers' Compensation Law as follows:

- Section 1 of the bill amends Section 47 of the Workers' Compensation Law to provide that when a uniformed court officer or court clerk of the Unified Court System having the powers of a peace officer provides written notice to his or her employer that he or she has been exposed to the blood or bodily fluid of another person during the course of employment, and later is diagnosed with a blood-borne disease, there shall be a presumption that such exposure caused such injury. Such written notice must be provided within 24 hours of such exposure.

**Chapter 338 of the Laws of 2003** amends the Insurance Law as follows:

- Sections 1 through 4 of the bill generally amend the Insurance Law to substitute the term “visually impaired” for the term “legally blind” relative to those individuals who must be provided coverage under various health policies for certain types of equipment and supplies necessary to treat diabetes. The bill also affirmatively requires coverage of supplies, equipment and education for the treatment of diabetes in policies issued under the New York State Health Insurance Plan or issued to or through a local government.

**Chapter 582 of the Laws of 2003** amends the Insurance Law as follows:

- Section 1 of the bill amends Section 2131 of the Insurance Law to permit the licensing of wireless communications equipment vendors and their franchisees as limited insurance agents relative to the sale of specified insurance products, which complement the use of wireless communications equipment. The insurance would cover the loss, theft, mechanical failure or malfunction of, or damage to, wireless communications equipment offered as either an individual policy issued to the consumer or as a group property and casualty policy under which certificates or other evidence of coverages are issued to individual consumers who enroll in the program. Such insurance would not extend to wireless services or service contracts governed by Article 79 of the Insurance Law. This limited license would also permit a licensee to authorize any duly trained and supervised sales representative to sell insurance coverage provided that the compensation paid to the sales representative is not primarily based upon the amount of insurance sold or offered by the sales representative.
- The bill defines wireless communications equipment to include wireless handsets, pagers, personal digital assistants, wireless telephones or wireless telephone batteries and other wireless devices and accessories related to such devices that are used to access wireless communications services and includes wireless services.

## IV. Regulations Promulgated or Repealed

The following is a summary of Insurance Department regulations promulgated or repealed in 2003. These brief descriptions of the regulations are intended to provide general information and, therefore, should not be used in place of the full text of the regulations or regarded as interpretation of Insurance Department intent or policy.

***The 1st Amendment to Regulation 68-C (11 NYCRR 65-3): Motor Vehicle Insurance Repairs Act/Claims for PIP Benefits (Adopted on a permanent basis effective 2/5/03)***

***The 1st Amendment to Regulation 68-D (11 NYCRR 65-4): Motor Vehicle Insurance Repairs Act/Arbitration (Adopted on a permanent basis effective 2/5/03)***

Regulation 68 contains provisions implementing Article 51 of the Insurance Law, known as the Comprehensive Motor Vehicles Insurance Repairs Act, popularly referred to as the No-Fault Law. Recognizing that disputes would occur involving the responsibility for payment of no-fault benefits, the Legislature included in Section 5106 of the Insurance Law the authority for the Superintendent of Insurance to promulgate or approve simplified arbitration procedures in order to expedite the payment of those benefits. Pursuant to that authority, the Department has implemented a financial assessment system in Regulation 68, which provides that insurers bear the operating costs of the arbitration system. Further pursuant to its statutory authority, the Department has revised the financial allocation process so that arbitrators may apportion costs to applicants in those cases where applicants have submitted frivolous claims without any factual or legal merit.

The amendment to Regulation 68-C updates provisions relating to Personal Injury Benefits (PIP) in conformance with changes to requirements regarding forms to be used by insureds, claimants and providers.

The amendment to Regulation 68-D revises the rules and requirements applicable to the arbitration of no-fault claims. It is intended to make the system more efficient for all participants.

***The 1st Amendment to Regulation 120 (11 NYCRR 33): Managing General Agents (Effective on an emergency basis since 6/8/01; Adopted on a permanent basis effective 2/19/03)***

Insurance Law Section 308 requires licensees to respond in writing to written inquiries or requests for reports, statements or data made by the Superintendent. Sections 2101, 2102 and 2103 give the Superintendent the authority to license and regulate the activities of agents, brokers and adjusters.

This amendment requires that certain contract provisions, at a minimum, must be included in a written contract between an insurer and a managing general agent (MGA). The amendment implements minimum provisions of the National Association of Insurance Commissioners' model law for MGAs, which has been adopted by several other states. These new provisions will help ensure that an insurer maintains proper supervision over an MGA and does not relinquish its authority, responsibilities and control to an MGA. This will help maintain the insurer's financial stability, thereby safeguarding the interests of both insureds and the general public, and help protect against any other abuses to insureds that may occur when another entity manages the affairs of the insurer. There have been many abuses in the past where MGAs have engaged in activities that proved to be harmful to the insurer and the public.

Section 33.4(c) also provides a clarification of the term "manager" for the purposes of the exception from the definition of an independent adjuster which is contained in Insurance Law Section 2101(g)(1)(A). While the statute provides an exception for a "manager", it does not define the term.

***The 1st Amendment to Regulation 172 (11 NYCRR 83): Financial Statement Filings and Accounting Practices and Procedures (Effective on an emergency basis since 12/28/01: Adopted on a permanent basis effective 3/26/03)***

The purpose of this Part is to enhance the consistency of the accounting treatment of assets, liabilities, reserves, income and expenses by entities subject to the Part, by clearly setting forth the accounting practices and procedures to be followed in completing annual and quarterly financial statements required by law. Pursuant to the Insurance Law, the Superintendent is authorized to implement the National Association of Insurance Commissioners *Accounting Practices and Procedures Manual* (i.e., Accounting Manual), subject to any provisions in New York law or policy which conflict with particular points in those rules. The Accounting Manual includes a body of accounting guidelines referred to as Statements of Statutory Accounting Principles (SSAPs). The Accounting Manual represents a codification of Statutory Accounting Principles.

This Part was originally promulgated in late 2000, prior to the National Association of Insurance Commissioners adoption of a new Accounting Manual as of March 2002. The NAIC's adoption of the new Accounting Manual made amendment of the regulation necessary. Emergency action was required so that the revised accounting principles would be in place for use in the preparation of Quarterly Statements for 2002 and for the Annual Statement as of December 31, 2002.

***The 8th Amendment to Regulation 20 (11 NYCRR 125): Credit for Reinsurance from Unauthorized Insurers (Effective on an emergency basis since 9/15/01: Adopted on a permanent basis effective 4/9/03)***

Insurance Law Sections 1301(a)(14) and 1301(c) gives the Superintendent the authority to prescribe, by regulation, the conditions under which a ceding insurer may be allowed credit, as an asset or as a deduction from loss and unearned premium reserves, for reinsurance recoverable from an assuming insurer not authorized in this state.

This amendment implements minimum provisions of the National Association of Insurance Commissioners' model law relating to "Credit for Reinsurance." By modifying the requirements regarding when ceding insurers can take credit for certain reinsurance contracts, these new provisions will help maintain the insurer's financial stability, thereby safeguarding the interests of both insureds and the general public.

***The 9th Amendment to Regulation 20 (11 NYCRR 125): Credit for Reinsurance from Unauthorized Insurers (Effective on an emergency basis since 11/1/01: Adopted on a permanent basis effective 4/2/03)***

Insurance Law Sections 1301(a)(14) and 1301(c) give the Superintendent the authority to prescribe, by regulation, the conditions under which a ceding insurer may be allowed credit, as an asset or as a deduction from loss and unearned premium reserves, for reinsurance recoverable from an assuming insurer not authorized in this state.

The regulation provides alien reinsurers with the means whereby they may secure their United States obligations through the establishment of a multi-beneficiary trust. Previously, the regulation required that funds held in such a trust must be in the form of cash or readily marketable securities. Since this requirement was originally established, the Department has recognized the use of letters of credit as qualifying security in a number of similar trust vehicles. Recently the National Association of Insurance Commissioners' amended its model regulation relating to "Credit for Reinsurance." Specifically it permits certain alien assuming reinsurers to include, subject to specified conditions, letters of credit in trust funds held for the protection of the United States insurers, and United States beneficiaries under reinsurance policies issued by such alien insurers. Modifying the requirements regarding alien reinsurers funding requirements to permit the use of letters of credit will permit alien

reinsurers that use multi-beneficiary trusts to reduce their cost of capital in a manner similar to other methods used by unauthorized reinsurers that use single-beneficiary trusts.

To assure that the marketable securities in the trust funds provide security adequate for the protection of the United States insurers, and United States beneficiaries under reinsurance policies issued by such alien insurers, standards for the quality of the marketable securities held in the trust are established. These qualitative standards are consistent with those required for the minimum capital and surplus investments and the reserve investments for licensed property/casualty insurers in New York State. Previously, as a condition of accreditation, the alien insurers were required to stipulate to hold marketable securities in the trust that met these standards.

***The 1st Amendment to Regulation 144 (11 NYCRR 39): Partnership for Long-Term Care Program (Adopted on a permanent basis effective 4/16/03)***

By Chapter 454 of the Laws of 1989, as amended by Chapter 659 of the Laws of 1997, the Legislature enacted the Partnership for Long-Term Care Program (“the Program”) to provide that citizens of New York State who purchase a long-term care insurance policy/certificate under the Program, and who exhaust benefits under such policy/certificate, will become eligible for long-term care protection through the New York State Medicaid program. Regulation 144 establishes the standards and requirements relating to the Program.

The amendment was necessary to comply with the minimum standards of the Program. All policies sold pursuant to this Program must include a provision guaranteeing lifetime inflation protection of at least five percent compounded on an annual calendar or policy year basis at issue ages less than age 80. The previously existing regulation set forth the minimum daily benefit standards for the 10-year period beginning January 1, 1993 and ending December 31, 2002. These minimum benefit standards are computed with a minimum annual increase of five percent. The amendment was necessary to set forth the daily minimum benefit amounts, computed using the five percent inflation protection, for the consecutive 10-year period beginning January 1, 2003 through December 31, 2012.

The increase in daily minimum benefit amounts will benefit insureds under the Program who require long-term care services by providing a higher daily reimbursement rate to offset their nursing home or home care costs. The increased daily minimum amounts should encourage individuals to purchase Program coverage to offset potential long-term care costs.

***The Repeal of Regulation 147 (11 NYCRR 98) and Adoption of the New Regulation 147 (11 NYCRR 98): Life Insurance Reserve Requirements (Effective on an emergency basis since 11/15/01: Adopted on a permanent basis effective 4/16/03)***

Section 1304 of the Insurance Law enables the Superintendent to require any additional reserves as necessary on account of policies, certificates and contracts of insurer's authorized to transact life insurance, annuities, and accident and health insurance. Section 1308 of the Insurance Law describes when reinsurance is permitted and the effect that reinsurance will have on reserves.

One major area of focus of the Insurance Law is the solvency of insurers doing business in New York. One way the Insurance Law seeks to ensure solvency is through requiring all insurers licensed to do business in New York State to hold reserve funds necessary in relation to the obligations made to policyholders. This regulation is necessary to help ensure the solvency of life insurers doing business in New York. The Insurance Law specifies mortality and interest standards but does not specify an explicit method to be used to value life insurance policies that do not have level premiums and/or level benefits. The law relies on the Superintendent to specify the method. Without this regulation, there would be no standard method for valuing such products. This could result in inadequate reserves for some insurers that would jeopardize the security of policyholder funds.

The new regulation requires that reserves for term products and secondary guarantees on universal life, universal life-type products, and variable life products meet the same standards as reserves for level premium products. The regulation permits the use of new select mortality factors and allows the appointed actuary for a life insurer to apply certain percentages, called X factors, to modify the mortality bases for deficiency reserves which will now give domestic insurance companies and foreign insurance companies licensed to do business in New York State the ability to compete in these markets with companies not so licensed.

***The 7th Amendment to Regulation 35-A (11 NYCRR 60-1): Minimum Provisions for Auto Liability Insurance/Supplemental Spousal Liability Insurance (Effective on an emergency basis since 11/18/02; Adopted on a permanent basis effective 7/23/03)***

Insurance Law Section 3420(g) as amended by Chapter 584 of the Laws of 2002 requires insurers to provide notification to insureds of the availability of supplemental spousal liability insurance coverage, an explanation of such coverage, and the premium for such coverage. This notification must be provided at least once a year. The law requires the Superintendent to promulgate a regulation to provide guidelines to insurers for compliance with these requirements. This amendment provides the minimum requirements for such notification and sample notification language that may be utilized by insurers to comply with these requirements.

## **Emergency Regulations**

The following is a summary of Insurance Department Regulations promulgated on an emergency basis in 2003 that were in effect on December 31, 2003. No final action was taken with regard to these Regulations in 2003 although it is anticipated that they will be permanently adopted in 2004. These brief descriptions of the regulations are intended to provide general information and, therefore, should not be used in place of the full text of the regulations or regarded as interpretation of Insurance Department intent or policy.

***The 1st Amendment to Regulation 171 (11 NYCRR 362): The Healthy NY Program Standard Application Form (Effective on an emergency basis since 11/19/01; Adopted on a permanent basis effective 2/11/04)***

The Legislature enacted Chapter 1 of the Laws of 1999 to provide for the Healthy NY Program, a new initiative designed to encourage small employers that do not currently provide health insurance coverage to their employees to offer such coverage and also designed to make coverage available to uninsured employees whose employers do not provide group health insurance coverage. In 2001 the Department adopted Regulation 171 to establish certain procedures and requirements necessary for effective implementation of the legislation.

This amendment is necessary to clarify eligibility for the Healthy NY Program and to simplify the application and administrative process for both enrollees and providers. Clarifying which persons are to be considered household members will eliminate the uncertainty involved in determining household income levels. The correct calculation of household income is crucial, as this is a major component in determining eligibility for Healthy NY. A simplified standardized application form will streamline the eligibility and administrative process, thereby facilitating enrollment. These provisions should enhance the implementation and operation of the Healthy NY program while improving the efficiency that individuals and small employers will have to access comprehensive health insurance, as the standard application form will be made available from many sources.

***The 2nd Amendment to Regulation 171 (11 NYCRR 362): The Healthy NY Program and Direct Payment Market Stop loss Relief Programs (Effective on an emergency basis since 3/28/03)***

A significant number of New York residents currently have no health insurance. A large portion of that uninsured population is made up of individuals employed in small businesses. Due in part to the rising cost of health insurance coverage, many small employers are currently unable to provide health insurance coverage to their employees. Additionally, the problem of the uninsured has been exacerbated by national events impacting the labor market and access to employer based health insurance coverage. Chapter 1 of the Laws of 1999 enacted the Healthy NY Program, an initiative designed to encourage small employers to offer health insurance to their employees and to encourage uninsured individuals to purchase health insurance coverage.

This amendment is necessary to introduce a second Healthy NY benefit package at a reduced premium rate. The second benefit package provides for a lower cost alternative and gives individuals and small businesses the choice of a benefit package that meets their needs. The amendment deletes the well child copayment applicable to Healthy NY in order to enhance access to preventive and primary care for children. The amendment permits Healthy NY to be considered qualifying health insurance under the federal Trade Act of 2002 to allow those qualifying for a federal tax credit to benefit from that credit. The amendment revises the eligibility requirements relating to employment in order to lessen complexity and enhance access. The amendment provides that child support payments shall not be treated as income of the parents for the purpose of determining household income eligibility equitably. The amendment deletes the applicability of certain documentation requirements in connection with the re-certification process and facilitates re-certification closer to annual renewal date. This will allow for simplification of the re-certification process to assist in ensuring continuity of coverage for low-income individuals. The amendment clarifies that qualifying small employers choosing to offer coverage to part-time workers may choose the level of premium contribution on behalf of these workers to encourage employers to extend coverage to part-time workers. The amendment provides that employers making a *de minimis* contribution to employee premiums shall not be forced out of the Healthy NY Program for this reason. This *de minimis* amendment will avoid penalizing vulnerable employers for such premium contributions and will encourage these employers to purchase Healthy NY subject to a 50% premium contribution requirement. The amendment clarifies that health maintenance organizations and participating insurers may reinsure their Healthy NY business if it achieves a favorable premium impact. The amendment also adjusts the stop loss corridors for the program in order to effectuate a level of premium reduction sufficient to encourage more currently uninsured businesses and individuals to purchase comprehensive health insurance coverage. These revisions should provide low-income individuals and vulnerable small businesses with enhanced access to Healthy NY.

***The 3rd Amendment to Regulation 124 (11 NYCRR 152): Physicians and Surgeons Professional Insurance Merit Rating Plans (Effective on an emergency basis since 6/12/02)***

Insurance Law Section 2343(d) provides that the Superintendent shall, by regulation, establish a merit rating plan for physicians professional liability insurance. Section 2343(e) provides that the Superintendent may approve malpractice insurance premium reductions for insured physicians who successfully complete an approved risk management course, subject to standards prescribed by the Superintendent by regulation. Section 42 of Part A of the Laws of 2002, as amended by Section 16 of Part J of Chapter 82 of the Laws of 2002, requires that all physicians, surgeons and dentists participating in the excess medical malpractice insurance program established by the Legislature in 1986 participate in a proactive risk management program.

As required by statute, insurers must have a proactive risk management course available for their insureds as of July 1, 2002 in order for insureds to participate in the excess medical malpractice insurance program. It is expected that insurers will be able to have a course available in a relatively short period of time since most medical malpractice insurers already have had other risk management

programs approved by the Superintendent. The regulation also allows, but does not require, that an insurer may offer an internet-based risk management course to its insureds as soon as the Department determines that the course is in compliance with the provisions of this Part.

***The Repeal of Regulation 56 (11 NYCRR 94) and Adoption of the New Regulation 56 (11 NYCRR 94): Rules Governing Individual and Group Accident and Health Reserves (Effective on an emergency basis since 12/31/02)***

The regulation prescribes rules and regulations for valuation of minimum individual and group accident and health insurance reserves, including standards for valuing certain accident and health benefits in life insurance policies and annuity contracts.

The Insurance Law does not specify mortality, morbidity, and interest standards used to value individual and group accident and health insurance policies and relies on the Superintendent to specify the method. Without this regulation, there would be no standard method for valuing such products and, in fact, the previous version of the regulation provided no guidance related to certain coverages such as group accident and health policies. This could result in inadequate reserves for some insurers, which would jeopardize the security of policyholder funds. Additionally, the previous regulation required higher reserves than necessary for certain individual accident and health insurance policies. The new regulation, by lowering such reserves for individual policies, will result in a lower cost of doing business in New York.

The regulation applies to financial statements commencing with December 31, 2002, which must be filed by March 1, 2003. Emergency action was necessary to allow insurers subject to the regulation ample time to achieve full compliance.

***The Adoption of the New Regulation 178 (11 NYCRR 230): Claim Submission Guidelines (Effective on an emergency basis since 8/14/03)***

Chapters 637 and 666 of the Laws of 1997 amended the Insurance Law relating to the settlement of claims for health care and payment for health care services and took effect January 22, 1998. The law was intended to set timeframes within which insurers and HMOs must pay undisputed claims for health care services submitted by subscribers and health care providers. The legislation prescribed penalties in the form of interest payable on claims paid later than 45 days. The law also amended Section 2402 and gave the Superintendent the power to levy monetary penalties against insurers and HMOs for their failure to pay undisputed claims within 45 days of receipt, or untimely denials of claims, or for requesting additional information needed to process the claim beyond 30 days of receipt of the claim. The Insurance Department established mechanisms for accepting complaints from health care providers and created procedures for levying monetary penalties against insurers and HMOs for violation of the prompt payment statute.

One area of continuing concern has been determining when a claim is deemed to be "clean" and therefore ready for payment. The regulation creates claim payment guidelines based on agreement with representatives of the industry on what is needed in order to determine when a health care insurance claim is considered complete and ready for payment. By its terms, the regulation is applicable only to claims submitted on paper.



## Consensus Regulations

Section 102(11) of the State Administrative Procedure Act states that a "Consensus rule" is a rule proposed by an agency for adoption on an expedited basis pursuant to the expectation that no person is likely to object to its adoption because it merely (a) repeals regulatory provisions which are no longer applicable to any person, (b) implements or conforms to non-discretionary statutory provisions, or (c) makes technical changes or is otherwise non-controversial. The Insurance Department acted to amend or repeal a number of rules on a consensus basis. Those actions are listed here with brief summaries.

### ***The 7th Amendment to Regulation 41 (11 NYCRR 27): Excess Line Placements Governing Standards (Adopted on a permanent basis effective 2/19/03)***

Regulation 41 establishes the duties and responsibilities of excess line brokers, unauthorized insurers and the Excess Line Association with regard to excess line business placed in New York State. This amendment corrects section references that appear throughout the regulation, updates the name of the Property Bureau, and amends Section 27.3 (e)(1)(ii) to reference general hospitals to conform with the new language in section 2118 (e) (2) (A) (ii) as amended by Chapter 587 of the Laws of 2002.

### ***Thirteen Parts of Title 11 (Parts 29, 34, 52, 53, 55, 87, 95, 216, 218, 241, 242, 390, and 400) (Regulation Nos. 87, 125, 62, 74, 78, 104, 126, 64, 90, 71, 116, 155, and 156)(Adopted on a permanent basis effective 3/5/03)***

These amendments merely correct references to the Department's Albany office to reflect the fact that it had been moved to One Commerce Plaza.

### ***Five Parts of Title 11 (Parts 51, 54, and 185) (Regulation Nos. 60, 77, and 27A)(Adopted on a permanent basis effective 3/5/03)***

These amendments to the regulations and appendices thereto take cognizance of the creation of a new type of "broker" license, defined in Section 2104(b)(1)(A) of the Insurance Law. The changes merely make conforming amendments to implement provisions of Chapter 505 of the Laws of 2000 and Chapter 13 of the Laws of 2002.

### ***The 9th Amendment to Regulation 64 (11 NYCRR 216): Minimum Provisions for Auto Liability Insurance / Right to inspect damaged rental vehicle (Effective on an emergency basis since 1/27/03; Adopted on a permanent basis effective 4/23/03)***

### ***The 8th Amendment to Regulation 35-A (11 NYCRR 60-1): Minimum Provisions for Auto Liability Insurance/Rental Vehicle Coverage (Effective on an emergency basis since 1/27/03; Adopted on a permanent basis effective 4/23/03)***

These amendments relate to provisions regarding the rights and responsibilities of parties to a rental vehicle agreement. They conform the subject regulations to Chapter 656 of the Laws of 2002, requiring that insurers, when issuing certain notices to insureds, inform insureds that they may contact the Insurance Department to file a complaint. In addition, the Department's office address listings are updated and the Department's Web site address is added as an option whereby insureds may contact the agency.

***Five Parts of Title 11 (Parts 21, 22, 23, 25, and 26)(Regulations Nos. 5, 6, 7, 10 and 25) Limited Liability Company Law (Adopted on a permanent basis effective 5/7/03)***

The Limited Liability Company Law became effective on October 24, 1994, pursuant to Chapter 576 of the Laws of 1994. A limited liability company is defined in Section 102(m) of that Law as “an unincorporated organization of one or more persons having limited liability for the contractual obligations of the business...other than as a partnership or trust, formed and existing under this chapter and the laws of this state.” Section 201 of that Law provides that a limited liability company may be formed to do any lawful business unless another statute requires that a natural person or a different type of a business entity conduct a specific type of business activity. The Insurance Department has determined that a limited liability company may be issued one or more of the licenses authorized by Article 21 of the Insurance Law, provided that it is otherwise qualified to receive it, because the structure of a limited liability company is similar enough to that of a firm or partnership to receive a license under the existing law and because there is no discernible legislative intent in Article 21 to deny licensing to a business organization with the structure of a limited liability company.

These amendments to Parts 21, 22, 23, 25, and 26 were needed to conform the regulations to the ongoing administrative practice of the Department and to recognize that limited liability companies, utilizing the new form of business structure permitted by the Limited Liability Company Law, may obtain licenses under Article 21. The Department had permitted limited liability companies to apply for and obtain licenses under Article 21, but an entity with this form of business structure was not specifically mentioned as a license applicant in these regulations. In addition, the amendments are needed to update the statutory references contained in the regulations to conform to the Insurance Law recodification.

***The 10th Amendment to Regulation 64 (11 NYCRR 216) & The 8th Amendment to Regulation 90 (11 NYCRR 218): Method for Filing Complaint (Adopted on a permanent basis effective 6/18/03)***

These amendments relate to provisions requiring that insurers, when issuing certain notices to insureds, inform insureds that they may contact the Insurance Department to file a complaint. The Department's office address listings are updated and the Department's Web site address is added as an option whereby insureds may contact the agency.

***The 2nd Amendment to Regulation 74 (11 NYCRR 53): Brokers - New Type of License (Adopted on a permanent basis effective 6/18/03)***

This amendment takes cognizance of the creation of a new type of “broker” license, defined in Section 2104(b)(1)(A) of the Insurance Law. The changes merely make conforming amendments to implement provisions of Chapter 505 of the Laws of 2000 and Chapter 13 of the Laws of 2002.

***The 31st Amendment to Regulation 62 (11 NYCRR 52): Coverage for Diagnosis and Treatment of Alcoholism in Group Policies (Adopted on a permanent basis effective 7/16/03)***

This amendment deletes obsolete language and updates the term “alcoholism” to “chemical dependence” in order to conform with revised statutory language in Insurance Law Sections 3221(l)(6)(E) and 4303(k), as amended by Chapter 558 of the Laws of 1999.

***Three Parts of Title 11 (Parts 260, 261, and 262) (Regulation Nos. 132, 161, and 162): Legal Services Insurance (Adopted on a permanent basis effective 8/13/03)***

These amendments delete an obsolete regulation (Part 260) relating to experimental monoline prepaid legal services plans for which the underlying statutory authority has been repealed by Chapter 28 of the Laws of 2003, and update Parts 261 and 262 to reflect the fact that Chapter 28 made

permanent various provisions relating to legal services insurance, which previously had an April 1, 2003 sunset date.

***The 3rd Amendment to Regulation 5 (11 NYCRR 21) and the 3rd Amendment to Regulation 7 (11 NYCRR 23): License Applications and Exams (Adopted on a permanent basis effective 8/13/03)***

These amendments conform the regulations to reflect current practice and law regarding license applications and examinations. The amendments to Part 21 take cognizance of the creation of a new type of "broker" license, defined in Section 2104(b)(1)(A) of the Insurance Law, and merely make conforming amendments to implement the new license, which was created by Chapter 505 of the Laws of 2000 and Chapter 13 of the Laws of 2002. The amendments to Parts 23 delete obsolete provisions regarding examinations and also update terminology concerning the property/casualty insurance examination to reflect current practice and law.

***The 2nd Amendment to Regulation 156 (11 NYCRR 400): Tax Law/Certified Capital Companies (Adopted on a permanent basis effective 8/20/03)***

This amendment conforms the language of the regulation to the amended language of Section 11(e)(5) and Section 1511(k)(6) of the Tax Law, and also updates language regarding applications under certified capital programs enacted after 1998.

***The 4th Amendment to Regulation 95 (11 NYCRR 86): Warning Statements on Claim Forms (Adopted on a permanent basis effective 8/27/03)***

This amendment deletes obsolete language and name references, updates the language in warning statements to conform to statutory amendments regarding commission of a fraudulent insurance act, and conforms the types of insureds and applicants for insurance who must receive the warning, in order to reflect the current statutory provisions in Insurance Law Section 403(d) and (e).

***The 2nd Amendment to Regulation 172 (11 NYCRR 83): Financial Statement Filings and Accounting Practices and Procedures (Adopted on a permanent basis effective 9/24/03)***

This amendment updates a citation in Section 83.2(c) referring to the publication date of the accounting manual entitled *Accounting Practices and Procedure Manual as of March 2003* (instead of 2002), and deletes Section 83.5 containing an obsolete reference to a special report for filings made in 2001. The change in Section 83.2(c) regarding the citation for the accounting manual has the effect of including in the regulation technical modifications made in the accounting manual since the publication of the 2002 manual. These modifications are technical changes in accounting practices and procedures which were proposed, discussed, commented upon, and adopted by the National Association of Insurance Commissioners in the past year, in accordance with the procedure described in Section 83.2(g). The technical amendment to Section 83.4(s) makes no substantive change. It merely clarifies the language of subdivision (s) so that its intent is stated more clearly and precisely.

***The 1st Amendment to Regulation 152 (11 NYCRR 243): Standards of Record Retention by Insurance Companies (Adopted on a permanent basis effective 9/24/03)***

This amendment deletes an obsolete reference to the life insurance department of a savings bank, since such life insurance departments no longer exist, as provided by Chapter 540 of the Laws of 1998. The amendment also changes an obsolete reference to the Medical Malpractice Insurance "Association" to read Medical Malpractice Insurance "Plan", in accordance with Chapter 147 of the Laws of 2000 providing for the dissolution of the Association. The Medical Malpractice Insurance Plan was organized pursuant to provisions of 11 NYCRR Part 430 (Regulation 170).

***The Repeal of Regulation 28 (11 NYCRR 76): Classification and Reporting of Real Estate Transactions by Insurers (Adopted on a permanent basis effective 9/24/03)***

This amendment repeals an obsolete regulation (Part 76), originally promulgated in 1947, relating to uniform classification and reporting of real estate operations by domestic insurers. The subject matter of the regulation is now covered in Regulation No. 172 (Part 83), entitled "Financial Statement Filings and Accounting Practices and Procedures," and in Statement of Statutory Accounting Principle (SSAP) No. 40, entitled "Real Estate Investments," as explained in Section 83.3(c) and Section 83.4(l) of Part 83. The subject is also treated in the more modern and specific language in the instructions for Schedule A of the annual statement, involving real estate transactions.

***The 3rd Amendment to Regulation 33 (11 NYCRR 91): Allocation of Income and Expenses (Adopted on a permanent basis effective 11/19/03)***

This amendment updates and corrects certain references to page and exhibit numbers in the instructions for the annual statement used by life insurers.

***The 4th Amendment to Regulation 33 (Repeal of 11 NYCRR 90): Reporting of Income and Expenses (Adopted on a permanent basis effective 11/19/03)***

This amendment repeals an obsolete Part. The content of Part 90 is now covered in Regulation No. 172 (11 NYCRR Part 83, entitled "Financial Statement Filings and Accounting Practices and Procedures") and the current instructions to the annual statement filed by life insurers and certain accident and health insurers. The provisions of Part 90 have become obsolete due to statutory changes and major revisions of the format of certain schedules to the annual statement.

***The 1st Amendment to Regulation 65 (11 NYCRR 202): Fees or Other Allowances (Adopted on a permanent basis effective 11/19/03)***

This amendment updates certain statutory references and deletes a provision pertaining to another regulation that was previously repealed.

***The Repeal of Regulation 2 (11 NYCRR 75): Statement of Financial Condition and Advertisements (Adopted on a permanent basis effective 11/19/03)***

This amendment repeals an obsolete regulation. The provisions of the regulation have become irrelevant or inapplicable due to statutory changes and revisions of the format of certain schedules to the annual statement. The content of this regulation is now covered in other more current regulations, such as Regulation No. 52 (11 NYCRR Part 80, entitled "Controlled Insurers") and Regulation No. 172 (11 NYCRR Part 83, entitled "Financial Statement Filings and Accounting Practices and Procedures").

***The 2nd Amendment to Regulation 105 (11 NYCRR 166): Treatment of Excess Profits in Motor Vehicle Insurance (Adopted on a permanent basis effective 11/19/03)***

This amendment removes outdated references and implements an amendment to Section 2329 of the Insurance Law made by Chapter 85 of the Laws of 2003.

***2 Parts of Title 11 (62 and 68) (Regulation Nos. 21, 96, and 83): Address Updates (Adopted on a permanent basis effective 12/10/03)***

The amendment to Part 62 (Reg. Nos. 21 and 96) updates the address of the Bureau of Fire Investigation of the New York City Fire Department and the amendment to Regulation No. 83 updates the addresses of certain units of the State Department of Health and the Education Department.

***The 1st Amendment to Regulation 148 (11 NYCRR 380): Viatical Settlements (Adopted on a permanent basis effective 12/10/03)***

This amendment deletes the obsolete term "aid to families with dependent children" and substitutes in its place the new term "the family assistance program" in a notice that is required to be included in an application for a viatical settlement contract. The amendment is being made to conform to the wording in a statutory amendment set forth in Section 108 of Part B of Chapter 436 of the Laws of 1997.

***The 3rd Amendment to Regulation 108 (11 NYCRR 112): Loss Portfolio Transfers (Adopted on a permanent basis effective 12/10/03)***

This amendment removes an obsolete reference to a Circular Letter issued in 1983 which was subsequently superseded by Regulation No. 133 (Part 79). The amendment therefore substitutes a reference to Regulation No. 133. Further, the amendment updates obsolete references to certain page and line numbers in annual and interim statements filed in New York, pertaining to loss portfolio transfers. The amendment also adds a reference to Regulation No. 172 (Part 83), which was promulgated effective January 1, 2001 and which contains provisions pertaining to the same subject matter.

***The 1st Amendment to Regulation 102 (11 NYCRR 127): Reinsurance Transactions/Life Insurers (Adopted on a permanent basis effective 12/10/03)***

This amendment deletes obsolete references to specific citations in the 1992 annual statement. The references to the 1992 annual statement were useful and convenient for readers when Regulation No. 102 (Part 127) was adopted in 1993. However, at this time the 1992 annual statement is not readily available to readers of the regulation and, in addition, the comparable citations in the statements have changed since 1992. Therefore, the deletion of the 1992 references eliminates confusion.

## V. Circular Letters Issued In 2003\*

Number	Date	Addressed to	Subject
1	1/31/03	All Insurers Licensed to Write Accident and Health Insurance in New York State ("Commercial Insurers"), Article 43 Corporations, and Health Maintenance Organizations	Women's Health and Wellness Act of 2002
2	1/24/03	All Insurers Authorized to Write Motor Vehicle Insurance in New York State, Rate Service Organizations, New York Automobile Insurance Plan, and Insurance Producer Organizations	Rental Vehicle Coverage
3	2/19/03	All Insurers Licensed to Write Accident and Health Insurance in New York State ("Commercial Insurers"), Article 43 Corporations and Health Maintenance Organizations	New York State Small Business Health Insurance Partnership Program (NYSHIPP)
Supplement 1 to CL No. 25 (2002)	2/19/03	All Property/Casualty Insurers and Rate Service Organizations Doing Business in New York State, New York Property Insurance Underwriting Association, State Insurance Fund, New York Automobile Insurance Plan, and Excess Line Association of New York	Additional Guidelines for the Implementation of the Provisions of the Terrorism Risk Insurance Act of 2002
4	9/15/03	All Insurers Authorized to Write Accident and Health Insurance in New York State, Including Article 43 Corporations and Health Maintenance Organizations ("Insurers")	Procedural Changes in the Filing Process for Accident and Health Insurance Policy Form and Rate Submissions: Optional Process for Expedited Prior Approval with Certification
5	3/7/03	All Insurers Authorized to Write Property/Casualty Insurance in New York State and Insurance Producer Organizations	Treatment of Policyholders Serving in Active Military Duty
6	3/7/03	All Insurers Authorized to Write Life Insurance and Annuities, Including Life Insurers and Fraternal Benefit Societies	War Risk Exclusions for Life Insurance
7	3/7/03	All Insurers Authorized to Write Accident and Health Insurance in New York State, Including Article 43 Corporations and Health Maintenance Organizations	New York Insurance Law Protections for Members of the Reserves, Including National Guard, Called to Active Duty

<b>Number</b>	<b>Date</b>	<b>Addressed to</b>	<b>Subject</b>
Supplement 5 to CL No. 11 (1998)	3/21/03	All Authorized Property/Casualty Insurers and Rate Service Organizations	Procedures for the Filing of Policy Forms, Rules and Rates: Use of Review Standards Checklists
8	3/24/03	All Department Licensees and Insurance Producer Organizations	Exemption From Completion of Continuing Education (CE) Requirements for Those Licensees Serving Active Military Duty
Supplement 1 to CL No. 27 (2002)	3/31/03	All Insurers Authorized to Write Accident and Health Insurance in New York State, Including Article 43 Corporations and Health Maintenance Organizations	Additional Guidance for the Implementation of the Provisions of Chapter 557 of the Laws of 2002 (Accident and Health Insurance Coverage Issued to or through Association and Chamber Groups)
9	5/5/03	All Property/Casualty Insurance Companies; Co-operative Property/Casualty Insurance Companies; Reciprocal Insurers; Financial Guaranty Insurance Corporations; and New York Medical Malpractice Insurance Plan	Property/Casualty Insurance Security Fund Reporting Information & Instructions Quarterly Report Form
10	5/30/03	All Insurance Companies Authorized to Transact Motor Vehicle Liability Insurance Business in New York	Motor Vehicle Law Enforcement Fee
11	6/16/03	All Insurers Authorized to Write Motor Vehicle Insurance in New York State; Rate Service Organizations; New York Automobile Insurance Plan and Insurance Producer Organizations	Revised Informational Statement on the Consequences of Driving While under the Influence of Alcohol or Drugs (DWI Information Statement)
Supplement 1 to CL No. 10 (2003)	8/7/03	All Insurance Companies Authorized to Transact Motor Vehicle Liability Insurance Business in New York	Motor Vehicle Law Enforcement Fee
12	9/15/03	All Insurers Authorized to Write Motor Vehicle Insurance in New York State; Rate Service Organizations; and Insurance Producer Organizations	Non-Business "Automobile Insurance" Policies: Nonrenewal and Conditional Renewal Provisions, Cancellation Provisions, and Multi-Tiering Provisions

<b>Number</b>	<b>Date</b>	<b>Addressed to</b>	<b>Subject</b>
14	12/4/03	Insurers Licensed to Write Motor Vehicle Physical Damage Insurance in New York State, Motor Vehicle Self-Insurers, and Insurance Producer and Adjuster Organizations	Application of Section 2610(b) of the Insurance Law
15	9/22/03	All Insurers Licensed to Write Property/Casualty Insurance; Joint Underwriting Associations; Rate Service Organizations; and the New York Automobile Insurance Plan	Implementation of the System for Electronic Rate and Form Filings (SERFF)
16	9/16/03	All Health Insurers Licensed to Write Accident And Health Insurance in New York State ("Commercial Insurers"), Article 43 Corporations and Health Maintenance Organizations	Health Insurer's Obligation in the Administration of Benefits for Covered Persons Receiving Services Under the New York State Early Intervention Program
17	10/27/03	All Licensed Life Insurers and Fraternal Benefit Societies	Market Conduct Initiatives
Supplement 1 to CL No. 16 (1996)	11/21/03	All Motor Vehicle Automobile Self-Insurers, and Insurers Authorized to Write Motor Vehicle Insurance in New York State	Statutory Amendments Made to the New York State Health Care Reform Act of 2000 and their Effects on No-Fault Insurance
18	12/4/03	All Motor Vehicle Automobile Self-Insurers, and Insurers Licensed to Write Motor Vehicle Automobile Insurance in New York State	Withdrawal of 16 Outdated Circular Letters
19	11/24/03	All Authorized Property/Casualty Insurers, Rate Service Organizations and Insurance Producer Organizations	Cancellation and Other Notices – Additional Statutory Requirements
20	12/31/03	All Authorized Motor Vehicle Insurers and Insurance Producer Organizations	Motor Vehicle Liability and Collision Insurance Premium Reduction for Completion of an Accident Prevention Course

\*Circular Letter No. 13 was not issued in 2003.



## VI. Major Litigation

### ***Medical Society of the State of New York, et al. v. Serio***

Supreme Court, New York County  
Appellate Division, First Department  
Court of Appeals

This is a combined declaratory judgment and Article 78 proceeding challenging the most recent amendments to Department Regulation 68 (11 NYCRR Part 65) implementing the No-Fault Law (Article 51 of the Insurance Law). The new amendments were promulgated following the nullification of prior amendments to Regulation 68 in *Medical Society of State of N.Y. v. Levin*, 185 Misc.2d 536 (Sup. Ct. N.Y. Co. 2000), *aff'd*, 280 A.D.2d 309 (1st Dept. 2001) for failure to comply with SAPA. In this proceeding the petitioners again contend that the new amendments -- which were to become effective on September 1, 2001, but were stayed by the Court pending determination of the proceeding -- were issued in violation of SAPA and are inconsistent with Article 51 of the Insurance Law.

On February 19, 2002, the Supreme Court (Justice William A. Wetzel) issued a decision and judgment upholding the amended Regulation 68 in its entirety. The Court noted that the Department "went back to the drawing board" after the prior version of the regulation had been invalidated, and properly addressed all SAPA deficiencies. The Court also rejected all of the substantive challenges to the regulation, finding that the Superintendent did not exceed his statutory authority in promulgating the amendments. Noting that the No-Fault system "is diseased by fraud of a dimension which threatens the economic viability of the program" the Court concluded "it is well within the authority of respondent Superintendent to promulgate new regulations to remedy this universally acknowledged problem."

The petitioners appealed to the Appellate Division, First Department which, on October 22, 2002, unanimously affirmed the judgment of the Supreme Court. The petitioners then filed a motion for leave to appeal and an appeal as of right to the Court of Appeals, and on February 25, 2003, the Court of Appeals accepted the Notice of Appeal as of right.

On October 21, 2003, in a unanimous ruling, the Court of Appeals affirmed the order of the Appellate Division and upheld Regulation 68. The Court held that the Superintendent acted within the scope of his lawfully delegated authority in promulgating the regulation; that the regulation had been adopted in substantial compliance with SAPA; and that the specific provisions of the regulation challenged by the petitioners were fully consistent with the Insurance Law.

### ***Allstate Insurance Co. v. Serio***

### ***Government Employees Insurance Co., et al. v. Serio***

United States Court of Appeals for the Second Circuit  
New York Court of Appeals  
United States District Court

These actions, filed by property and casualty insurers, challenged the Department's interpretation and enforcement of Section 2610(b) of the Insurance Law, which prohibits insurers from recommending or suggesting that repairs to motor vehicles be made in particular repair shops unless the insured expressly requests such a recommendation.

On May 4, 2000, the District Court (Richard Conway Casey, U.S.D.J.) granted summary judgment to the plaintiffs, and ruled that Section 2610(b), as applied to Allstate and GEICO, impermissibly restricted commercial free speech in violation of the United States and New York State Constitutions.

In response to this decision, on May 10, 2000, the Department issued Circular Letter No. 16 (2000), which states that "it is clear from the decision that the First Amendment protection of

commercial free speech would extend to . . . insurers that were not parties to the . . . actions” and that “attempts by the Department to enforce . . . Section 2610(b) run afoul of First Amendment protections.” The Circular Letter goes on to state that insurers are therefore “free to recommend or suggest that repairs to a damaged vehicle be made in particular places or repair shops regardless of whether the insured expressly requested such recommendations.”

The Attorney General, acting pursuant to his statutory role in defending the constitutionality of state statutes, filed an appeal from the decision of the District Court to the U.S. Court of Appeals for the Second Circuit. In an opinion issued July 23, 2001, the Court certified four questions to the New York Court of Appeals, requesting that Court to interpret Section 2610(b) under state law and the New York State Constitution. On September 20, 2001, the New York Court of Appeals accepted the certification.

In a decision dated April 30, 2002, the Court of Appeals ruled that the Department’s prior interpretation of Section 2610(b) was overly restrictive and inconsistent with the requirements of the statute. It was therefore unnecessary for the Court to reach the issue of the constitutionality of Section 2610(b) under the New York State Constitution. Upon receipt of the decision of the New York Court of Appeals, the U.S. Court of Appeals for the Second Circuit remanded the case to the District Court for further proceedings.

On remand, the District Court vacated its prior order and dismissed the claims of Allstate and GEICO. In an opinion and order dated May 7, 2003, the Court ruled that the plaintiffs’ First Amendment claims had been rendered moot by the decision of the New York Court of Appeals and by the Department’s action in withdrawing Circular Letter No. 4 (1984). Following this decision, the Department issued Circular Letter No. 14 (2003), which states that Section 2610(b) of the Insurance Law remains in effect and will be enforced by the Department consistent with the New York Court of Appeals interpretation of the statute.

***Atlantic Express Transport Group Inc., et al. v. Gregory V. Serio  
Carmine Montemarano, et al. v. Gregory V. Serio***  
Supreme Court, New York County  
Appellate Division, First Department

These Article 78 proceedings arise out of the ancillary receivership of Reliance Insurance Company, an insolvent insurer. The petitioners in *Atlantic Express* are school bus operators insured by Reliance who received notification from the Department’s Liquidation Bureau that although claims against them are covered by the New York Public Motor Vehicle Liability Security Fund (“PMV Fund”), because the PMV Fund is “financially strained” they cannot provide either defense or indemnification at this time. The petitioners alleged that the failure of the PMV Fund to provide defense and indemnification is contrary to Article 76 of the Insurance Law, an abuse of discretion and arbitrary and capricious. They sought a judgment declaring that they are entitled to defense and indemnification, and directing the Superintendent, as Ancillary Receiver of Reliance Insurance Company, to provide such defense and indemnification.

The petitioners in *Montemarano* are plaintiffs in a personal injury action against Atlantic Express. They seek a judgment compelling the Superintendent, as Ancillary Receiver of Reliance Insurance Company, to provide defense and indemnification to Atlantic Express.

The *Montemarano* case was transferred to Justice Michael Stallman, who presides in the ancillary receivership proceeding. On March 27, 2003, Justice Stallman issued a decision and order dismissing the Article 78 proceeding. The Court held that the Superintendent had demonstrated that the PMV Fund did not possess sufficient assets to cover outstanding claims, and therefore he had not abused his discretion by declining to provide coverage in light of the Fund’s financial condition. The Court also ruled that the Property/Casualty Insurance Fund is separate from the PMV Fund, and that the Superintendent could not, as requested by the petitioners, commingle the assets of the two funds, or

take or borrow from one to satisfy claims made against the other. The Court also noted that if the present statutory structure and funding formula is inadequate to meet current and future needs, "it is the responsibility of the Legislature and the Governor to address it promptly through the legislative process." The petitioners have filed an appeal from the decision of Justice Stallman in the Appellate Division, First Department.

In January 2003, the Supreme Court (Justice Faviola Soto) dismissed the petition in *Atlantic Express* on the grounds that the stay of proceedings issued in the Reliance ancillary receivership proceeding prohibits the case from being prosecuted. The dismissal was without prejudice should the stay be lifted. In January 2004, the petitioners filed another Article 78 proceeding in which they seek a stay of all litigation involving lawsuits against policyholders and insureds of Reliance for 180 days, or until such time as there are sufficient funds in the PMV Fund to provide defense and indemnification to Reliance policyholders and insureds. The Superintendent has filed a motion to transfer the proceeding to Justice Stallman, and for dismissal of the proceeding.

***Excellus Health Plan, Inc. v. Gregory V. Serio***

Supreme Court, Albany County  
Appellate Division, Third Department  
Court of Appeals

This is an Article 78 proceeding challenging the Department's interpretation and implementation of Section 4308(g)-(j) of the Insurance Law concerning "file and use" premium rates for health insurance. The Department had advised the petitioner, and other HMOs and health insurers, that they could not implement new health insurance rates filed pursuant to Section 4308(g) until the Department had completed a review of the rates. The petitioner contended that rates filed pursuant to Section 4308(g) are "deemed" approved, and can be implemented immediately without any further Department review.

In a decision issued on July 16, 2002, the Supreme Court (Justice George L. Cobb) granted the petition. The Court held that as long as the rate filing satisfies the explicit requirements of Section 4308(g) regarding anticipated loss ratios and certification by a member of the American Academy of Actuaries, the filing is approved by operation of law, without any opportunity for further review or exercise of discretion by the Department. On March 13, 2003, the Appellate Division, Third Department, affirmed the judgment of the Supreme Court. On April 6, 2004, the New York State Court of Appeals affirmed the decision of the Appellate Division.

***Consumers Union of U.S. Inc., et al. v. The State of New York, et al.***

***Consumers Union of U.S., Inc., et al. v. Gregory V. Serio***

Supreme Court, New York County

These actions arise out of the conversion of Empire Blue Cross and Blue Shield to a for-profit entity. The plaintiffs challenged the conversion on several grounds, including unconstitutional impairment of a contractual obligation, violation of due process, unreasonable taking of property without just compensation, failure to comply with the Not For Profit Corporation Law, and breach of fiduciary duties by the Empire Board of Directors. The plaintiffs sought declaratory and permanent injunctive relief prohibiting the conversion, and alternative relief requiring all proceeds of the Empire conversion to be paid to a foundation that will carry on Empire's charitable mission.

In a memorandum decision issued February 28, 2003, the Supreme Court (Justice Ira Gammerman) granted the defendants' motion to dismiss the complaint. The Court held that none of the nine causes of action alleged in the complaint had merit. However, the Court also stated that the factual allegations of the complaint were sufficient to support a cause of action for violation of Article III, Section 17 of the State Constitution, which provides that no private or local laws shall grant any corporation, association or individual any exclusive privilege, immunity or franchise. The Court

indicated that Chapter 1 of the Laws of 2002 carves out an exception to the prohibition on conversion to for-profit status contained in Section 4301(j)(1) of the Insurance Law that applies exclusively to Empire. Accordingly, the Court did not dismiss the complaint, and granted the plaintiffs leave to serve an amended complaint within 30 days. The Court also continued the temporary restraining order it granted at commencement of the action which enjoined the defendants from transferring the proceeds of the sale of WellChoice stock issued in the name of the Public or Charitable Asset Fund.

Plaintiffs filed a Notice of Appeal of the February 28, 2003 decision. The State Defendants then cross-appealed the February 28, 2003 decision. Plaintiffs subsequently amended their complaint and defendants moved to dismiss. In a memorandum decision dated October 1, 2003, Justice Gammerman denied the motion to dismiss. The State Defendants then took an interlocutory appeal of the decision denying the motion to dismiss. Subsequently, by stipulation, all parties agreed to stay the litigation pending final adjudication by the appellate courts.

***Catholic Charities of the Diocese of Albany, et al. v. Gregory V. Serio***  
Supreme Court, Albany County

This is a declaratory judgment action challenging the “conscience clause” provision of Sections 3221(l)(16)(A) and 4303(cc)(1) of the Insurance Law, which provides an exception from the mandate to provide contraceptive coverage in group health insurance policies issued to “religious employers.” The plaintiffs, various religious organizations that do not fall within the statutory definition of “religious employers,” contend that Sections 3221(l)(16)(A) and 4303(cc)(1) violate the Establishment, Free Exercise, Free Speech and Equal Protection provisions of the United States and New York State Constitutions. They seek declaratory and injunctive relief against enforcement of the statutes.

On November 25, 2003, the Supreme Court (Acting Justice Dan Lamont) granted the Superintendent’s motion for summary judgment and dismissed the complaint. The Court held that the Women’s Health and Wellness Act does not violate any of the plaintiffs’ constitutional rights under the United States and New York State Constitutions, nor does it violate any other New York State law. The plaintiffs have filed an appeal to the Appellate Division, Third Department.

***Loula Vellios v. Gregory Serio, et al.***  
Supreme Court, New York County

This is an Article 78 proceeding against the Superintendent and IPRO, an external appeal agent certified by the Superintendent to perform external appeals of adverse medical necessity determinations pursuant to Article 49 of the Insurance Law. The petitioner sought a judgment annulling the determination of the external appeal agent that upheld the determination of the petitioner’s insurer that a proposed course of treatment was not medically necessary and therefore not covered under the petitioner’s health insurance plan.

The Court (Justice Michael V. Ajello) granted the Superintendent’s motion to dismiss the petition as against him on the ground that the Superintendent had not made the medical necessity determination, and that the Superintendent had taken no other action which was subject to judicial review under Article 78. However, the Court held that Article 78 was a proper vehicle to review the determination of the external appeal agent. In a decision dated August 20, 2003, the Court vacated and annulled the external appeal agent’s determination, and ruled that the costs of the proposed medical treatment were to be covered under the petitioner’s health insurance plan.

## VII. 2004 Legislative Recommendations

*These are the legislative recommendations that were available at press time. Additional recommendations may be submitted throughout the year. The information which follows was accurate at the time the legislative recommendations were forwarded to the Legislature for introduction.*

### A. Governor's Program Bills for 2004

#### 1. Expanding New York's Captive Legislation: Program Bill No. 9

This bill would amend the Insurance Law to allow the City of New York to form a captive insurance company to provide insurance coverages for liability related to or arising out of activities in or near the World Trade Center in response to the attacks of September 11, 2001. It also permits a broader range of sophisticated financial entities, including public entities, to form pure and group captive insurance companies and sponsored insurance companies in New York State.

Section 1 of the bill:

--amends Section 7002(a) of the Insurance Law to change the defined term "affiliates" to "affiliated companies" and to define an affiliated company as a company in the same corporate system as an industrial insured by virtue of common ownership, control, operation or management; or, relative to pure captive companies, companies that maintain a contractual or sub-contractual relationship with, and which have risk management controlled by, the industrial insured or its other affiliated companies, provided such companies voluntarily elect such affiliated status. Such term shall also include any statutory subsidiary or affiliate of a public entity as well as any contractor, subcontractor and consultant of any tier of a city with a population of one million or more persons for liability related to or arising out of activities in or near the World Trade Center site in response to the attacks of September 11, 2001.

--amends Section 7002(c) of the Insurance Law to add sponsored captive insurance companies to the definition of "captive insurance company" for purposes of Article 70 of the Insurance Law.

--amends the definition in Section 7002(e) of the Insurance Law of "industrial insured" (which are the entities permitted to form pure and group captive insurance companies) to reduce the threshold for businesses to operate a pure captive from a net worth of \$100 million to a net worth or annual revenues of at least \$25 million. Not-for-profit organizations and public entities with a total annual budget that exceeds \$25 million would have the ability to form and operate a pure captive. It also provides the Superintendent with discretionary authority to allow an industrial insured to operate as a pure captive that may not meet the specified standards in the definition, but which otherwise demonstrates to the Superintendent that it is qualified to do so. The definition of "industrial insured" for a group captive has also been amended, reducing the threshold from a net worth of \$100 million, to now apply to any insured who has a full-time employee acting as a risk manager, whose aggregate annual premiums for insurance is at least \$25,000, who has at least 25 full-time employees, or who is a public entity.

--amends the definition of "group captive insurance company" in Section 7002(f) of the Insurance Law to clarify that the captive insurance company can insure the risks of the owners' affiliated companies.

--amends the definition of "industrial insured group" in Section 7002(g) of the Insurance Law to provide that a public entity may only be a member of an industrial insured group with other public entities and to include risk retention groups formed pursuant to the federal Product Liability Risk Retention Act of 1981.

Section 2 of the bill reletters subsection (h) of section 7002 of the Insurance Law subsection (k) and adds six new subsections (h), (i), (j), (1), (m) and (n) which set forth the following new definitions:

--"participant" shall mean an entity insured by a sponsored captive insurance company where the losses of the participant are limited by contract to the assets of a protected cell.

--"participant contract" shall mean a contract by which a sponsored captive insurance company insures the risk of a participant and limits the losses of the participant to the assets of a protected cell.

--"protected cell" means a separate account established and maintained by a sponsored captive insurance company for one participant.

--"public entity" shall mean any of the following entities which are authorized to form and operate a subsidiary which would not be precluded from engaging in the activities of a captive insurance company: any department, bureau, division, commission, board or other agency of the State of New York, including any public benefit corporation or any public authority; any governmental entity operating a college, community college or university; any city with a population of one million or more persons; or a public corporation created pursuant to agreement or compact with another state or Canada.

--"sponsor" shall mean any entity approved by the Superintendent to provide all or part of the capital and surplus required by law and to operate a sponsored captive insurance company.

--"sponsored insurance company" shall mean any captive insurance company in which the minimum capital and surplus required by law is provided by one or more sponsors, that is formed or licensed under the Insurance Law, that insures the risks of separate participants through contract and that segregates each participant's liability through one or more protected cells.

Section 3 of the bill amends subsection (a) of section 7003 of the Insurance Law to permit a captive insurance company to offer title insurance on a primary basis or as reinsurance, to include sponsored captives in the prohibition against captives offering on a primary basis workers' compensation insurance and other insurance involving a demonstration of financial responsibility, to limit a sponsored captive to insuring only the risks of its participants, and to provide that a group captive insurance company insuring the risks of an industrial insured group would be subject to the provisions of section 5904(d) and (e) (requiring compliance with unfair claims settlement practices law and the unfair claims settlement practices) and section 5905 (a) (d) (relating to notices, prohibited solicitations, coverage and ownership with respect to risk retention groups) of the Insurance Law.

Section 4 of the bill amends subsection (c) of section 7003 of the Insurance Law to provide that where a captive insurance business was formed pursuant to articles of incorporation or association, such articles must be filed with the superintendent before such business receives a license to do a captive business. In the case of a pure captive insurance company formed by a city with a population of one million or more persons to insure such City and its affiliated companies for liability relating to or arising out of activities in or near the World Trade Center site in response to the attacks of September 11, 2001, the Superintendent shall consider, in addition to other statutory requirements, such factors as the unique risk insured by such captive and the source and limits of the premium payments together with any limitations on the acceptance of claims and the payment of accepted claims where such limitations provide an equitable basis for the allocation of assets of such company to pay claims. The bill also requires an applicant sponsored captive insurance company to file with the Superintendent: a business plan demonstrating how the applicant will account for the loss and expense experience of each protected cell and report such experience to the Superintendent; a statement acknowledging that all financial records of such company shall be made available for inspection by the Superintendent; all contracts or sample contracts between such company and any participants; and evidence that expenses shall be allocated to each protected cell in a fair and equitable manner.

Section 5 of the bill amends subsection (d) of section 7003 of the Insurance Law to provide that any proposed amendments to the articles of incorporation of a not-for-profit captive insurance company must be submitted to the Superintendent for approval before filing with the secretary of state.

Section 6 of the bill adds a new section 7003-a to the Insurance Law to authorize one or more sponsors to form a captive insurance company under the Insurance Law and to establish and maintain one or more protected cells to insure the risk of one or more participants subject to the following: the shareholders of such company shall be limited to its participants and sponsors; such company shall maintain and account for separately the books and records of each protected cell to reflect the financial condition and results of operation of such protected cell, net income or loss, dividends/distributions to participants; the assets of the protected cell shall not be chargeable with the liabilities of any other insurance business conducted by such company; such company shall not sell, exchange or transfer assets between or among any of its protected cells without the consent of such protected cells; no sale exchange, transfer of assets, dividend or distribution may be made from a protected cell to a sponsor or participant without the Superintendent's approval (which cannot be given if such sale, exchange, etc., would result in insolvency or impairment with respect to a protected cell; each such company shall annually file with the Superintendent those financial reports requested by the Superintendent including, but not limited to, accounting statements detailing the financial experience of each protected cell; each such company shall notify the Superintendent in writing within ten business days of any protected cell that is insolvent or otherwise unable to meet its claim or expense obligations; participant contracts, including any changes in protected cell additions or withdrawals, shall not take effect without the prior written approval of the Superintendent. In addition, the business written by a sponsored captive, with respect to each cell, must be fronted by an insurance company (which may be licensed in any state), reinsured by a reinsurer authorized or approved by the State of New York or secured by a trust fund in the United States for the benefit of policyholders and claimants funded by an irrevocable letter of credit or other asset approved by the Superintendent (sets forth the amount and form of such security). Provides that the sponsor of a sponsored captive insurance company must be an insurer licensed in any state, a reinsurer approved under the laws of any state, or a captive insurer licensed in New York. Provides that associations, corporations, limited liability companies, partnerships, trusts and other business entities may be participants in any sponsored captive insurance company formed or licensed under the Insurance Law. Provides that a sponsor may be a participant in a sponsored insurance company and that a participant need not be a shareholder of the sponsored captive insurance company or any affiliate thereof. Provides further that a participant shall insure only its own risks through a sponsored captive insurance company.

Sections 7 and 8 of the bill amend subsection (a) of section 7004 of the Insurance Law to provide that no sponsored captive insurance company shall be issued a license unless it shall possess and thereafter maintain not less than one million dollars of paid-in capital and surplus.

Section 9 of the bill amends section 7005(a) of the Insurance Law to provide that a city with a population of one million or more persons may form a pure captive insurance company as a public benefit corporation or a not-for-profit corporation for any legal purpose including insurance that is retroactive to September 11, 2001, for risks incurred by such City and its affiliated companies arising out of activities in or near the World Trade Center site in response to the September 11, 2001 terrorist attacks. Any such captive shall be exempt from all state and local taxes. The members or directors of such corporation shall be appointed by or with the approval of the mayor of such city. The bill also provides immunity from personal liability to certain personnel of such City and such captive while exercising or carrying out their powers.

Section 10 of the bill reletters subsections (c), (d), (e), (f), (g), (h) and (i) of section 7005 of the Insurance Law as subsections (d), (e), (f), (g), (h), (i) and (j) and adds a new subsection (c) which provides that a sponsored captive insurance company may be incorporated as a stock insurer with its capital divided into shares and held by the stockholders, or as a mutual insurer without capital stock,

the governing body of which is elected by the participants and sponsors of the sponsored captive insurance company.

Section 11 of the bill amends section 7006 of the Insurance Law to require that any group captive insuring the risks of an industrial insured group that includes risk retention groups shall file its report in the form and according to the standards set forth under section 307 of the Insurance Law. A pure captive insurance company formed by a city with a population of one million or more persons to insure such city and its affiliates from liability related to or arising out of activities in or near the World Trade Center site in response to the terrorist attacks of September 11, 2001 must also file with the Superintendent evidence that the industrial insured continues to meet the standards set forth in Section 7002(c) of the Insurance Law.

Sections 12 and 13 of the bill amend subsection (a) and add a new subsection (d) to Section 7009 of the Insurance Law to restrict investments of group captives insuring the risks of an industrial insured group that includes risk retention groups to those set forth in Insurance Law § 1403.

Section 14 of the bill adds a new Title 12 to Article 9 of the Public Authorities Law to provide that every public authority and every public benefit corporation is authorized to form and operate a subsidiary as a pure captive insurance company or as a group captive insurance company pursuant to article seventy of the Insurance Law. Such Title also sets forth the form and composition of such subsidiaries.

Section 15 of the bill adds a new subdivision 6 to Section 82 of the Workers' Compensation Law to authorize the state insurance fund to form and operate a subsidiary as a pure or group captive insurance company.

Sections 16 and 17 of the bill amend sections 1500 and 1502-b of the Tax Law to exempt from the payment of certain fees, taxes or assessments those captives set up by any "public entity" as defined in Section 7002(1) of the Insurance Law. This expands the current exemption that applies now only to the MTA.

Section 18 of the bill amends section 108 of the Insurance Law to provide that the Business Corporation Law shall not apply to a captive insurance company formed under the Not-For-Profit Law.

## **2. Permit the Authorization of Civil Authority Insurance: Program Bill No. 42**

To enhance the insurance protections available to business owners, including small businesses in New York State, by permitting the authorization of "civil authority" insurance. To provide further that if the New York Property Insurance Underwriting Association provides coverage for business interruption insurance it also shall offer to cover economic loss due to acts of civil authority upon a determination of necessity made by the Superintendent of Insurance. To provide that civil authority insurance may also be made available through duly licensed excess lines brokers in the non-admitted market.

Section 1 adds a new paragraph (30) to section 1113(a) of the Insurance Law defining "civil authority insurance" as insurance for the loss of use and occupancy, rents, and profits resulting from an order of civil authority with or without the threat of loss of or damage to property or actual loss of or damage to property.

Section 2 amends section 4101(b) of the Insurance Law to add civil authority insurance to the list of "non-basic kinds of insurance" that are permitted under section 1113.



Section 3 amends section 4102(b)(2) of the Insurance Law to add civil authority insurance to the kinds of insurance that a property and casualty company may write if it is also licensed to write fire insurance.

Section 4 adds a new subsection (h) to section 5402 of the Insurance Law to provide that if business interruption insurance is provided through the New York Property Insurance Underwriting Association, then NYPIUA shall also offer civil authority insurance pursuant to a determination of necessity made by the Superintendent under section 5412.

Section 5 amends subsection (a) of section 2105 of the Insurance Law to add civil authority insurance to the kinds of insurance excess lines brokers may procure in the non-admitted market.

## **B. Insurance Department Bills for 2004**

### **1. Consolidates the Public Motor Vehicle Liability Security Fund into the Property/Casualty Insurance Security Fund: Departmental Bill No. 304**

Implements a series of reforms that will strengthen New York's Public Motor Vehicle Liability Security Fund (PMVLSF) and the Property Casualty Security Fund (P/CISF) and helps streamline the receivership process.

Section 1 of the bill amends the article heading of Article 76 of the Insurance Law to reflect that the Article will now relate to the Property/Casualty Insurance Security Fund.

Sections 2 through 14 amend various sections in Article 76 of the Insurance Law to consolidate the PMVLSF into the P/CISF, with the surviving Fund assuming all assets, liabilities, rights and obligations.

Section 3 would amend subsection (a) of Section 7602 of the Insurance Law to define the term "limit of liability" to mean the limit of liability shown in the declarations of a policy or the penal sum of a bond.

Section 4 would amend Section 7603 of the Insurance Law to cap the amount of damages that may be paid from the P/CISF from the current \$1 million limit to a limit of \$300,000. It also provides that an insured or claimant must first exhaust all coverage provided by any other insurance policy before asserting a claim against the P/CISF, and that such Fund's obligation to pay shall be reduced by any amount recoverable or recovered, whichever is greater, under such other policy of insurance. The bill further prohibits companies with a net worth exceeding \$10 million from accessing the P/CISF in the event their carrier becomes insolvent and provides that no payment from the P/CISF shall be made for any amount due any insurer, reinsurer, insurance pool or underwriting association as subrogation recoveries, reinsurance recoveries, contribution, indemnification or otherwise.

Section 10 adds two new subsections (d) and (e) to Section 7608 of the Insurance Law to provide that the new consolidated fund shall not make any interest payments on an allowed claim accruing after the date of entry of liquidation, rehabilitation, conservation or ancillary receivership order. The bill also provides that the fund shall not pay any claim after the earlier of: (1) 18 months after the date of liquidation, or (2) the final date set by the court for the filing of claims against the liquidator of an insolvent carrier.

Section 15 amends subsection (b) of Section 7405 of the Insurance Law to provide that all policies, bonds and other insuring and reinsuring instruments issued by an insurer placed into liquidation shall be deemed cancelled regardless of their terms, thirty days after the date the order of

liquidation is entered. The bill also requires the Superintendent, prior to the effective date of such cancellation, to provide notice, by publication, to the insurer's policyholders that their policies will be canceled by the liquidation order, which will enable them to replace their insurance coverage.

Section 16 adds a new subsection (e) to Section 7407 of the Insurance Law to clarify that policies issued by out-of-state insurers are cancelled upon entry of the liquidation order for any such insurer by a court of competent jurisdiction.

Section 17 amends Section 7424 of the Insurance Law by adding a new subsection which permits the Superintendent, as receiver, to invest assets in enumerated low-risk investments.

Section 18 amends subdivision (1) of Section 705 of the Abandoned Property Law to remove the existing statutory requirement that all unclaimed and undistributed dividends and other assets shall only be deemed abandoned property if held by the Superintendent, as liquidator, for five or more years.

Section 19 amends subdivision (1) of Section 706 of the Abandoned Property Law to provide that the Superintendent shall, upon the filing of the final report closing the liquidation proceeding, pay to the State Comptroller, all abandoned property in the proceeding.

## **2. Combines Auto Flex-Rating with File and Use for Health Rate Changes: Departmental Bill No. 268**

Requires the Superintendent's prior approval of premium rate adjustments by HMO's, Article 43 corporations and commercial insurance carriers when the adjustments in the aggregate exceed ten percent during any twelve month period; and to make permanent provisions regarding flex-rating for nonbusiness automobile insurance policies and commercial liability insurance policies.

Section 1 amends Section 3231(e)(2) of the Insurance Law to add a new subparagraph (B) to provide that beginning April 1, 2004, premium rate adjustments sought by insurers subject to Article 32 of the Insurance Law cannot be deemed approved if the aggregate rate adjustment exceeds ten percent during any continuous twelve month period. It also requires at least thirty days prior written notice of a rate increase to each policyholder, employee and group member.

Section 2 amends Section 4308(g)(2) of the Insurance Law to provide that beginning April 1, 2004, premium rate adjustments sought by corporations subject to Article 43 of the Insurance Law will not be deemed approved if the aggregate rate adjustment exceeds ten percent during any continuous twelve month period.

Sections 3 would repeal paragraph 13 of subsection (b) of Section 2305, and Section 5 would amend subsection (f) of Section 2350, of the Insurance Law, to make auto flex-rating for nonbusiness automobile insurance policies permanent.

Section 4 would amend subsection (h) of Section 2344 of the Insurance Law to make flex-rating for commercial liability insurance policies permanent.

## **3. Establishes the Interstate Insurance Product Regulation Compact to Regulate Certain Insurance Products: Departmental Bill No. 305**

Establishes an interstate insurance product regulation compact. The purposes of this Compact are, through means of joint and cooperative action among the compacting states:

- to promote and protect the interest of consumers of individual and group annuity, life insurance, disability income and long-term care insurance products;

- to develop uniform standards for insurance products covered under the compact;
- to establish a central clearinghouse to receive and provide prompt review of insurance products covered under the compact and, in certain cases, advertisements related thereto, submitted by insurers authorized to do business in one or more compacting states;
- to give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform standard;
- to improve coordination of regulatory resources and expertise among state insurance departments regarding the setting of uniform standards and review of insurance products covered under the compact;
- to create the interstate insurance product regulation commission; and
- to perform such other related functions as may be consistent with the state regulation of the business of insurance.

Section 1 of the bill sets forth legislative findings.

Section 2 of the bill adds a new Article 88 (Sections 8801 through 8817) to the Insurance Law to establish the Interstate Insurance Product Regulation Compact.

The bill creates an Interstate Insurance Product Approval Commission (hereinafter referred to as the "Commission") and provides the statutory framework for states to enter into an interstate insurance product regulation compact.

The Compact would establish a single point of filing for certain insurance products and rate filings that would be subject to uniform national standards. Those states that are members of the Compact would develop the uniform standards that apply to products filed with the Commission. Product standards would be developed through a rulemaking process that would require the approval of two-thirds of the commission management committee and two-thirds of the commission members. Unless a state opts-out as described below, approval of a product by the Compact would be the same as approval by a member state. The bill would, however, allow companies the option to continue to file products in the individual states through the existing form filing processes.

The bill also provides that individual states will continue to regulate market activities and allows for coordination among states and the Commission to determine instances of violations of uniform standards subject to the final order of the Commission.

If a state disagrees with a product standard developed by the Commission, it may opt-out of the uniform standard either by regulation or legislation. For long-term care insurance, states may opt-out at the time of joining the Compact ("front-end" opt-out). In order to opt-out by regulation, a state must show that the uniform standard does not provide reasonable protections to the citizens of the state and that the needs of the state outweigh the Legislature's intent to participate in and receive the benefits of the Compact.

The Compact would become effective when two states enact compact legislation. The Commission becomes operational (that is, adopting uniform standards, receiving products and giving

approvals/disapprovals) if twenty-six states or states representing forty percent of the premium for life, annuities, disability income insurance and long-term care join the Compact.

Operations of the Commission would be financed initially through contributions and other sources of funding and over time through the filing fees paid by insurers.

All states joining the Compact would be involved in setting up and overseeing the activities of the Compact, including developing product standards and the rules and operating procedures of the Commission.

The Commission would make an annual report to the legislature and governor of each state joining the Compact. In addition to opting out of particular product standards, each state has the right to withdraw from the Compact, by enacting a statute repealing this bill.

#### **4. Makes Certain Changes Relating to the External Appeal Program: Departmental Bill No. 285**

Makes certain changes relating to the external appeal program and holds certified external appeal agents harmless for decisions made in accordance with Title II of Article 49 of the Insurance Law and Public Health Law.

Sections 1 and 2 amend Section 4914 of the Insurance Law and Section 4914 of the Public Health Law to clarify the external appeal agent liability protections currently in law and provide that court proceedings cannot be brought against certified external appeal agents for decisions rendered pursuant to Title II of Article 49 of the Insurance Law and Public Health Law unless the decision was rendered in bad faith or involved gross negligence.

#### **5. Makes Provisions Relating to Group Health Insurance: Departmental Bill No. 269**

Clarifies the language and intent of Chapter 557 of the Laws of 2002, which was designed to make group health insurance sold through chambers of commerce and association groups available to sole proprietors.

Section 1 amends Section 3231(i) of the Insurance Law as follows:

- To change the applicability of this subsection to health insurers which issue health insurance to eligible association groups as defined in Insurance Law Section 4235(c)(1)(B), (D) and (H), including chambers of commerce that satisfy any of the statutory group definitions.
- To clarify that insurers are not prohibited from issuing coverage to sole proprietors that are not connected with an association group or chamber of commerce.
- To clarify that nothing in this subsection shall require an insurer to establish a premium rate for individual proprietors that is greater than the rate established for the same coverage issued to groups. For those insurers seeking to implement a rate differential for individual proprietors, they must file with the Superintendent the actuarial justification for the proposed rate differential and obtain the Superintendent's approval thereof.
- To allow insurers to impose a lesser timeframe or waive the existing sixty-day membership requirement as long as such action is done uniformly.

Section 2 amends Section 4317(f) of the Insurance Law to conform the language of this Section to the language of Section 3231(i) of the Insurance Law as amended by Section 1 of the bill.

## VIII. Regulatory Activities

### A. OPERATING STATISTICS

#### 1. Licenses Issued During Year

**Table 67**  
**LICENSES ISSUED DURING YEAR**  
**2002 and 2003**

	<b>2003</b>	<b>2002</b>
<b>Total</b> .....	<b>127,713</b>	<b>94,380</b>
<b>Adjusters<sup>a</sup></b>		
Independent.....	1,123	5,747
Public.....	144	297
<b>Agents<sup>b</sup></b>		
Life/Accident and Health.....	113,897	18,945
Property and Casualty.....	6,900	34,436
Rental Vehicle.....	4	52
Mortgage Guaranty Insurance.....	3	0
Bail Bond.....	84	16
Limited Lines <sup>c</sup> .....	0	20
<b>Brokers<sup>d</sup></b>		
Life.....	1,571	642
Property and Casualty.....	3,387	32,913
Excess Line (Regular).....	171	664
Excess Line (Limited).....	43	23
Viatical Settlement.....	13	13
<b>Consultants<sup>e</sup></b>		
Life.....	187	22
General.....	32	356
<b>Reinsurance Intermediaries<sup>f</sup></b> .....	28	213
<b>Service Contract Registrants<sup>g</sup></b> .....	126	21

**Note:** Footnotes to table appear on next page

**Footnotes to Table 67**

- <sup>a</sup> Adjuster licenses issued pursuant to Section 2108 are renewable biennially as of January 1 of odd numbered years.
- <sup>b</sup> Life/Accident and Health Agent licenses issued pursuant to Section 2103(a) are renewable biennially as of July 1 of odd numbered years. Property and Casualty Agent licenses issued pursuant to Section 2103(b) are renewable biennially as of July 1 of even numbered years. Rental Vehicle Agent licenses issued pursuant to Section 2131 are renewable biennially as of July 1 of even numbered years. Mortgage Guaranty Agent licenses issued pursuant to Section 6535 are perpetual. Bail Bond Agent licenses issued pursuant to Section 6802 are renewable biennially as of January 1 of odd numbered years.
- <sup>c</sup> Limited Lines licenses – Effective January 1, 1987, licenses were issued to agents of assessment co-operative property/casualty companies enabling them to sell only coverage written by such companies. These licenses are renewable biennially as of July 1 of even numbered years.
- <sup>d</sup> Life Broker licenses issued pursuant to Section 2104(b)(1)(A) are renewable biennially as follows: Issued between 3/01 and 6/30, expiration on 2/28 of odd years; issued between 7/01 and 10/31, expiration on 6/30 of odd years; issued between 11/01 and 2/28(9), expiration on 10/31 of odd years. Property and Casualty Broker licenses issued pursuant to Section 2104 and Excess Line Broker licenses issued pursuant to Section 2105 are renewable biennially as of November 1 of even numbered years. Limited Excess Line Brokers are licensed to deal only with purchasing groups as defined in Regulation 134. Viatical Settlement Broker licenses issued pursuant to Section 7802 are renewable annually as of December 1.
- <sup>e</sup> Consultant licenses issued pursuant to Section 2107 are renewable on a biennial basis, Life Consultants as of April 1 of odd numbered years and General Consultants as of April 1 of even numbered years.
- <sup>f</sup> Reinsurance Intermediary licenses issued pursuant to Section 2106 are renewable biennially as of September 1 of even numbered years.
- <sup>g</sup> Service Contract Registrations issued pursuant to Section 9707 are renewable biennially as of March 1 of odd numbered years.

2. Results of Examinations for Licenses

**Table 68**  
**RESULTS OF EXAMINATIONS FOR LICENSES**  
**Adjusters, Agents, Brokers and Consultants**  
**2002 and 2003**

<u>Type of Examination</u>	<u>2003</u>		<u>2002</u>	
	<u>Number Taking Examination</u>	<u>Percent Passing</u>	<u>Number Taking Examination</u>	<u>Percent Passing</u>
<b>Total</b>	<b>40,731</b>	<b>54%</b>	<b>44,256</b>	<b>53%</b>
<b>Public Adjusters</b> .....	68	51	95	25
<b>Independent Adjusters - Total</b> ....	3,191	58	2,287	68
Accident and Health.....	212	72	141	62
Automobile.....	359	49	324	65
Aviation.....	0	0	0	0
Casualty.....	775	51	542	48
Fidelity and Surety.....	11	80	9	11
Fire.....	86	52	111	51
General (All Lines).....	329	39	544	56
Health Service Charges.....	90	62	90	73
Inland Marine.....	3	100	3	67
Limited Auto (Damage or Theft Appraisals only).....	1,326	75	616	91
<b>Agents - Total</b> .....	34,739	54	39,257	52
Accident and Health.....	14,129	62	18,194	49
Life.....	18,385	46	19,424	54
Mortgage Guaranty.....	4	100	3	67
Property and Casualty.....	2,185	58	1,636	61
Bail Bond.....	36	58	42	26
Credit.....	0	0	0	0
<b>Brokers</b> .....	2,707	49	2,617	58
<b>Consultants - Total</b> .....	26	58	0	0
Life.....	23	17	0	0
General.....	3	100	0	0

### 3 Changes in Authorized Insurers During 2003

#### a. Life Insurance Companies

##### Domestic Companies Licensed

First Berkshire Hathaway Life Insurance Company, Woodbury, NY.....	Mar. 21
United Healthcare Life Insurance Company of New York, New York, NY.....	Apr. 8

##### Foreign Companies Licensed

Cambridge Life Insurance Company, Jefferson City, MO.....	July 30
MetLife Security Insurance Company of Louisiana, Metairie, LA.....	Oct. 28
North Central Life Insurance Company, Schaumburg, IL.....	Dec. 31

##### Restated Charter

Farmers and Traders Life Insurance Company, Syracuse, NY.....	June 26
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##### Amendments to Charter

Preferred Life Insurance Company of New York, New York, NY.....	Jan. 1
CGU Life Insurance Company of New York, Buffalo, NY.....	Feb. 14
Northstar Life Insurance Company, Ithaca, NY.....	Mar. 10
AUSA Life Insurance Company, Inc., Purchase, NY.....	Apr. 1
First SunAmerica Life Insurance Company, New York, NY.....	June 13
Sentry Life Insurance Company of New York, Syracuse, NY.....	July 8
United Healthcare Life Insurance Company of New York, New York, NY.....	Aug. 8
First Safeco Life Insurance Company of New York, East Syracuse, NY.....	Sept. 15
Anthem Health and Life Insurance Company of New York, Staten Island, NY.....	Sept. 24
American Mayflower Life Insurance Company of New York, New York, NY.....	Oct. 8
GE Capital Life Assurance Company of New York, New York, NY.....	Oct. 9
First Reliance Standard Life Insurance Company, New York, NY.....	Oct. 30
Allstate Life Insurance Company of New York, Farmingville, NY.....	Nov. 3
Intramercia Life Insurance Company, Farmingville, NY.....	Nov. 3

##### Changes of Names

“Preferred Life Insurance Company of New York” to “Allianz Life Insurance Company of New York,” New York, NY .....	Jan. 1
“CGU Life Insurance Company of New York” to “Aviva Life Insurance Company of New York,” Buffalo, NY.....	Feb. 14
“Provident Mutual Life Insurance Company” to “Nationwide Life Insurance Company of America,” Berywn, PA.....	Mar. 28
“AUSA Life Insurance Company, Inc.,” to “Transamerica Financial Life Insurance Company,” Purchase, NY.....	Apr. 1
“United Healthcare Life Insurance Company of New York” to “Unimerica Life Insurance Company of New York,” New York, NY.....	Aug. 8
“Anthem Health and Life Insurance Company of New York” to “The PerfectHealth Insurance Company,” Staten Island, NY.....	Sept. 24

##### Merger Agreements Filed

Transamerica Life Insurance Company of New York, of Purchase, NY into AUSA Life Insurance Company, Inc., Purchase, NY.....	Apr. 1
Security Equity Life Insurance Company, New York, NY into Metropolitan Life Insurance Company, New York, NY.....	Oct. 28
North Central Life Insurance Company, Schaumburg, IL into United States Life Insurance Company in the City of New York, New York, NY.....	Dec. 31

##### Conversion

Provident Mutual Life Insurance Company (from mutual company to stock company).....	Mar. 28
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#### b. Accident and Health Insurance Companies

##### Redomestication

Delta Dental Insurance Company (from Illinois to Delaware).....	Feb. 14
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**Withdrawn**

Senate Insurance Company, Scottsdale, AZ.....	Oct. 20
Berkshire Mutual Insurance Company, Pittsfield, MA.....	Aug. 28

**c. Property and Casualty Insurance Companies**

**Domestic Companies Incorporated**

New York Transportation Insurance Corp., County of Queens.....	Jan. 24
Western Continental Insurance Company of New York, County of New York .....	Mar. 5
Adirondack Insurance Company of New York, County of Erie.....	Aug. 11
Old Tower Insurance Company, County of Westchester.....	Aug. 18
Kensington Insurance Company, County of New York.....	Dec. 12

**Domestic Company Licensed**

Western Continental Insurance Company of New York, New York, NY.....	Apr. 11
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**Foreign Companies Licensed**

Fidelity National Insurance Company, Santa Barbara, CA.....	Jan. 31
North East Insurance Company, Scarborough, ME.....	Apr. 10
United National Casualty Insurance Company, Hammond, IN.....	May 5
Encompass Home and Auto Insurance Company, Chicago, IL.....	May 12
Encompass Independent Insurance Company, Chicago, IL.....	May 12
Encompass Insurance Company of America, Chicago, IL.....	May 12
Mendota Insurance Company, Mendota Heights, MN.....	June 3
Professionals Direct Insurance Company, Grand Rapids, MI.....	June 3
Union Insurance Company, Lincoln, NE.....	June 12
Esurance Insurance Company, Tulsa, OK.....	July 10
Eastern Alliance Insurance Company, Lancaster, PA.....	Aug. 5
Mendakota Insurance Company, Mendota Heights, MN .....	Aug. 12
Continental Western Insurance Company, Urbandale, IA.....	Sept. 5
The Hartford Steam Boiler and Inspection and Insurance Company of Connecticut, Hartford, CT.....	Sept. 26
Sagamore Insurance Company, Indianapolis, IN.....	Oct. 8
Technology Insurance Company, Inc., Nashua, NH.....	Oct. 20
Lexington National Insurance Corporation, Baltimore, MD.....	Oct. 27
State National Specialty Insurance Company, Waco, TX.....	Dec. 1
Evergreen National Indemnity Company, ColumbusOH.....	Dec. 5
BNM Indemnity Company, Wilmington, DE.....	Dec. 23
MJR Fire Insurance Company, Wilmington, DE.....	Dec. 23

**Restated Charters**

Insurance Corporation of New York, New York, NY.....	June 25
Western Continental Insurance Company of New York, New York, NY.....	Aug. 31
Mitsui Marine and Fire Insurance Company of America, New York, NY.....	July 1
Tokio Marine and Fire Insurance Company, Ltd., (U.S. Branch – New York, NY).....	Sept. 24
American Steamship Owners Mutual Protection and Indemnity Association, NY, NY.....	Oct. 15
General Security Indemnity Company, New York, NY.....	Dec. 29

**Amendments to Charters**

Financial Structures Insurance Company, New York, NY.....	Apr. 1
General Security Property Casualty Company, New York, NY.....	Feb. 18
American Horizon Insurance Company of New York, Astoria, NY.....	Feb. 21
Royal & SunAlliance Personal Insurance Company, New York, NY.....	Mar. 21
NIPPONKOA Insurance Company of America, New York, NY.....	Apr. 1
Sumitomo Marine & Fire Insurance Company of America, New York, NY.....	July 1
International Credit of North America Reinsurance Inc., Centerport, NY.....	May 30
Sompo Japan Insurance Company of America, New York, NY.....	June 30
Unitrin Advantage Insurance Company, New York, NY.....	July 25

General Assurance Company, Melville, NY.....	July 28
Marine Indemnity Insurance Company of America, New York, NY.....	Aug. 7
Western Continental Insurance Company of New York, New York, NY.....	Aug. 31
Stone Harbor Insurance Company, Melville, NY.....	Oct. 24
First Community Insurance Company, New York, NY.....	Dec. 12

**Changes of Name**

“General Security Insurance Company” to “Unitrin Auto and Home Insurance Company,” New York, NY.....	Feb. 18
“First Standard Security Insurance Company” to “Independence American Insurance Company,” Dover, DE.....	Feb. 13
“General Security Property Casualty Company” to “Unitrin Preferred Insurance Company,” New York, NY .....	Feb. 18
“American Horizon Insurance Company of New York” to “Global Liberty Insurance Company of New York,” Astoria, NY.....	Feb. 21
“Royal & SunAlliance Personal Insurance Company” to “AXIS Reinsurance Company,” New York, NY.....	Mar. 21
“Winterthur International America Insurance Company” to “XL Insurance America Inc.,” Wilmington, DE .....	Mar. 28
“The Mountbatten Surety Company, Inc.” to “First Sealord Surety, Inc.,” Bala Cynwyd, PA.....	May 23
“Combined Specialty Insurance Company” to “Virginia Surety Company, Inc.,” Glenview, IL .....	May 27
“Provident National Assurance Company,” to “Allstate Assurance Company,” Northbrook, IL.....	May 29
“CGU Insurance Company of Canada (U.S. Branch),” New York, New York to “Aviva Insurance Company of Canada (U.S. Branch),” New York, NY.....	June 3
“Northbrook Property and Casualty Insurance Company” to “St. Paul Protective Insurance Company,” Chicago, IL.....	June 9
“Worldwide Direct Auto Insurance Company” to “Response Worldwide Direct Auto Insurance Company,” Columbus, H.....	June 13
“Worldwide Insurance Company” to “Response Worldwide Insurance Company,” Columbus, OH .....	June 13
“Mitsui Marine and Fire Insurance Company of America” to “Mitsui Sumitomo Insurance USA Inc.,” New York, NY.....	July 1
“Sumitomo Marine & Fire Insurance Company of America” to “Mitsui Sumitomo Insurance Company of America,” New York, NY.....	July 1
“Allianz Insurance Company” to “Allianz Global Risks US Insurance Company,” Burbank, CA.....	Aug. 12
“Western Continental Insurance Company of New York” to “CDC IXIS North Guaranty North America Inc.,” New York, NY.....	Aug. 31
“Old Republic Minnehoma Insurance Company” to “Old Republic Security Insurance Company,” Phoenix, AZ.....	Oct. 21
“First Community Insurance Company” to “Fidelity National Property and Casualty Insurance, Inc.,” New York, NY.....	Dec. 12
“BNM Indemnity Company” to “Crum and Forster Indemnity Company,” Wilmington, DE .....	Dec. 23
“MJR Fire Insurance Company” to “United States Fire Insurance Company,” Wilmington, DE.....	Dec. 23
“Kemper Employers Insurance Company,” to “Seabright Insurance Company,” Long Grove, IL.....	Dec. 24
“General Security Indemnity Company” to “Hudson Speciality Insurance Company,” New York, NY.....	Dec. 30

**Withdrawn**

Commercial Casualty Insurance Company, Pleasanton, CA.....	Apr. 10
Wasatch Crest Insurance Company, Salt Lake City, UT.....	Dec. 31

**Changes in Capital**

Sompo Japan Insurance Company of America, New York, NY (from \$10,000,000 to \$15,000,000).....	June 30
Unitrin Advantage Insurance Company, DeWitt, NY (from \$700,000 to \$1,000,000).....	July 25
General Assurance Company, Melville, NY (from \$1,000,000 to \$1,800,000).....	July 28
Marine Indemnity Insurance Company of America, New York, NY (from \$3,200,000 to \$3,290,000).....	Aug. 7
Stone Harbor Insurance Company, Melville, NY (from \$500,000 to \$700,000).....	Oct. 24

**Redomestications Filed**

Wilshire Insurance Company (from California to North Carolina).....	Mar. 18
XL Specialty Insurance Company (from Illinois to Delaware).....	Apr. 30
Worldwide Direct Auto Insurance Company (from Kentucky to Ohio).....	June 3
Greenwich Insurance Company (from California to Delaware).....	Aug. 5
United Financial Casualty Company (from Missouri to Ohio).....	Aug. 28

**Merger Agreements Filed**

Chartwell Insurance Company, Stamford, CT into Trenwick America Reinsurance Corporation, Stamford, CT.....	May 8
American Colonial Insurance Company, New York, NY into North East Insurance Company, Scarborough, ME.....	Apr. 10
International Insurance Company, Chicago, IL into TIG Insurance Company, Martinez, CA.....	June 2
Western Continental Insurance Company, of Houston, TX into Western Continental Insurance Company, of New York, NY.....	June 5
Recor Insurance Company, Inc. , New York, NY into Insurance Corporation of New York, New York, NY.....	June 25
Linso Reinsurance Company, Fort Wayne, IN into Swiss Reinsurance America Corporation, New York, NY.....	Oct. 9
EBI Indemnity Company, of Farmington, CT, Design Professionals Insurance Company, of Farmington, CT and Employee Benefits Insurance Company, of Farmington, CT into Security Insurance Company of Hartford, Farmington, CT .....	Oct. 15
Allcity Insurance Company, of Brooklyn, NY into Empire Insurance Company, Brooklyn, NY.....	Dec. 23
Crum and Forster Indemnity Company, New York, NY into BNM Indemnity Indemnity Company, Wilmington, DE .....	Dec. 23
United States Fire Insurance Company into MJR Fire Insurance Company, Wilmington, DE .....	Dec. 23
TIG Insurance Company of New York, of New York, NY into TIG Insurance Company, Martinez, CA .....	Dec. 24
CORPA Reinsurance Company, of New York, NY into Stonebridge Casualty Insurance Company, Columbus, OH.....	Dec. 31

**In Receivership**

Legion Insurance Company, Philadelphia, PA.....	Aug. 22
Fremont Indemnity Company, Glendale, CA.....	Sept. 23
Home Insurance Company, Manchester, NH.....	Sept. 24
Villanova Insurance Company, Philadelphia, PA.....	Nov. 17

**Withdrawn**

Senate Insurance Company, Phoenix, AZ .....	Oct. 20
Merchants and Business Men’s Mutual Insurance Company, Harrisburg, PA.....	Dec. 29

**d. Assessment Co-operative Insurance Companies**

**Amendments to Charters**

Allegany Co-operative Insurance Company, Cuba, NY.....	Apr. 25
Farmers Mutual Insurance Company of Milan, Pine Plains and Stanford, NY.....	May 19
Franklin Fire Insurance Company, Treadwell, NY.....	May 19
Sauquoit Valley Insurance Company, Sauquoit, NY.....	Sept. 5

**Changes of Names**

“Monroe Co-operative Fire Insurance Company” to “Monroe Co-op Insurance Company,” Rochester, NY.....	July 1
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**Conversion**

Monroe Co-operative Fire Insurance Company (from assessment cooperative to advance premium) .....	July 1
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**e. Advance Premium Co-operative Insurance Company**

**Amendments to Charter**

Sterling Insurance Company, Cobleskill, NY.....	Jan. 9
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**f. Title Insurance Company**

**Foreign Company Licensed**

Westcor Land Title Insurance Company, Roseville, CA.....	Jan. 3
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**g. Accredited Reinsurers**

**Recognized**

Aspen Insurance UK Limited, England.....	June 30
Tudor Insurance Company, Keene NH .....	Nov. 7
Southern Insurance Company of Virginia, Glen Allen, VA.....	Dec. 31
Vantage Casualty Insurance Company, Indianapolis, IN .....	Dec. 31

**Changes of Name**

“AXA Reassurance S.A.” to “AXA RE (U.S. Reinsurance Trust),” Paris, France.....	Aug. 8
“Clarica Life Reinsurance Company” to “Generali USA Life Reassurance Company,” Lansing, MI.....	Sept. 29
“Lyndon Life Insurance Company” to “XL Life Insurance and Annuity Company,” St. Louis, MO.....	Dec. 12

**Withdrawn**

Central National Life Insurance Company of Omaha, Wilmington, DE.....	Apr. 7
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**Merger Agreement Filed**

Clarica Life Insurance Company (US Branch) into Sun Life Assurance Company of Canada, Ontario, Canada.....	Feb. 20
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**h. Charitable Annuity Societies**

**Permits Issued**

General Board of Global Ministries of the United Methodist Church, New York, NY.....	Mar. 21
The New York Botanical Garden, Bronx, NY.....	Apr. 10
World Literature Crusade, Colorado Springs, CO.....	Apr. 16
The Jewish Museum, New York, NY.....	Apr. 25

People for the Ethical Treatment of Animals, Inc., Norfolk, VA.....	Apr. 30
Cooper Union for the Advancement of Science and Art, New York, NY.....	May 9
The Lutheran University Association, Inc., Valparaiso, IN.....	May 9
The University of Connecticut Foundation, Incorporated, Storrs, CT.....	May 22
The Voice of Prophecy, Simi Valley, CA.....	June 13
Defenders of Wildlife, Washington, DC.....	July 16
The Student Conservation Association, Inc., New York, NY.....	July 17
Habitat for Humanity, Inc., Americus, GA.....	Aug. 11
The Endowment Association of the College of William and Mary in Virginia, Incorporated, Williamsburgh, VA.....	Sept. 11
Consumers Union of United State, Inc., Yonkers, NY.....	Oct. 8
Teachers College, Columbia University, New York, NY.....	Nov. 17
Wycliffe Bible Translation, Orlando, FL.....	Nov. 17
Albany Medical Center Foundation, Inc., Albany, NY.....	Nov. 20
ProLiteracy Worldwide, Syracuse, NY.....	Nov. 20
Manhattan College, Bronx, NY.....	Nov. 21
Best Friends Animal Society, Kanab, UT.....	Dec. 2
Bridgewater College, Bridgewater, VA.....	Dec. 10
General Board of Church of the Nazarene, Kansas City, MO.....	Dec. 19
<b>Change of Name</b>	
“National Jewish Center for Immunology and Respiratory Medicine” to “National Jewish Medical and Research Center,” Denver, CO .....	Aug. 12
<b>Permits No Longer Required</b>	
Polytechnic University, Brooklyn, NY.....	Oct. 6
Planned Parenthood of New York City, Inc., New York, NY.....	Oct. 31
<b>Merger Agreement Filed</b>	
World Division of the General Board of Global Ministries into .....	Mar. 25
<b>Withdrawn</b>	
American Slovenian Catholic Union (K.S.K.J.), Joliet, IL .....	Mar. 1
<b>i. Fraternal Benefit Society</b>	
<b>Change of Name</b>	
“Croatian Catholic Union of USA and Canada” to “Croatian Catholic Union of USA,” Hobart, IN.....	Oct. 9
<b>Merger Agreement Filed</b>	
Lithuanian Catholic Alliance into Ladies Pennsylvania Slovak Catholic Union (survivor not licensed in NYS).....	Oct. 22
<b>j. Municipal Cooperative Health Benefit Plan</b>	
<b>Authorized</b>	
State-Wide Schools Cooperative Health Plan, Albany, NY.....	Sept. 29
<b>k. Financial Guaranty Companies</b>	
<b>Domestic Company Incorporated</b>	
ACE Capital Insurance Company, County of New York.....	Mar. 20
<b>Restated Charter</b>	
Financial Security Assurance, New York, NY .....	June 20
<b>Amendment to Charter</b>	
Radian Asset Assurance Inc., Armonk, NY.....	Aug. 25
<b>Change in Capital</b>	
Financial Security Assurance Inc., New York, NY (from \$15,000,000 to \$20,000,000).....	June 20
Radian Asset Assurance Inc., Armonk, NY (from \$15,000,000 to \$19,000,080).....	Aug. 25

**I. Mortgage Guaranty Company**

**Licensed**

Triad Guaranty Insurance Corporation, Lombard, IL..... Aug. 28

**m. Captive Insurance Companies**

**Domestic Companies Incorporated**

Midtown Insurance Company, County of New York..... May 15

Cooper Captive, Inc., County of New York..... June 12

Sammaranick Insurance Corporation, County of New York..... July 1

Haversine Insurance Company, County of New York..... Oct. 3

Ecclesia Assurance Company, County of Nassau..... Dec. 10

Clove Park Insurance Company, County of New York..... Dec. 12

Customer Asset Protection Company, County of New York..... Dec. 16

Ports Insurance Company, Inc., County of New York..... Dec. 18

Concord Insurance Limited, County of New York..... Dec. 23

Premier Management Insurance, Inc., Count of Suffolk..... Dec. 23

Black Ridge Insurance Corp., County of Saratoga..... Dec. 30

PXC Inc., County of Monroe..... Dec. 30

Bolton Insurance Company, County of New York..... Dec. 31

**Captive Companies Licensed**

GVP Risk Management Insurance, Incorporated, Purchase, NY..... Jan. 1

Sammaranick Insurance Corporation, New York, NY..... July 3

Cooper Captive, Inc., New York, NY..... July 8

Midtown Insurance Company, New York, NY..... July 10

Haversine Insurance Company, New York, NY..... Oct. 17

Clove Park Insurance Company, New York, NY..... Dec. 12

Ports Insurance Company, Inc., New York, NY..... Dec. 23

Concord Insurance Limited, New York, NY..... Dec. 24

Bolton Insurance Company, New York, NY..... Dec. 31

Customer Asset Protection Company, New York, NY..... Dec. 31

Premier Management Insurance, Inc., Islandia, NY..... Dec. 31

PXC Inc., Rochester, NY ..... Dec. 31

**n. CAPCO Company**

**Domestic Company Certified**

Enhanced New York Issuer, LLC, New York, NY..... Jan. 3

**o. Welfare Trust Fund**

**Registered**

Erie 1BOCES Health Benefits Plan Trust, West Seneca, NY..... July 1

**p. Reciprocal Insurer**

**Domestic Company Incorporated**

Adirondack Insurance Exchange, Buffalo, NY..... July 3

**q. Retirement System**

**Amendment to Charter**

College Retirement Equities Fund, New York, NY..... Feb. 12

#### **4. Examination Reports Filed During 2003**

<b>NAME OF COMPANY</b>	<b>As of</b>	<b>Date Filed</b>
<b>Domestic Life Insurance Companies</b>		
Allianz Life Insurance Company of New York	12/31/01	8/7/03
American Life Insurance Company of New York	12/31/01	6/18/03
American Mayflower Life Insurance Company of New York	12/31/01	8/4/03
Aviva Life Insurance Company of New York	12/31/01	6/9/03
Columbian Family Life Insurance Company	12/31/01	2/11/03
Combined Life Insurance Company of New York	12/31/02	4/10/03
Farmers and Traders Life Insurance Company	12/31/01	5/19/03
First Berkshire Hathaway Life Insurance Company	On Organization	3/14/03
First Citicorp Life Insurance Company	12/31/01	9/19/03
First Great-West Life & Annuity Insurance Company	10/28/02	8/20/03
First Rehabilitation Life Insurance Company of America	2/28/03	5/2/03
First SAFECO National Life Insurance Company of New York	12/31/01	7/8/03
First UNUM Life Insurance Company	1/3/03	3/19/03
Guardian Life Insurance Company of America	12/31/02	3/24/03
Jefferson Pilot LifeAmerica Insurance Company	12/31/01	10/31/03
Lincoln Life & Annuity Company of New York	12/31/01	10/3/03
ML Life Insurance Company of New York	12/31/01	12/15/03
Reliastar Life Insurance Company of New York	12/31/02	3/21/03
Manhattan Life Insurance Company	12/31/02	8/14/03
Manufacturers Life Insurance Company of New York	12/31/01	8/7/03
Metropolitan Life Insurance Company	12/31/02	6/24/03
Mutual of America Life Insurance Company	12/31/01	5/21/03
National Integrity Life Insurance Company	12/31/01	6/24/03
New York Life Insurance Company	12/31/02	3/4/03
Presidential Life Insurance Company	12/31/00	3/25/03
Presidential Life Insurance Company	12/31/02	1/3/03
SBLI USA Mutual Life Insurance Company, Inc.	12/31/02	8/7/03
Standard Security Life Insurance Company of New York	12/31/02	2/5/03
Teachers Insurance and Annuity Association of America	12/31/02	3/11/03
Transamerica Financial Life Insurance Company	5/19/03	5/19/03
Transamerica Life Insurance Company of New York	12/31/01	6/18/03
William Penn Life Insurance Company of New York	12/31/01	9/5/03
XL Insurance Company of New York, Inc.	12/31/99	8/18/03
<b>Domestic Accident and Health Insurance Companies</b>		
Dental Insurance Company of America	12/31/00	1/3/03
Empire HealthChoice Assurance, Inc.	12/31/99	6/5/03
Empire HealthChoice Assurance, Inc.	7/26/03	6/5/03
Health Net Insurance of New York, Inc.	12/31/01	7/22/03
HIP Insurance Company of New York	Market Conduct	12/30/03
The PerfectHealth Insurance Company	12/31/00	3/10/03
<b>Domestic Property and Casualty Insurance Companies</b>		
Alea North America Insurance Company	12/31/01	2/5/03
AXA Art Insurance Corporation	12/31/02	12/1/03
AXIS Reinsurance Company	12/31/01	12/2/03
Crum & Forster Indemnity Company	12/31/00	5/14/03
Farm Family Casualty Insurance Company	12/31/00	4/9/03
Financial Structures Insurance Company	12/31/01	11/19/03
Folksamerica Reinsurance Company	12/31/00	7/30/03

<b>NAME OF COMPANY</b>	<b>As of</b>	<b>Date Filed</b>
Great American Insurance Company	12/31/01	7/28/03
Hudson Specialty Insurance Company	12/31/98	1/15/03
ICM Insurance Company	12/31/01	10/31/03
Insurance Corporation of New York	12/31/99	2/14/03
Marine Indemnity Insurance Company of America	12/31/01	11/19/03
Mitsui Sumitomo Insurance Company of America	12/31/01	12/5/03
NIPPONKOA Insurance Company, Limited	12/31/01	4/14/03
Partner Reinsurance Company of the U.S.	12/31/00	3/28/03
PartnerRe Insurance Company of New York	12/31/00	3/28/03
ReCor Insurance Company Inc.	12/31/99	2/14/03
Sea Insurance Company of America	12/31/01	12/10/03
Stone Harbor Insurance Company	12/31/01	6/30/03
TM Casualty Insurance Company	12/31/00	10/28/03
Tokio Marine and Fire Insurance Company, Limited	12/31/00	10/28/03
Trans Pacific Insurance Company	12/31/00	10/28/03
Transcontinental Insurance Company	12/31/98	6/18/03
United Concordia Insurance Company of New York	12/31/01	4/29/03
United States Fire Insurance Company	12/31/98	2/6/03
Unitrin Advantage Insurance Company	12/31/02	8/7/03
Unitrin Preferred Insurance Company	12/31/98	1/15/03
USAgencies Direct Insurance Company	12/31/01	12/2/03
United Farm Family Insurance Company	12/31/00	4/9/03
Unitrin Auto and Home Insurance Company	12/31/98	1/15/03
Vigilant Insurance Company	12/31/01	11/18/03
XL Reinsurance America Inc.	12/31/99	8/18/03

**Assessment Co-operative P&C Insurance Companies**

Allegany Co-Insurance Company	12/31/01	3/14/03
Broome Co-Operative Insurance Company	12/31/02	7/17/03
Genesee Patrons Cooperative Insurance Company	12/31/02	12/30/03
Madison Mutual Insurance Company	12/31/01	2/7/03
Midstate Mutual Insurance Company	12/31/02	11/24/03
Salem Mutual Town Fire Insurance company	12/31/02	11/14/03
Sauquoit Valley Insurance Company	12/31/01	4/30/03

**Advance Premium Co-operative P&C Insurance Companies**

Associated Mutual Insurance Cooperative	12/31/01	9/4/03
Commercial Mutual Insurance Company	12/31/01	11/4/03
Monroe Co-op Insurance Company	12/31/01	4/14/03
Preferred Mutual Insurance Company	12/31/01	2/7/03

**Financial Guaranty Companies**

Capital Markets Assurance Corporation	12/31/99	11/4/03
MBIA Assurance Corporation	12/31/99	9/17/03

**Title Insurance Companies**

ACE Capital Title Reinsurance Company	12/31/02	11/10/03
First American Title Insurance Company of New York	12/31/00	5/13/03
Monroe Title Insurance Corporation	12/31/01	9/19/03



<b>NAME OF COMPANY</b>	<b>As of</b>	<b>Date Filed</b>
<b>Mortgage Guaranty Insurer</b>		
ACE Capital Mortgage Reinsurance Company	12/31/96	2/28/03
<b>Reciprocal Insurer</b>		
Adirondack Insurance Exchange	On Organization	8/7/03
<b>Charitable Annuity Societies</b>		
Africa Inland Mission International, Inc.		
American Jewish Committee	12/31/00	9/25/03
Canterbury Woods	12/31/01	10/18/03
Catholic Medical Mission Board, Inc.	12/31/01	8/22/03
Friars of the Atonement, Inc.	12/31/00	12/10/03
Glen Arden Inc.	12/31/00	2/7/03
Planned Parenthood of New York City, Inc.	12/31/00	9/25/03
Summit at Brighton	12/31/00	2/7/03
Syracuse University	6/30/00	8/22/03
University of Rochester	12/31/00	8/22/03
Women's American ORT, Inc.	12/31/01	12/10/03
<b>Health Maintenance Corporations</b>		
Americhoice of New York, Inc.	12/31/00	1/31/03
CIGNA Healthcare of New York, Inc.	12/31/00	8/11/03
Empire HealthChoice HMO, Inc.	12/31/99	6/5/03
Empire HealthChoice HMO, Inc.	7/26/03	6/5/03
Health Net of New York, Inc.	12/31/01	7/22/03
MDNY Healthcare, Inc.	12/31/02	7/8/03
MVP Health Plan, Inc.	Market Conduct	4/9/03
Managed Health, Inc.	12/31/01	8/22/03
Unitedhealthcare of New York, Inc.	Market Conduct	10/21/03
<b>Non-Profit Corporations</b>		
MVP Health Services Corp.	Market Conduct	7/14/03
<b>Viatical Settlement Companies</b>		
Life Settlements International, LLC	12/31/01	1/13/03
<b>Municipal Cooperative Health Benefit Plans</b>		
State-Wide Schools Cooperative Health Plan, Albany, NY	On Organization	9/30/03
Putnam/Northern Westchester Health Benefits Consortium	12/31/01	12/5/03
<b>Miscellaneous</b>		
Excess Line Association of New York	12/31/95	4/11/03
Excess Line Association of New York	12/31/99	4/11/03
<b>Welfare Trust Funds</b>		
Amalgamated Transit Union, Division 726, AFL-CIO NYC Transit Authority Health Benefit Trust	12/31/01	9/25/03

## 5. Rehabilitation, Liquidation, Ancillary Receivership and Conservation Proceedings

The insurance entities under the Liquidation Bureau's jurisdiction during 2003 were as follows:

### Rehabilitations

**Commenced:** None

**Continued:** Executive Life Insurance Company of New York  
Frontier Insurance Company

**Completed:** None

### Liquidations

**Continued:** American Agents Insurance Company  
American Consumer Insurance Company  
American Fidelity Fire Insurance Company  
Capital Mutual Insurance Company  
Consolidated Mutual Insurance Company  
Contractors Casualty and Surety Company  
Cosmopolitan Mutual Insurance Company  
First Central Insurance Company  
Galaxy Insurance Company  
Group Council Mutual Insurance Company  
Home Mutual Insurance Company of Binghamton, NY  
Horizon Insurance Company  
HUM Healthcare Systems, Inc.  
Ideal Mutual Insurance Company  
Long Island Insurance Company  
Medical Malpractice Insurance Association  
Midland Insurance Company  
Midland Property and Casualty Insurance Company  
Nassau Insurance Company  
Nem Re-Insurance Corporation  
New York Merchant Bakers Insurance Company  
New York Surety Company  
North Medical Community Health Plan, Inc.  
Northumberland General Insurance Company (U.S. Branch)  
Transtate Insurance Company  
Union Indemnity Insurance Company of New York  
United Community Insurance Company  
U. S. Capital Insurance Company  
Whiting National Insurance Company

**Closures:** Dominion Insurance Company of America  
New York Professional Liability Insurance Company  
Pan Atlantic Investors, Ltd.  
Sage Life Assurance Company of New York

**Ancillary Receiverships** - In the case of a New York-licensed foreign (*i.e.*, not domiciled in New York) insurer becomes insolvent, the Superintendent of Insurance must apply to the court to establish an Ancillary Receivership to enable the New York Department (and the Superintendent as Ancillary Receiver) to trigger the New York Security Fund to pay Security Fund-covered claims.

**Commenced:** Fremont Indemnity Company  
Legion Insurance Company  
The Connecticut Surety Company  
The Home Insurance Company  
Villanova Insurance Company

**Continued:** Acceleration National Insurance Company  
American Druggists' Insurance Company  
American Eagle Insurance Company  
American Mutual Insurance Company of Boston  
American Mutual Liability Insurance Company  
Amwest Surety Insurance Company  
Commercial Compensation Casualty Company  
Far West Insurance Company  
Frontier Pacific Insurance Company  
Credit General Insurance Company  
Integrity Insurance Company  
LMI Insurance Company  
MCA Insurance Company  
Mission Insurance Company  
Phico Insurance Company  
Reliance Insurance Company  
Transit Casualty Company  
Western Employers Insurance Company

**Closures:** Mission National Insurance Company  
The Great Western "Marine" Insurance Company

**Conservations** - All foreign or alien (*i.e.*, not domiciled in New York) insurers not licensed in New York but doing business on an excess and surplus lines basis must establish a trust fund in New York. If such an insurer becomes insolvent, the Insurance Department must apply to the court in order for the Insurance Department (and the Superintendent as Conservator) to conserve the assets of that trust fund for the benefit of all U.S. policyholders.

**Commenced:** Legion Indemnity Insurance Company

**Continued:** Alpine Insurance Company  
FAI General Insurance Company, Ltd.  
HIH Casualty and General Insurance, Ltd.  
Municipal General Insurance, Ltd.  
National Colonial Insurance Company  
Northumberland General Insurance Company – 41 Trust  
Pacific and General Insurance Company  
Reliance Insurance Company of Illinois  
United Capital Insurance Company

**Closures:** Alliance General Insurance Company

### **Insurance Companies**

During 2003, six proceedings commenced while 63 insurance company proceedings continued. Seven proceedings were completed and closed. Two of these closures were not listed as open in the 2002 report. The 64 active insurance company proceedings were classified as follows:

2	Rehabilitations
29	Liquidations
23	Ancillary Receiverships
10	Conservations

As of December 31, 2003, assets, liabilities and current insolvency of the 64 active insurance company proceedings, taken as a group, were as follows:

Total Assets	-	\$3,692, 618,430
Total Liabilities -		\$7,688, 299,004
Current Insolvency -		\$3,995, 680,574

During 2003, cash payments received from the New York State security funds on allowed claims totaled \$222,511,000 for claims, \$5,204,000 for return premiums, and \$71,022,000 for expenses. Payments by other states' guaranty funds are excluded from these totals.

During 2003, cash distributions paid to the New York State security funds from domestic estates totaled \$90,133,878. Distributions to the New York State security funds from other states' guaranty funds totaled \$6,916,898 for a combined total \$97,050,776.

### **Fraternal Benefit Societies**

As of December 31, 2003, there were 167 pending liquidation proceedings. During 2003, 17 proceedings were terminated and 10 proceedings were commenced. The remaining assets of the 174 liquidation proceedings totaled \$1,005,517. During 2003, assets of \$313,439 were distributed to former members of fraternal benefit societies.

6. Insurance Department Receipts and Expenditures

**Table 69**  
**DEPARTMENT RECEIPTS**  
**Fiscal Year Ended March 31, 2003**

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<b>Taxes Collected Under the New York State Insurance Law:</b>	
Taxes collected by reason of retaliation under Section 1112	\$14,067,354.31
Excess Line - Section 2118	38,684,242.79
Organization Tax - Section 180, Tax Law	<u>20,674.52</u>
<b>Total taxes collected</b>	<b>\$52,772,271.62*</b>
 <b>Fees Collected Under Section 1112 of the NYS Insurance Law:</b>	
Filing Annual Statements and Certificates of Authority to Companies	\$159,013.25
Agents' Certificates of Authority	448,967.18
Admission Fees	<u>46,946.00</u>
<b>Total</b>	<b>\$654,926.43</b>
 <b>Licensing and Accreditation Fees:</b>	
Agents' Licenses - Section 2103	\$4,036,957.23
Adjusters' Licenses - Section 2108	749,241.00
Brokers' Licenses - Section 2104 and 2105	2,194,444.11
Bail Bond Agents' Licenses - Section 6802	4,350.00
Insurance Consultants' Licenses - Section 2107	35,015.00
Reinsurance Intermediary Licenses - Section 2106	144,800.00
Special Risk Licenses - Section 6302	188,000.00
Accredited Reinsurers - Section 107(a)2	141,010.00
Limited License	1,850.00
Duplicate License Fees	29,520.00
Viatical Licenses	34,000.00
Continuing Education Provider Fee	<u>133,280.00</u>
<b>Total</b>	<b>\$7,692,467.34</b>
 <b>Assessments and Reimbursement of Department Expenses:</b>	
Section 313 - Company Examinations	\$9,734,179.58
Section 332 - Assessment	118,425,543.76
Section 9104/9105 - Tax Distribution	109,869.75
Administrative Expense Security Funds	66,291.00
Reimbursement of Expenses - Other Bureaus	<u>18.19</u>
<b>Total</b>	<b>\$128,335,902.28</b>

(table continues on next page)

**Table 69**  
**DEPARTMENT RECEIPTS**  
**Fiscal Year Ended March 31, 2003**  
*(continued)*

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**Other Fees and Receipts:**

Regulation 68 - Health Services Arbitration Expenses	\$1,265.00
Section 9107 - Certification & Filing Fees	115,966.75
Section 9108 - Fire Insurance Fee	11,980,922.86
Section 1212 - Summons and Complaints	1,119,180.00
Fines and Penalties	5,402,180.95
FOIL Requests	25,812.76
Miscellaneous	1,482.75
Regulation 134	1,800.00
Motor Vehicle Law Enforcement Fee	12,334,630.43
Continuing Education Filing Fees	272,295.00
CAPCO Application Fees	5,000.00
Section 7902 – Service Contract Registration Fee	50,750.00
<b>Total</b>	<b><u>\$31,311,286.50</u></b>

**Total Departmental Receipts** **\$220,766,854.17**

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\*This amount is in addition to the \$704 million collected by the Department of Taxation and Finance under Article 33 of the Tax Law.

**Table 70**  
**INSURANCE TAX RECEIPTS\***  
**(in millions)**

<b>Fiscal Year</b>	<b>Net</b>
1998-99	\$673.0
1999-00	589.0
2000-01	584.0
2001-02	633.0
2002-03	704.0

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\*Collected by the Department of Taxation and Finance under Article 33 of the Tax Law.  
Source: State of New York, Annual Budget Message, 2004-05

**Table 71**  
**DEPARTMENT EXPENDITURES**  
**Fiscal Year Ended March 31, 2003**  
**Paid in the First Instance from Appropriations**

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<b>Personal Service</b>	
Employee salaries	<b>\$56,689,932.78</b>
<b>Maintenance and Operation</b>	
General office supplies	\$726,786.15
Travel expense	2,286,002.12
Rental equipment	7,117.58
Repair and maintenance of equipment	234,900.88
Real estate rental	6,204,225.91
Postage and shipping	508,897.41
Printing	194,852.85
Telephone	1,438,701.15
Miscellaneous contractual services	6,296,103.38
OFT Computer	129,116.19
OGS Interagency courier	19,520.33
Equipment	4,134,993.13
Employee fringe benefits/indirect cost	<u>20,773,068.55</u>
<b>Total maintenance</b>	<b>\$42,954,285.63</b>
Total expenditures from Special Revenue Appropriations for fiscal year ended 3/31/03	<b>\$99,644,218.41</b>
<b>Total Department receipts for fiscal year ended 3/31/03</b>	<b>\$220,766,854.17</b>
Excess of Department receipts over Department expenditures	<b>\$121,122,635.76</b>

7. Security Funds Income and Disbursements

**Table 72**  
**PROPERTY/CASUALTY INSURANCE SECURITY FUND<sup>1</sup>**  
**Income and Disbursements**  
**April 1, 2003**

	<b>To and Including 3/31/02</b>	<b>4/1/02 to 3/31/03</b>	<b>As of 4/1/03</b>
Paid into the Fund	\$ 680,008,368.46	\$ 97,508,089.22	\$ 777,516,457.68
Interest income - net	440,786,575.59	3,049,246.28	443,835,821.87
Recoveries from companies in liquidation	534,760,801.48	77,029,932.05	611,790,733.53
General Fund Reimbursement	128,446,513.00	1,994,040.00	130,440,553.00
<b>Total</b>	<b>\$1,784,002,258.53</b>	<b>\$ 179,581,307.55</b>	<b>\$1,963,583,566.08</b>
Less disbursements:			
Administrative expenses	\$ 1,354,904.87	\$ 100,582.72	\$ 1,455,487.59
Awards and expenses of companies in liquidation	1,519,651,155.40	93,734,708.75	1,613,385,864.15
Refunds and credits to companies	44,442,985.54	-0-	44,442,985.54
Transfers to other funds <sup>2</sup>	144,562,280.96	25,000,000.00	169,562,280.96
<b>Total</b>	<b>\$1,710,011,326.77</b>	<b>\$ 118,835,291.47</b>	<b>\$1,828,846,618.24</b>
<b>Total of Fund</b>	<b>\$ 73,990,931.76</b>	<b>\$ 60,746,016.08</b>	<b>\$ 134,736,947.84</b>
Cash in bank and U.S. securities (at par)	<b>\$ 73,990,931.76</b>		<b>\$ 134,736,947.84</b>
<b>Total of Fund</b>	<b>\$ 73,990,931.76</b>		<b>\$ 134,736,947.84</b>

<sup>1</sup> Monies collected under Sections 7602 and 7603 of the Insurance Law

<sup>2</sup> State Purpose Fund - \$47,562,280.96 + \$87,000,000 per Chapter 55 of the Laws of 1982 and \$35,000,000 transferred to the Public Motor Vehicle Liability Security Fund.



**Table 73**  
**PUBLIC MOTOR VEHICLE LIABILITY SECURITY FUND<sup>1</sup>**  
**Income and Disbursements**  
**April 1, 2003**

	<b>To and Including 3/31/02</b>	<b>4/1/02 to 3/31/03</b>	<b>As of 4/1/03</b>
Paid into the Fund	\$ 97,296,430.60	\$ 8,280,765.25	\$ 105,577,195.85
Interest income - net	27,716,516.22	113,308.13	27,829,824.35
Recoveries from companies in liquidation	49,771,764.57	27,583,074.25	77,354,838.82
Transfers	10,000,000.00	25,000,000.00	35,000,000.00
<b>Total</b>	<b>\$ 184,784,711.39</b>	<b>\$ 60,977,147.63</b>	<b>\$245,761,859.02</b>
Less disbursements:			
Administrative expenses	\$ 494,702.29	\$ 15,876.24	\$ 510,578.53
Awards and expenses of companies in liquidation	169,368,295.56	58,939,699.26	228,307,994.82
Refunds to companies	13,583,306.98	-0-	13,583,306.98
<b>Total</b>	<b>\$ 183,446,304.83</b>	<b>\$ 58,955,575.50</b>	<b>\$ 242,401,880.33</b>
<b>Total of Fund</b>	<b>\$ 1,338,406.56</b>	<b>\$ 2,021,572.13</b>	<b>\$ 3,359,978.69</b>
Cash in bank and U.S. securities (at par)	<b>\$ 1,338,406.56</b>		<b>\$ 3,359,978.69</b>
<b>Total of Fund</b>	<b>\$ 1,338,406.56</b>		<b>\$ 3,359,978.69</b>

<sup>1</sup> Monies collected under Section 7601 of the Insurance Law from companies writing bonds and policies carrying coverages set forth in Section 370 of the Vehicle and Traffic Law.

**Table 74**  
**WORKERS' COMPENSATION SECURITY FUND<sup>1</sup>**  
**Income and Disbursements**  
**April 1, 2003**

	<b>To and Including 3/31/02</b>	<b>4/1/02 to 3/31/03</b>	<b>As of 4/1/03</b>
Paid into the Fund	\$ 136,151,213.61	\$ 18,864,774.35	\$155,015,987.96
Interest income - net	118,196,432.83	145,837.53	118,342,270.36
Recoveries from companies in liquidation	104,889,315.41	10,508,753.15	115,398,068.56
<b>Total</b>	<b>\$ 359,236,961.85</b>	<b>\$ 29,519,365.03</b>	<b>\$ 388,756,326.88</b>
Less disbursements:			
Administrative expenses	\$ 854,495.27	\$ 20,887.30	\$ 875,382.57
Awards and expenses of companies in liquidation	274,966,588.09	30,627,312.87	305,593,900.96
Refunds to companies	27,381,071.74	-0-	27,381,071.74
Transfers <sup>2</sup>	52,000,000.00	(15,000,000.00)	37,000,000.00
<b>Total</b>	<b>\$ 355,202,155.10</b>	<b>\$ 15,648,200.17</b>	<b>\$ 370,850,355.27</b>
<b>Total of Fund</b>	<b>\$ 4,034,806.75</b>	<b>\$ 13,871,164.86</b>	<b>\$ 17,905,971.61</b>
Cash in bank and U.S. securities (at par)	<b>\$ 4,034,806.75</b>		<b>\$ 17,905,971.61</b>
<b>Total of Fund</b>	<b>\$ 4,034,806.75</b>		<b>\$ 17,905,971.61</b>

<sup>1</sup> On March 1, 1990, the Stock Workers' Compensation and Mutual Workers' Compensation Security Funds were consolidated into a single fund known as the Workers' Compensation Security Fund

<sup>2</sup> Payment to the Workers' Compensation Security Fund pursuant to Chapter 55 of the Laws of 1982

**B. Table 75  
DEPARTMENT STAFFING  
NEW YORK STATE INSURANCE DEPARTMENT  
Number of Filled Positions by Bureau (as of March 2004)**

Bureau	Examiners	Attorneys	Actuaries	Other Professionals	Investigators	Support Staff	Total
<b>New York City Office:</b>							
Executive	2			9		4	15
Life	93		10	3		8	114
Health	47		5			3	55
Administration*	1			7		8	16
Consumer Services	30			1		17	48
Frauds	3			1	28	6	38
OGC		24		4		6	34
Public Affairs/Research				2		2	4
Property	177		21			21	219
Systems	5			17		5	27
Capital Markets				6		2	8
Examiner Pool	39						39
<b>NYC Total</b>	<b>397</b>	<b>24</b>	<b>36</b>	<b>50</b>	<b>28</b>	<b>82</b>	<b>617</b>
<b>Albany Office:</b>							
Executive				10		2	12
Life		10	19			6	35
Health	2	19	6			6	33
Administration*				12		20	32
Consumer Services	34			1		13	48
Frauds					6		6
OGC		6				1	7
Property	10					1	11
Systems				23		12	35
Licensing	2			6		33	41
<b>Albany Total</b>	<b>48</b>	<b>35</b>	<b>25</b>	<b>52</b>	<b>6</b>	<b>94</b>	<b>260</b>
<b>ALL OTHER</b>							
<b>Buffalo Office:</b>							
Health	1	1					2
Consumer Services	2					1	3
Frauds					3		3
<b>Mineola Office:</b>							
Consumer Services	3					1	4
Frauds					7		7
<b>Oneonta Office:</b>							
					3		3
<b>Rochester Office:</b>							
					2		2
<b>Syracuse Office:</b>							
					2		2
<b>All Other Total</b>	<b>6</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>17</b>	<b>2</b>	<b>26</b>
<b>Department Total</b>	<b>451</b>	<b>60</b>	<b>61</b>	<b>102</b>	<b>51</b>	<b>178</b>	<b>903</b>

\*Includes HRM & Office Services

**Note:** Table does not include two student assistants assigned to various bureaus during the year

## C. NEW YORK STATE INSURANCE DEPARTMENT

### Publications as of 5/15/2004

#### Consumer Guides, Annual Reports, Directories, etc.

##### Automobile/Livery Guides

- Annual Ranking of Automobile Insurance Complaints
- Consumers Shopping Guide to Automobile Insurance (upstate and downstate editions)
- Handbook for Livery Drivers (English & Spanish)

##### Frauds Guides

- Annual Frauds Bureau Report
- Welcome to the NYS Insurance Department Frauds Bureau – A Consumer Brochure (*online only*)

##### Health Guides

- External Review: Your Rights as a Health Care Consumer
- External Appeals Program Annual Report
- Healthy NY Guide (English & Spanish)
- Insurance Policies Covering Long Term Care Services in NYS
- New York Consumer Guide to Health Insurers (ranks complaints from HMOs, commercial health insurers, and nonprofit indemnity health insurers; also includes grievances and utilization review appeals & performance evaluations)
- New York Consumer Guide to HMOs (an interactive guide is also available online)

##### Homeowners/Tenants Guides

- Coastal Homes and Insurance: A Guide for New York Homeowners
- Consumers Shopping Guide for Homeowners' and Tenants Insurance (upstate and downstate editions)

##### Life Guides

- Consumers Shopping Guide for Life Insurance (abbreviated Web guide also available)
- Policyholder Protection Provided by the Life Insurance Company Guaranty Corporation of New York

##### Miscellaneous Guides & Publications

- A Consumer's Guide to the New York State Insurance Department
- Annual Report to the Legislature
- Directory of Regulated Insurance Companies
- Statistical Tables from Annual Statements
  - Volume 1, Property/Casualty, Financial Guaranty, Mortgage Guaranty and Assessment Cooperative Companies
  - Volume 2, Life and A & H Companies, and Fraternal Benefit Societies
  - Volume 3, Title Companies, HMOs, Nonprofit Health Insurers

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**Note:** Copies of listed publications are available free of charge to New York State residents (limit: one per resident).