

**REPORT ON EXAMINATION**

**OF**

**GLEN ARDEN, INC.**

**AS OF**

**DECEMBER 31, 2002**

**DATE OF REPORT**

**JUNE 8, 2004**

**EXAMINER**

**ANDRE BLACKMAN**

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

June 8, 2004

Honorable Gregory Serio  
Superintendent of Insurance  
Albany, NY 12257

Sir:

Pursuant to the requirements of the New York Insurance Law and in compliance with the instructions contained in Appointment Number 22145, dated February 3, 2004 annexed hereto, I have made an examination of the condition and affairs of Glen Arden, Inc. as of December 31, 2002 and submit the following report thereon. Glen Arden, Inc. is a Continuing Care Retirement Community licensed pursuant to the provisions of Article 46 of the Public Health Law (PHL).

Wherever the designations "the Community" appear herein, without qualification, they should be understood to indicate Glen Arden, Inc. Wherever the designations "Elant" or "the affiliate" appear herein, without qualification, they should be understood to mean the former Arden Hill Senior Health System, the sole corporate member of Glen Arden Inc.

The examination was conducted at the home office of Glen Arden, Inc. at 214 Harriman Drive, Goshen, New York 10924.

As a result of this examination, which incorporated a review of the Community's revised actuarial balance sheet submitted in July 2003, the Community's minimum reserve requirement, as determined using generally accepted actuarial standards and applying statutory requirements, was impaired in the amount of \$8,964,000.

## **1. SCOPE OF THE EXAMINATION**

The previous examination was conducted as of December 31, 2000. This examination covered the two-year period from January 1, 2001 through December 31, 2002. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

The examination comprised a verification of assets, liabilities, and change in surplus as of December 31, 2002 in accordance with Generally Accepted Accounting Principles (GAAP), as modified by the Department pursuant to Insurance Department Regulation 140 (11 NYCRR 350), a review of income and disbursements deemed necessary to accomplish such verification, and utilized to the extent considered appropriate, work performed by the Community's independent certified public accountants. A review was also made of the following items:

- Community documents
- Compliance with the By-laws
- Contracts, agreements, and forms filing
- Computer systems, rates, and marketing
- Occupancy levels
- Update to "Plan to remove impairment"

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

## **2. EXECUTIVE SUMMARY**

As a result of this examination, Glen Arden's minimum reserve requirement was impaired in the amount of \$8,964,000 as of December 31, 2002. The Community is operating under a Department approved plan to resolve its actuarial reserve deficiency and restore its minimum surplus, as required by Department Regulation 140 (11 NYCRR 350.8(a)).

The Community's restoration plan includes the addition of a new contract option as described in this report, increased monthly fees and the conversion of independent living units into enriched housing units. The community has utilized cost control measures to reduce administrative expenses during the years 2000, 2001, and 2002. However, the rate of attrition within the Community and competition with other retirement communities in the region will make it difficult to meet its occupancy goals.

All examination findings are described in the remainder of this report.

### **3. DESCRIPTION OF THE COMMUNITY**

Glen Arden Inc. is a Continuing Care Retirement Community (CCRC), as defined under Article 46 of the New York State Insurance Law. The Community received a Certificate of Authority from the New York State Continuing Care Retirement Community Council, effective September 23, 1994, and a final Certificate of Authority from the New York State Department of Health on December 19, 1994. The Community commenced operations on June 1, 1996. Glen Arden shares affiliation with several entities through common board members as disclosed in the Holding Company section described on page 5.

Glen Arden Inc. is a nonprofit, tax-exempt corporation under 501(c)(3) of the Internal Revenue Code that operates a continuing care retirement community. The community offers a 40-bed skilled nursing center for residents who need full time nursing care and a 163-unit independent living facility. It offers various amenities to its residents and guests; such as dining rooms, hair salon, wellness center, library, post office, bank, private dining rooms, billiards room and guest suites.

#### **A. Management**

Pursuant to the Community's charter and by-laws, management of the Community is vested in a board of directors consisting of not less than eleven or more than fifteen members. As of the examination date, the board of directors was comprised of thirteen members. The board is required to meet once a year for an annual meeting and once each quarter of the year,

but may hold other special meetings as desired. The directors as of December 31, 2002 were as follows:

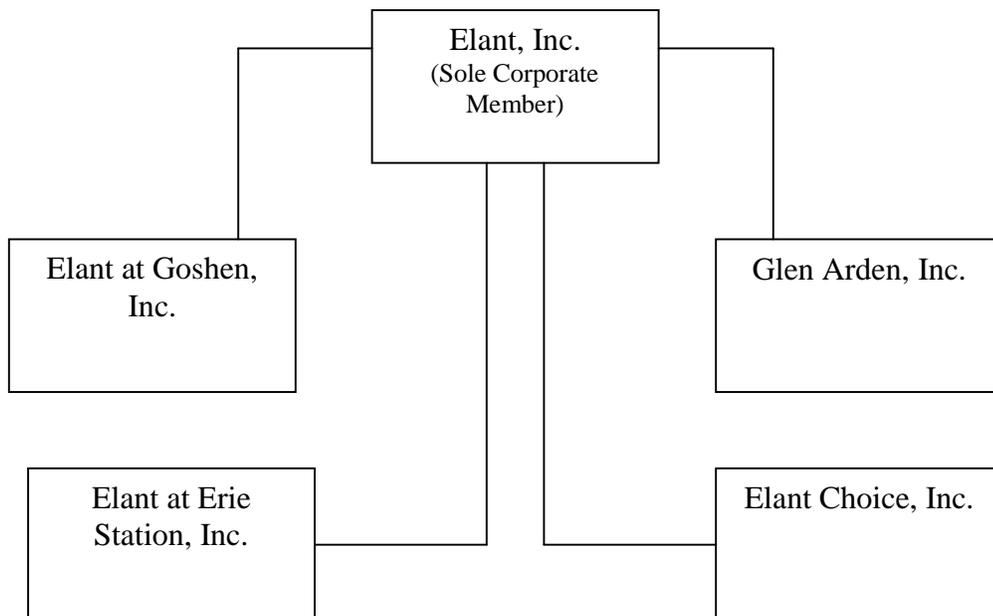
<u>Name</u>	<u>Principal Business Affiliation</u>
Donna G. Case Westtown, NY	President & CEO, Elant, Inc.
Michael H. Donnelly Goshen, NY	Vice-Chairman, Glen Arden, Inc.
John S. Goodreds Goshen, NY	Treasurer, Glen Arden, Inc.
George W. Kohl Goshen, NY	Chairman of the Board, Glen Arden, Inc.
Ciro Attardo, MD Chester, NY	Physician, Horizon Family Medical Group
Ursula M. Degenhardt Goshen, NY	Retired
Clifford E. Kelsey, Jr. Goshen, NY	Secretary, Glen Arden, Inc.
Donna Genovese Chester, NY	Co-owner, ARC Realty Group
William C. Gruber, MD Warwick, NY	Vice President, Wyeth-Ayerst Laboratories
Robert W. Scherreik Bloomingdale, NJ	Senior Vice President and General Manager, McBride Corporate Real Estate
Emma Klimek-Warwick Warwick, NY	Assistant Superintendent, Orange Ulster BOCES
Hal D. Teitelbaum, MD Middletown, NY	Physician and Managing Partner, Crystal Run Health Care System
Stephen Brown Goshen, NY	Independent Certified Public Accountant

The principal officers of the Community as of December 31, 2002 are as follows:

<u>Officers</u>	<u>Title</u>
Donna G. Case	President & CEO
George W. Kohl	Chairman
Michael H. Donnelly, Esq.	Vice-Chair
Todd A. Whitney	Executive Vice-President and CFO
Clifford E. Kelsey, Jr.	Secretary
John S. Goodreds	Treasurer

B. Holding Company

Glen Arden currently operates within a passive-parent organizational structure under Elant, Inc. formerly Arden Hill Senior Health System Inc. Elant Inc. is a not-for-profit company incorporated in New York State and is the sole corporate member of a number of health care providers who along with Glen Arden Inc. constitute the Elant Health Care System. The structure of the Elant Health Care System, as of the examination date, is as follows:



Elant, Inc. became the sole corporate member of Glen Arden, Inc. in 1999 and has operated under the terms of an administrative services agreement for the day-to-day management of the continuing care retirement community.

To date, Glen Arden, Inc. has an application before the New York State Department of Health requesting a revision to its current Certificate of Authority by adding Elant, Inc. as a co-operator of each member of the Elant Health Care System, which included Glen Arden.

C. Plan of Operations

In exchange for an entrance fee and monthly maintenance charges, the Community provides a resident with the option to enter into a contract that covers lifetime residence and unlimited care in the Glen Arden Health Care Center or a limited benefit contract option as described herein. Three different contract options, outlined below, are available for residents, each offering the lifetime right to live at Glen Arden and for unlimited care in the Elant at Goshen Adult Home for the same monthly fee the resident would have paid in the independent living apartment. The amount of the entrance fee and monthly maintenance charges in each case is dependent upon the size of the residence being occupied and the type of contract selected.

Entrance Fee Requirement:

Each prospective resident is required to render a 10% Entrance Deposit. The balance, as disclosed with the Initial Disclosure Statement, is due prior to the applicant moving in, but no later than 90 days following the effective date of the Residency Agreement.

Monthly Fee Requirement:

Resident begins to pay a monthly fee after the complete entrance fee has been tendered and the agreement has been endorsed. Monthly fees are prorated for any partial month where the resident begins or ends occupancy. The Community is required to give sixty days written

notice before increasing the amount of the monthly fee, as approved by the Department, or before using a methodology previously approved by the Superintendent.

All fees, along with the initial deposit and entrance fee balances, are intended to meet the financial requirements of Glen Arden, including but not limited, to debt service, property taxes and any other costs or expenses.

Declining Entrance Fee Refund Option:

In this refund option, if a resident terminates residency after ninety (90) days, the entrance fee paid by the resident shall be refunded, reduced by a four percent (4%) administrative fee and two percent (2%) for each month of occupancy for forty-eight (48) months, beginning with the fourth (4<sup>th</sup>) month of occupancy. After the fifty-first (51<sup>st</sup>) month the resident shall not be entitled to any refund of the entrance fee. If applicable, a refund will be made within thirty (30) days after a new resident pays the then applicable entrance fee, but in no event later than one year after.

90% Refundable Fee Refund Option:

If a resident terminates residency after ninety (90) days (but before six (6) months) under this option, the entrance fee paid will be refunded in the same manner as the “Declining Entrance Fee Refund Option”. If the termination of residency is after six (6) months of occupancy, the resident shall be entitled to a refund equal to ninety percent (90%) of the entrance fee paid.

Contracts

Full Life Care Option Contract:

A continuing care retirement contract holder covered under the Full Life Care Option, in addition to being subject to the entrance fee and monthly maintenance fee requirements as disclosed in the contract, receives the benefit of an independent living apartment, nursing

home benefit, and unlimited adult home benefit, as disclosed under the terms of their contract. Full Life Care Option contract-holders are covered for adult home benefits as needed, without change in the monthly maintenance fee, and for transfers to the nursing home. These benefits are at cost to the resident where services given go beyond those allowed under the terms of the contract, including the resident's personal private physician, private duty nursing and other privately prescribed therapies. In addition to their monthly fee for independent living at the Community, When a resident receives care at a hospital, the resident is responsible for the hospital costs.. Adult home care is also made available when deemed necessary to each resident without an increase in the resident's monthly fee. Each contract holder must maintain Medicare Part A, Medicare Part B and one supplemental Medicare health insurance policy.

Limited Health Care Option Contract:

Under the Limited Health Care Option, a resident receives the benefit of an independent living apartment and nursing home benefits at cost to the contract holder of the health care center's daily rate. Nursing home benefits are applied only after other insurance benefits are exhausted up to a lifetime maximum of sixty (60) days. The resident is subject to the entrance fee and monthly maintenance fee requirements as disclosed in the contract. The nursing home benefit is limited to sixty (60) days but can be subsidized up to 365 days upon resident payment for the excess cost above Medicare and other insurance reimbursements. Adult home care is also made available when deemed necessary to each resident without an increase in the resident's monthly fee. Each contract holder must maintain Medicare Part A, Medicare Part B and one supplemental Medicare health insurance policy.

Modified Health Care Option Contract:

Under the Modified Health Care Option a resident receives the benefit of an independent living apartment and health care center benefits at cost to the contract holder of the health care center's daily rate. Health care center benefits are applied after other insurance benefits are exhausted, up to a maximum of 365 days. The nursing home benefit is limited to 365 days over which the resident pays the daily rate. The resident is subject to the entrance fee and monthly maintenance fee requirements as disclosed in the contract. Adult home care is

also made available when deemed necessary to each resident without an increase in the resident's monthly fee. Each contract holder must maintain Medicare Part A, Medicare Part B and one supplemental Medicare health insurance policy.

Each of the three contract options; Full Life Care Option, Limited Health Care Option and Modified Health Care Option, conform to the standard of a Continuing Care Retirement Community Contract as required by NYS Public Health Law §4608; except that in each of the three contract options obligatory contract language was omitted.

Section 4608 (7) of the New York Public Health Law states, in part, that a continuing care retirement contract shall contain:

“A statement that, if the resident dies prior to the occupancy date or, through illness, injury, or incapacity is precluded from becoming a resident under the terms of the contract, the contract is automatically rescinded and the resident and his or her legal representative shall receive a full refund of all moneys paid to the facility, except for those costs specifically incurred by the facility at the request of the resident and set forth in writing in a separate addendum...”

The language “*as set forth in writing in a separate addendum*” does not appear in any of the three contract options.

It is therefore recommended that contract language containing the entirety of the provisions as outlined in section 4608(7) of the New York Public Health Law be included in each Continuing Care Retirement Community Contract.

#### Initial Disclosure Statement:

The Initial Disclosure Statement is a document, in accordance with New York Public Health Law §4606, which is used by the Community for informing prospective applicants of benefits, services, fees, sponsor information including name, address, legal entity and other descriptions of the Community, including demographics. The document must be delivered to the person with whom the contract is to be entered into or the person's legal representative prior to the execution of a contract or before the transfer of any money.

The Initial Disclosure Statement reviewed by the examiner conforms to the standard as required by New York Public Health Law §4606 except that:

- Section 4606(14) of the New York Public Health Law mandates that along with any distributed marketing materials and with the dissemination of the Initial Disclosure Statement, a “*Standard Information Sheet*” shall be prepared and must be sent approved by the New York Department of Health. This section states in part:

“Prior to the execution of the contract...the operator shall deliver to the person with whom the contract is to be entered into or the person’s legal representative...an initial disclosure statement which contains the following:” (14.) “In accordance with regulations promulgated by the council, the operator shall prepare a standard information sheet for each approved continuing care retirement community, which must be approved by the department of health, distributed with the community’s marketing materials and attached to the initial disclosure statement prepared in accordance with this section.”

It is therefore recommended that an approved standard information sheet be included with any distributed marketing materials and attached to the Initial Disclosure Statement pursuant to Section 4606(14) of the New York Public Health Law.

#### D. Administrative Services Agreement

Glen Arden Inc. entered into an administrative services agreement (ASA) with Elant Inc. for management of the day-to-day activities of Glen Arden, subject to the oversight of the board of directors. The term of the agreement is for three years commencing January 1, 2001 and renewable thereafter. This agreement includes, but is not limited to, recruitment and hiring, training, supervision and termination of staff, administration and management of benefits, accounting, operating systems, budgets, expenses and bank accounts; maintenance of assets; facility maintenance and repair; the recommending of adjustments to entrance and monthly fees; and regulatory compliance.

As contained in a schedule annexed to the ASA, Glen Arden Inc. is required to cover the costs incurred for the day-to-day management of the community by Elant Inc. The amount of such fee, called an administrative services fee, shall be transferable to and based upon the real cost estimates of Elant Inc. The estimated fee is paid to Elant Inc. by Glen

Arden Inc. on a monthly basis in an amount that equals the actual costs incurred. Adjustments to the actual costs would be supplied no later than one hundred twenty (120) days after the anniversary of the effective date and any adjustments are factored into the monthly administrative services fee payment no later than thirty (30) days after receipt of the additional information needed to calculate the adjusted fee. Glen Arden properly reflected on its balance sheet, as “amount due affiliates”, the liability of the community at December 31, 2002.

The term of the agreement expired December 31, 2003 and, as of the date of this examination, has not been renewed. Glen Arden Inc. continues to receive administrative services from Elant Inc. beyond the expiration date of the signed agreement.

It is recommended that the administrative services agreement with Elant Inc. be renewed or that a new agreement be established.

Under the terms of the administrative services agreement, Elant Inc. is responsible for the supervision, the administration and processing of Glen Arden related transactions on a secured computer system, including but not limited to accounting records, books, chart of accounts, supporting journals and ledgers, employee benefit data, and other community-relevant account functions. Finance, marketing, and public relations information are also maintained within Glen Arden’s computer system environment.

#### **4. COMMUNITY DEMOGRAPHICS**

##### **A. Occupancy Levels**

As of the year ending December 31, 2002, there were 159 residents in the independent living units and 4 residents in the adult care facility’s permanent housing. There were an additional 24 permanent and 5 temporary nursing home placements. The average number of residents in independent living units for the year was 186 and the average number of independent living units occupied was 137 units. There was an average of 4 residents in the enriched housing unit and an average of 21 skilled nursing unit residents during 2002. The

occupancy level for the year ending December 31, 2002 was eighty-four (84%) percent. The target occupancy level for the Community is ninety-five (95%).

The following reflects the breakdown of occupancy at December 31, 2002:

Independent Living Units	Number of Apartments
Traditional	13
1 Bedroom Deluxe	51
1 Bedroom with Den	42
2 Bedroom	36
2 Bedroom with Den	21
Total Units	163

The following reflects the occupancy rates at each year-end from 1998 to 2002:

Period	1998	1999	2000	2001	Dec 31, 2002
Occupancy	92.0%	93.3%	93.9%	89.6%	84.0%

#### B. Rates

The monthly maintenance fee for 2002 and 2003 was increased at a rate of 3% and 5%, respectively, for all independent living unit contracts. The required sixty-day notice was provided to the residents and such rate increases were made in accordance with a plan approved by the Department.

#### C. Marketing

The marketing plan in place for the Community has been approved by the Department and includes the approval of a new contract with a seventy-five percent (75%) refundable option to supplement the declining balance and ninety (90%) refundable option. The

marketing plan also includes the conversion of fifteen (15) independent living units to twenty-eight (28) enriched housing units.

## **5. FINANCIAL STATEMENTS**

### A. Balance Sheet

The following shows the assets, liabilities and surplus as of December 31, 2002, as determined by this examination. It is the same as the revised actuarial balance sheet submitted in July, 2003 and as reported by the Company presented on a Statutory Accounting basis, pursuant to Insurance Department Regulation 140 {11 NYCRR 350}:

#### Assets:

##### Current assets

Short term investments	\$ 7,319
Long term investments	3,077
Accounts receivable	186
Inventory	28
Prepaid expenses	<u>208</u>
Total current assets	10,818

##### Fixed assets

Land and improvements	\$ 741
Building and improvements	36,054
Long term debt	(26,780)
Fixed and movable equipment	2,067
Less: accumulated depreciation	<u>(3,131)</u>
Total fixed assets net of accumulated depreciation and long-term debt	8,951

##### Other assets

Deferred marketing/start-up	704
Deferred financing costs	<u>892</u>
Total other assets	<u>1,596</u>

Total assets: \$ 21,365

#### Liabilities:

Retrospective reserve:	
EOY retrospective reserve	\$ 20,095
Prepayment of expenses	<u>207</u>

Total retrospective reserve	\$ <u>20,302</u>
Prospective reserve:	
EOY prospective reserve	\$ 27,242
Accounts payable	434
Accrued expenses	763
Due to affiliate	267
Due to third party	14
Resident deposits	46
Refunds due	<u>1,563</u>
Total prospective reserve	<u>30,329</u>
Minimum liquid reserve	7,319
Total liabilities (Greater of minimum liquid, prospective, or retrospective reserves)	\$ <u>30,329</u>
Net surplus (deficiency)	(8,964)
Total liabilities and surplus	\$ <u>21,365</u>

It should be noted that the asset values herein are reported on an actuarial basis. As such, the values differ from the certified financial statements prepared by the Community's Certified Public Accountants using Generally Accepted Accounting Principles (GAAP basis).

As a result of this examination, which incorporates a review of the Community's revised actuarial balance sheet submitted in July 2003, the Community's minimum reserve requirement, as determined using generally accepted actuarial standards and applying statutory requirements, was impaired in the amount of \$8,964,000.

## B. Statement of Revenue and Expenses

The statement of revenue and expenses is presented on a GAAP basis for the period January 1, 2001 through December 31, 2002.

<b>Operating revenue:</b>	
Resident services	\$8,943,346
Earned entrance fees	2,679,552
Health care center revenue	<u>4,721,442</u>
<b>Net resident services revenue</b>	16,344,340
Other operating revenue	<u>1,196,063</u>
<b>Net operating revenue</b>	\$17,540,403
<b>Operating expenses:</b>	
Salaries & wages	\$4,693,801
Fringe benefits	1,152,112

Supplies/Purchased services	4,872,713	
Depreciation & amortization	2,853,764	
Interest	3,112,515	
Utilities & other capital costs	846,741	
NYS cash assessment tax	<u>102,152</u>	
<b>Total operating expenses</b>		<u>17,633,798</u>
<b>Gain/(Loss) from operations before overhead allocation</b>		(93,395)
Overhead allocation		<u>(1,908,209)</u>
Net operating loss prior year		642,076
<b>Gain/(Loss) from operations</b>		\$ <u>(1,359,528)</u>

C. Changes in surplus (deficiency)

Reserves and surplus decreased \$1,642,170 during the examination period, January 1, 2001 through December 31, 2002, detailed as follows:

Surplus (deficiency) as of January 1, 2001		\$ (7,321,830)
	Losses in <u>Net Worth</u>	
GAAP basis net income/(loss)	\$ (1,359,528)	
Statutory adjustment as per examination	(282,642)	
(Deficiency) per examination as of December 31, 2002		<u>\$ (8,964,000)</u>

**6. CONCLUSION**

As a result of this examination, which incorporated a review of the Community's revised actuarial balance sheet submitted in July 2003, the Community's minimum reserve requirement, as determined using generally accepted actuarial standards and applying statutory requirements, was impaired in the amount of \$8,964,000.

Prior to the examination date, the Community was operating under an approved plan to resolve its actuarial reserve deficiency and restore its minimum surplus, as required by Department Regulation 140 (11 NYCRR 350.8(a)). The restoration plan relies on administrative cost reductions, fee increases, and a ninety-five (95%) occupancy rate. The restoration plan was approved by the New York Insurance Department on September 28, 2001 and is currently being monitored. An amended restoration plan was approved on May 19, 2004.

It is therefore recommended that the community continue to operate under the approved plan to resolve its actuarial reserve deficiency and minimum surplus, as required by Department Regulation 140 (11 NYCRR 350.8(a)), and which was approved on September 28, 2001 and amended on May 19, 2004.

## **7. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION**

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Management</u>	
i. <i>It is recommended that board members attend at least half of the scheduled board meetings.</i>	5
<i>The Plan has complied with this recommendation.</i>	
B. <u>Market Conduct</u>	
i. <i>It appears that the Community's advertising of assisted living benefits was misleading.</i>	11
<i>The Plan has complied with this recommendation.</i>	

## 8. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Plan of Operations</u>	
i. It is therefore recommended that contract language containing the entirety of the provisions, as outlined in section 4608(7) of the New York Public Health Law, be included in each Continuing Care Retirement Community Contract.	9
B. <u>Initial Disclosure Statement</u>	
ii. It is therefore recommended that an approved standard information sheet be included with any distributed marketing materials and attached to the initial disclosure statement pursuant to section 4606(14) of the New York Public Health Law.	10
C. <u>Administrative Services Agreement</u>	
i. It is recommended that the administrative services agreement with Elant Inc. be renewed or that a new agreement be established.	11
D. <u>Restoration Plan</u>	
i. It is therefore recommended that the Community continue to operate under the approved plan to resolve its actuarial reserve deficiency and restore its minimum surplus, as required by Department Regulation 140 (11 NYCRR 350.8(a)) which was approved on September 28, 2001 and amended on May 19, 2004.	16

Respectfully submitted,

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ANDRE BLACKMAN  
Senior Insurance Examiner

STATE OF NEW YORK    )  
                                  ) SS.  
                                  )  
COUNTY OF NEW YORK )

Andre Blackman, being duly sworn, deposes and says that the foregoing report submitted by him is true to the best of his knowledge and belief.

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Andre Blackman

Subscribed and sworn to before me  
This \_\_\_\_\_ day of \_\_\_\_\_ 2004

Appointment No. 22145

**STATE OF NEW YORK  
INSURANCE DEPARTMENT**

I, GREGORY V. SERIO, Superintendent of Insurance of the State of New York,  
pursuant to the provisions of the Insurance Law, do hereby appoint:

**Andre Blackman**

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

**Glen Arden**

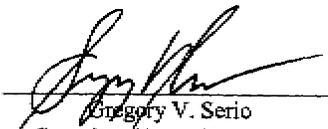
*and to make a report to me in writing of the said*

**Company**

with such information as he shall deem requisite.

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

this 3rd day of February, 2004

  
\_\_\_\_\_  
Gregory V. Serio  
Superintendent of Insurance

