



STATE OF NEW YORK INSURANCE DEPARTMENT
REPORT ON EXAMINATION
OF THE
AMERICAN LIFE INSURANCE COMPANY OF NEW YORK

CONDITION:

DECEMBER 31, 2004

DATE OF REPORT:

SEPTEMBER 15, 2006

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AS OF
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EXAMINER:

DENNIS G. BENSEN

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

David A. Paterson
Governor

Eric R. Dinallo
Superintendent

September 11, 2008

Honorable Eric R. Dinallo
Superintendent of Insurance
Albany, New York 12257

Sir:

In accordance with instructions contained in Appointment No. 22377, dated June 1, 2005 and annexed hereto, an examination has been made into the condition and affairs of American Life Insurance Company of New York, hereinafter referred to as "the Company," at its home office located at 435 Hudson Street, New York, New York 10014.

Wherever "Department" appears in this report, it refers to the State of New York Insurance Department.

The report indicating the results of this examination is respectfully submitted.

1. EXECUTIVE SUMMARY

Subsequent to the examination period, the Company, North American Company for Life and Health Insurance of New York, and Utica National Life Insurance Company of New York were acquired by Wilton Re U.S. Holdings, Inc. on September 15, 2006 and merged into one Company which was named Wilton Reassurance Life Company of New York. The merger took effect on September 29, 2006.

The examiner's review of a sample of transactions did not reveal any differences which materially affected the Company's financial condition as presented in its financial statements contained in the December 31, 2004 filed annual statement. (See item 5 of this report)

The Company violated Section 1202(b)(2) of the New York Insurance Law by failing to have the independent committee of the board of directors nominate candidates for the board of directors in 2002 and 2003 and by failing to evaluate the performance of officers and recommend their selection and compensation to the board of directors in 2002 and 2003. The Company also violated Section 4230(a) of the New York Insurance Law by failing to have the salary, compensation, or emoluments paid to its principal officers and directors authorized by a vote by the board of directors. (See item 3C of this report)

The Company violated Section 3201(b)(1) of the New York Insurance Law by using policy forms which were neither filed with nor approved by the Superintendent. A similar violation appeared in the prior report on examination. (See item 6B of this report)

The Company violated Section 3203(a) of the New York Insurance Law by allowing an unapproved form to be incorporated into the policy contract by reference. (See item 6B of this report)

The Company violated Section 51.6(a) of Department Regulation No. 60 by failing to require or obtain a completed Definition of Replacement. (See item 6A of this report)

The Company violated Section 3209(b)(1) of the New York Insurance Law by failing to provide the prospective purchaser with a copy of the current buyers guide at or prior to the time the application was taken. (See item 6A of this report)

The Company violated Section 3214(c) of the New York Insurance Law when it failed to pay interest on some death claims and improperly computed interest paid on other death claims. (See item 7 of this report)

The Company violated Section 4240(e) of the New York Insurance Law when it failed to file the changes to the Plan of Operations for Separate Account No. 5 and obtain the Superintendent's approval for such amendments to the Plan. (See item 8 of this report)

2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2001. This examination covers the period from January 1, 2002 through December 31, 2004. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2004 but prior to the date of this report (i.e., the completion date of the examination).

The examination comprised a verification of assets and liabilities as of December 31, 2004 to determine whether the Company's 2004 filed annual statement fairly presents its financial condition. The examiner reviewed the Company's income and disbursements necessary to accomplish such verification and utilized the National Association of Insurance Commissioners' Examiners Handbook or such other examination procedures, as deemed appropriate, in such review and in the review or audit of the following matters:

- Company history
- Management and control
- Corporate records
- Fidelity bond and other insurance
- Officers' and employees' welfare and pension plans
- Territory and plan of operation
- Market conduct activities
- Growth of Company
- Business in force by states
- Mortality and loss experience
- Reinsurance
- Accounts and records
- Financial statements

The examiner reviewed the corrective actions taken by the Company with respect to the violations, recommendations and comments contained in the prior report on examination. The results of the examiner's review are contained in item 9 of this report.

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

3. DESCRIPTION OF COMPANY

A. History

The Company was incorporated as a stock life insurance company under the laws of New York on March 23, 1955, was licensed on November 9, 1956 and commenced business on April 1, 1957. Initial resources of \$2,000,000, consisting of capital stock of \$500,000 and paid in and contributed surplus of \$1,500,000, were provided through the sale of 50,000 shares of common stock (with a par value of \$10 each) for \$40 per share.

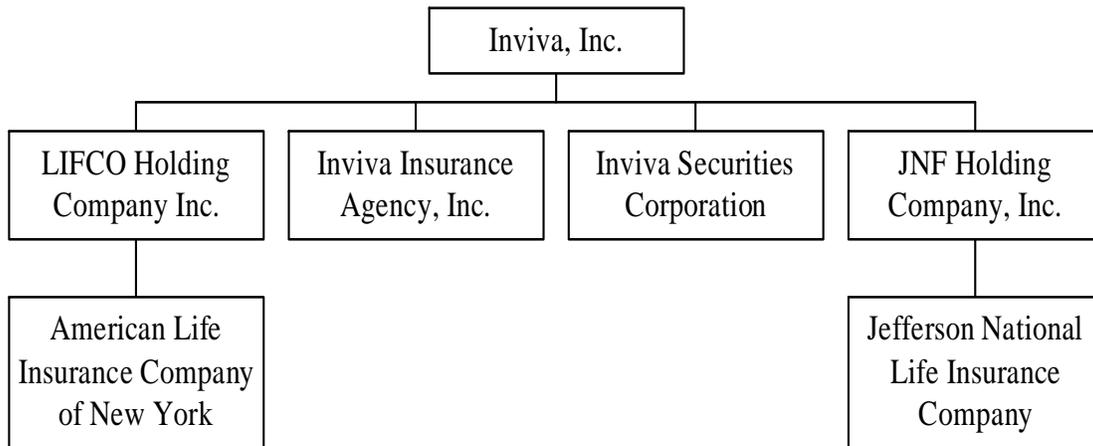
The Company was initially formed as a wholly owned subsidiary of American Surety Company of New York. On December 31, 1963, control of the Company passed to Transamerica Insurance Company, Inc. after American Surety Company of New York was absorbed in a merger. On April 1, 1981, Allied Investment Corporation, a Delaware Corporation, acquired all of the outstanding stock of the Company from Transamerica Insurance Company, Inc. On March 4, 1988 Mutual of America Corporation purchased the Company from Allied Investment Corporation. The Mutual of America Corporation changed its own name on September 20, 2000 to LIFCO Holding Company, Inc. (“LIFCO”). Mutual of America, (“MOA”), was the ultimate parent of Mutual of America Corporation and hence became the parent of LIFCO.

On March 16, 2001, Inviva, Inc. (“Inviva”), a Delaware holding company, acquired 100% of the outstanding stock of LIFCO from MOA. LIFCO owns 100% of the Company’s 1,100,000 shares of authorized common stock, with a par value of \$4.55 per share, of which 550,000 shares are issued and outstanding.

Subsequent to the examination period, the Company, North American Company for Life and Health Insurance of New York, and Utica National Life Insurance Company of New York were acquired by Wilton Re Holdings Limited on September 15, 2006 and merged into one Company which was named Wilton Reassurance Life Company of New York. The merger took effect on September 29, 2006.

B. Holding Company

During the examination period, the Company was a wholly owned subsidiary of LIFCO, a Delaware holding Company. LIFCO was in turn a wholly owned subsidiary of Inviva, also a Delaware holding Company and the Company's ultimate parent. Jefferson National Life Insurance Company ("Jefferson National"), a Texas life insurer owned entirely by Inviva was another insurance company in the holding company system. An organization chart reflecting the relationship between the Company and significant entities in its holding company system as of December 31, 2004 follows:



The Company had two service agreements in effect with affiliates during the examination period.

Type of Agreement and Department File Number	Effective Date	Provider of Services	Recipient of Services	Specific Service(s) Covered	Income (Expense)* For Each Year of the Examination
Administrative Service Agreement File # 29718	3/1/2001	Inviva	The Company	Accounting, data processing, actuarial, legal, marketing, underwriting, and policy administration	2002 \$(10,119,367) 2003 \$(6,276,029) 2004 \$(9,156,380)
Distribution Agreement File # 29812A	11/1/01	Inviva Securities Corp.	The Company	Underwriter of Separate Account No. 5	2002 \$0 2003 \$0 2004 \$0

* Amount of (Expense) Incurred by the Company

C. Management

The Company's by-laws provide that the board of directors shall be comprised of not less than nine and not more than 21 directors. As of December 31, 2004, the board of directors consisted of nine members. Meetings of the board are to be held immediately following the annual meeting of the shareholders in May of each year, and as frequently as deemed necessary, but at least once in each calendar year.

The nine board members and their principal business affiliation, as of December 31, 2004, were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Peter Bach* New York, NY	Physician – Clinical Assistant Memorial Sloane-Kettering Cancer Center	2001
Philip Galanes* New York, NY	Independent Contractor	2001
Laurence Greenberg New York, NY	Chief Executive Officer and President American Life Insurance Company of New York	2001
Tracey Hecht Smilow New York, NY	Director American Life Insurance Company of New York	2001
Robert Jefferson* Philadelphia, PA	Chief Financial Officer ACE INA Holdings	2001
Dean Kehler* New York, NY	Managing Director and Vice Chairman Trimaran/CIBC World Markets	2001
Thomas Leaton* Herndon, VA	Manager, ADM Boutique Products Fannie Mae	2001
David Smilow New York, NY	Chairman of the Board American Life Insurance Company of New York	2001
Timothy Ward* Weisbaden, Germany	Director Gerling E & L Lebensversicherung	2001

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

On January 25, 2006 Thomas Leaton resigned from the board and was replaced by Mr. Arjun Thimmaya.

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

Article I, Section 1 of the Company's Amended and Restated By-Laws states, in part:

“Annual Meeting. The Annual meeting for the election of Directors . . . shall be held on the fifteenth of May of each year beginning in 2002 . . . ”

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

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

Section 4230(a) of the New York Insurance Law states:

“No domestic life insurance company shall pay any salary, compensation or emolument in any amount to any officer, deemed by a committee or committees of the board to be a principal officer pursuant to subsection (b) of section one thousand two hundred two of this chapter, or to any salaried employee of the company if the level of compensation to be paid to such employee is equal to, or greater than, the compensation received by any of its principal officers, or to any trustee or director thereof, unless such payment be first authorized by a vote of the board of directors of such company.”

In accordance with the Company's by-laws, directors are to be elected for a period of one year at the annual meeting of the stockholders held in May of each year. No board of directors elections were held in 2002 or 2003. In addition, the independent committee of the board of directors failed to nominate candidates for the board of directors, for election by the shareholders, in 2002 and 2003.

Further, during the period under examination the independent committee of the board of directors did not evaluate the performance of the Company's principal officers nor recommend to the board the compensation to be paid to them. Also, the review of the board of director meeting minutes did not contain any indication that the compensation paid to its principal officers and directors was authorized by a vote of the Company's board of directors.

The Company violated Section 1202(b)(2) of the New York Insurance Law by failing to have the independent committee of the board of directors nominate candidates for the board of directors in 2002 and 2003 and by failing to evaluate the performance of officers and recommend their selection and compensation to the board of directors in 2002 and 2003.

The Company also violated Section 4230(a) of the New York Insurance Law by failing to have the salary, compensation, or emoluments paid to its principal officers and directors authorized by a vote by the board of directors.

Further, the Company did not comply with its own by-laws when it did not have any board of director elections in 2002 and 2003.

The following is a listing of the principal officers of the Company as of December 31, 2004:

<u>Name</u>	<u>Title</u>
David Smilow	Chairman of the Board
Laurence Greenberg	Chief Executive Officer and President
Craig Hawley	General Counsel and Secretary
Timothy Rogers	Chief Financial Officer and Treasurer
Chris Tosney*	Director Administration

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

D. Territory and Plan of Operation

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

The Company is licensed to transact business in all 50 states, the District of Columbia, and the U.S. Virgin Islands. In 2004, 24.1% of total premiums and considerations were received from New York and 11.3% were received from California. Policies are written on a non-participating basis.

The Company focused on the sale of its "Select Term" product, a term life insurance policy sold through the internet on a direct marketing basis during the period under examination. In addition, the Company marketed two other term products, "Simple Term" and "Instant Term." Both were marketed by agents, and have upper face amount limits of \$250,000 and \$1 million, respectively. The Company has maintained several closed blocks of business since its acquisition by Inviva including group accident and health insurance, annuities and traditional life insurance.

There was limited marketing of the Company's "Select Term" product in New York during the period under examination. "Select Term" was only marketed in New York in the fourth quarter of 2003 and the first quarter of 2004. The Company shut down sales in New York during 2004 because of certain concerns the Department had with regards to meeting the requirements of Department Regulation No. 60. (See Section 6A of this report) Beginning in 2005, subsequent to the period under examination, the Company marketed "Select Term" in New York by mailing application packages to prospective purchasers subsequent to an initial internet inquiry by the prospective purchaser.

The Company's agency operations are conducted on a general agency basis. To facilitate the Company's internet sales, the Company has agency agreements with "partners" that include insurance agents, brokers, insurance distribution websites, banks, securities brokers, financial planners, and other financial services planners who offer insurance products on their websites.

E. Reinsurance

As of December 31, 2004, the Company had 32 reinsurance treaties in effect with 20 companies, of which 18 were authorized or accredited. The Company's life and accident and health business is reinsured on a coinsurance, modified-coinsurance, or yearly renewable term basis. Reinsurance can be provided on both an automatic and facultative basis.

The maximum retention limit for individual life policies is \$150,000. The total face amount of life insurance ceded with authorized reinsurers, as of December 31, 2004, was \$1,426,667,068, which represents approximately 65% of the total face amount of life insurance in force. Reserve credit taken for reinsurance ceded to unauthorized companies, was \$83,461. The Company set up a liability of \$102,035 to support this amount.

As of December 31, 2004, the Company had one reinsurance assumption treaty in effect with RBC Liberty Life Insurance Company for certain term life business. The treaty is a coinsurance treaty that took effect early in 2003. As of December 31, 2004 the in-force amount of assumed insurance was \$121,696,000.

4. SIGNIFICANT OPERATING RESULTS

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

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

	December 31, <u>2001</u>	December 31, <u>2004</u>	<u>(Decrease)</u>
Admitted assets	\$ <u>112,187,702</u>	\$ <u>91,484,283</u>	\$(<u>20,703,419</u>)
Liabilities	\$ <u>82,387,159</u>	\$ <u>75,558,827</u>	\$ <u>(6,828,332)</u>
Common capital stock	\$ 2,502,500	\$ 2,502,500	\$ 0
Gross paid in and contributed surplus	31,549,679	31,549,679	0
Unassigned funds (surplus)	<u>(4,251,636)</u>	<u>(18,126,723)</u>	<u>(13,875,087)</u>
Total capital and surplus	\$ <u>29,800,543</u>	\$ <u>15,925,456</u>	\$(<u>13,875,087</u>)
Total liabilities, capital and surplus	\$ <u>112,187,702</u>	\$ <u>91,484,283</u>	\$(<u>20,703,419</u>)

The decrease in capital and surplus during the period under examination was primarily due to a decrease in bonds which were redeemed to fund operations.

The Company's invested assets as of December 31, 2004, exclusive of separate accounts, were mainly comprised of bonds (91.7%) and policy loans (5.6%).

The entire bond portfolio, as of December 31, 2004, was comprised of investment grade obligations.

The following is the net gain (loss) from operations by line of business after federal income taxes but before realized capital gains (losses) reported for each of the years under examination in the Company's filed annual statements:

	<u>2002</u>	<u>2003</u>	<u>2004</u>
Ordinary:			
Life insurance	\$(9,341,067)	\$(4,225,583)	\$(8,927,778)
Individual annuities	576,613	(591,688)	50,733
Supplementary contracts	<u>(189,354)</u>	<u>70,479</u>	<u>121,093</u>
Total ordinary	<u>\$(8,953,808)</u>	<u>\$(4,746,792)</u>	<u>\$(8,755,952)</u>
Group life	\$ <u>(30,194)</u>	\$ <u>32,032</u>	\$ <u>(18,916)</u>
Accident and health:			
Group	\$ (70,605)	\$ 5,364	\$ 7,245
Other	<u>16,211</u>	<u>(13,139)</u>	<u>(64,532)</u>
Total accident and health	<u>\$ (54,394)</u>	<u>\$ (7,775)</u>	<u>\$ (57,287)</u>
Total	<u>\$(9,038,396)</u>	<u>\$(4,722,535)</u>	<u>\$(8,832,155)</u>

The fluctuations during the period under examination in the losses from ordinary life insurance resulted from fluctuations in general expenses. In 2002, the Company's parent allocated almost all of its overhead to the Company. In 2003, Inviva had acquired an additional subsidiary, Jefferson National, to which it began allocating some of the overhead. In 2004, there was a direct marketing initiative undertaken to increase sales levels which resulted in a significant rise in the expenses of the ordinary life line of business.

5. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital and surplus as of December 31, 2004, as contained in the Company's 2004 filed annual statement, a condensed summary of operations and a reconciliation of the capital and surplus account for each of the years under review. The examiner's review of a sample of transactions did not reveal any differences which materially affected the Company's financial condition as presented in its financial statements contained in the December 31, 2004 filed annual statement.

A. ASSETS, LIABILITIES, CAPITAL AND SURPLUS AS OF DECEMBER 31, 2004

Admitted Assets

Bonds	\$78,793,030
Stocks	
Preferred stocks	8,795
Cash, cash equivalents and short term investments	2,222,654
Contract loans	4,798,979
Receivable for securities	103,688
Investment income due and accrued	814,051
Premiums and considerations:	
Uncollected premiums and agents' balances in the course of collection	(298,528)
Deferred premiums, agents' balances and installments booked but deferred and not yet due	2,891,953
Reinsurance:	
Amounts recoverable from reinsurers	369,791
Funds held by or deposited with reinsured companies	50,687
Other amounts receivable under reinsurance contracts	380,466
Guaranty funds receivable or on deposit	1,463
From separate accounts, segregated accounts and protected cell accounts	<u>1,347,254</u>
 Total admitted assets	 <u>\$91,484,283</u>

Liabilities, Capital and Surplus

Aggregate reserve for life policies and contracts	\$ 64,730,389
Aggregate reserve for accident and health contracts	102,225
Liability for deposit-type contracts	885,076
Contract claims:	
Life	1,447,696
Accident and health	6,862
Premiums and annuity considerations for life and accident and health contracts received in advance	48,502
Contract liabilities not included elsewhere:	
Surrender values on cancelled contracts	(65,238)
Other amounts payable on reinsurance	53,978
Interest maintenance reserve	3,102,986
Commissions and expense allowances payable on reinsurance assumed	23,565
General expenses due or accrued	165,873
Taxes, licenses and fees due or accrued, excluding federal income taxes	380,744
Amounts withheld or retained by company as agent or trustee	41,261
Amounts held for agents' account	304,832
Remittances and items not allocated	277,351
Miscellaneous liabilities:	
Asset valuation reserve	7,690
Reinsurance in unauthorized companies	102,035
Payable to parent, subsidiaries and affiliates	2,590,152
Other cash clearing	5,670
Interest due on claims	(76)
From separate accounts statement	<u>1,347,254</u>
Total liabilities	<u>\$ 75,558,827</u>
Common capital stock	\$ 2,502,500
Gross paid in and contributed surplus	31,549,679
Unassigned funds (surplus)	<u>(18,126,723)</u>
Total capital and surplus	<u>\$ 15,925,456</u>
Total liabilities, capital and surplus	<u>\$ 91,484,283</u>

B. CONDENSED SUMMARY OF OPERATIONS

	<u>2002</u>	<u>2003</u>	<u>2004</u>
Premiums and considerations	\$ 4,653,884	\$ 3,833,029	\$ 5,344,526
Investment income	5,502,599	4,600,651	4,618,383
Commissions and reserve adjustments on reinsurance ceded	(41,593)	315,136	3,871,382
Miscellaneous income	<u>175,331</u>	<u>132,313</u>	<u>246,264</u>
 Total income	 <u>\$ 10,290,221</u>	 <u>\$ 8,881,129</u>	 <u>\$14,080,555</u>
 Benefit payments	 \$ 11,509,244	 \$ 6,660,787	 \$ 5,325,413
Increase in reserves	(4,746,825)	(3,357,397)	(1,377,097)
Commissions	144,606	1,268,497	3,668,107
General expenses and taxes	11,674,025	8,445,329	13,574,885
Increase in loading on deferred and uncollected premium	0	0	1,304,958
Net transfers to (from) separate accounts	(818,482)	576,659	356,607
Miscellaneous deductions	<u>1,566,049</u>	<u>9,788</u>	<u>59,837</u>
 Total deductions	 <u>\$ 19,328,617</u>	 <u>\$13,603,663</u>	 <u>\$22,912,710</u>
 Net loss from operations before net realized capital losses	 \$ (9,038,396)	 \$ (4,722,534)	 \$ (8,832,155)
Net realized capital losses	<u>(1,500,000)</u>	<u>(424,831)</u>	<u>(66,374)</u>
 Net income	 <u>\$(10,538,396)</u>	 <u>\$ (5,147,365)</u>	 <u>\$ (8,898,529)</u>

The large increase in commissions and reserve adjustments on reinsurance ceded in 2004 was due to the increase in new term life insurance sales and the related reinsurance amounts, which in turn accounts for the overall increase in total income.

The decline in benefit payments during the period under examination corresponds to the decrease in the reserves due to the decreasing size of the Company's traditional whole life and deferred annuity blocks of business (the closed blocks).

The high amount of general expenses, and the net loss from operations in 2002 were due to the parent's overhead being attributed solely to the Company. In 2003 general expenses and the net loss decreased because overhead expenses were shared between the Company and another affiliate. In 2004 general expenses increased due to the marketing activities for the new term life insurance.

C. CAPITAL AND SURPLUS ACCOUNT

	<u>2002</u>	<u>2003</u>	<u>2004</u>
Capital and surplus, December 31, prior year	\$ <u>40,152,296</u>	\$ <u>29,800,543</u>	\$ <u>24,693,590</u>
Net income	\$(10,538,396)	\$ (5,147,365)	\$ (8,898,529)
Change in net unrealized capital gains (losses)	0	(33,180)	0
Change in non-admitted assets and related items	(150,000)	4,711,173	42,760
Change in liability for reinsurance in unauthorized companies	(32,153)	(54,870)	95,325
Change in reserve valuation basis	280,291	0	0
Change in asset valuation reserve	88,505	(1)	(7,690)
2002 audit adjustment	<u>0</u>	<u>(4,582,710)*</u>	<u>0</u>
Net change in capital and surplus for the year	\$ <u>(10,351,753)</u>	\$ <u>(5,106,953)</u>	\$ <u>(8,768,134)</u>
Capital and surplus, December 31, current year	\$ <u>29,800,543</u>	\$ <u>24,693,590</u>	\$ <u>15,925,456</u>

* E & Y, the Company's outside auditors, indicate in their 2002 – 2003 audited statements that this amount is a "non-admitted receivable from affiliate."

6. MARKET CONDUCT ACTIVITIES

The examiner reviewed various elements of the Company's market conduct activities affecting policyholders, claimants, and beneficiaries to determine compliance with applicable statutes and regulations and the operating rules of the Company.

A. Advertising and Sales Activities

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

Section 3209(b) of the New York Insurance Law states, in part:

“No policy of life insurance shall be delivered or issued for delivery in this state after the applicable effective date . . . unless the prospective purchaser has been provided with the following:

(1) a copy of the most recent buyer's guide . . . at or prior to the time an application is taken. . . .”

During the period from December 2003 through April 2004, 112 “Select Term” policies were sold in New York. A review of the Company's procedures for issuing “Select Term” policies indicated that the buyers guide was to be mailed to the policyholder with the issued policy contract instead of being provided to the prospective purchaser at, or prior to, the time an application was taken. A test of the Company's current sales and marketing practices during the on-site examination indicated that this was still the practice of the Company.

The Company violated Section 3209(b)(1) of the New York Insurance Law by failing to provide the prospective purchaser with a copy of the most recent buyer's guide at or prior to the time the application was taken.

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

“Each insurer shall . . .

(2) Require with or as part of each application, a completed ‘Definition of Replacement’ signed by the applicant and agent or broker”

The Company did not require nor obtain a completed Definition of Replacement for the 112 “Select Term” policies sold to New York residents over the internet during the period December 2003 through April 2004.

The Company violated Section 51.6(a) of Department Regulation No. 60 by failing to require or obtain a completed Definition of Replacement.

B. Underwriting and Policy Forms

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

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

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

Section 3203(a) of the New York Insurance Law states, in part:

“All life insurance policies, except as otherwise stated herein, delivered or issued for delivery in this state, shall contain in substance the following provisions, or provisions which the superintendent deems to be more favorable to policyholders . . .

(4) that the policy, together with the application therefore if a copy of such application is attached to the policy when issued, shall constitute the entire contract between the parties . . .”

Department Circular Letter No. 4 (1963) advises, in part:

“ . . . V. Applications

B. Questions . . .

2. Questions requiring applicant’s opinion regarding past or present health of a person proposed for coverage should be asked to the best of the applicant’s knowledge and belief . . .”

During the period between December 2003 and April 2004, the Company issued approximately 112 “Select Term” policies in New York over the internet. As part of the application process the Company requested qualifying information from the applicant using internet screens that were not part of any application form filed with or approved by the

Superintendent. A review of the internet screens determined that these were application forms that should have been filed with and approved by the Superintendent.

The Company violated Section 3201(b)(1) of the New York Insurance Law by using policy forms that were neither filed with nor approved by the Superintendent. A similar violation appeared in the prior report on examination.

The Company used policy form ALNY-SIMP-03 (NY) for the sale of the aforementioned 112 policies. The version of the form used by the Company in these sales was compared with the version filed with and approved by the Department. The comparison revealed that the form used was materially different from the approved form in that the form used contained the following unapproved paragraph:

“Before you purchase the policy we ask that you . . .
Read and agree to our Terms of Service . . .
I have read my application and agree it is correct. I have also read and agree to . . .
The American Life Insurance Company of New York’s Terms of Service
Agreement. . . .”

This unapproved paragraph refers to an additional document, namely the Company’s “Terms of Service Agreement” which is not an approved form. This paragraph incorporates this unapproved form into the contract by reference. In addition, the paragraph also included the statement “I have read my application and agree it is correct.” This statement, which requires the applicant’s opinion regarding the past or present health of a person proposed for coverage, does not include the qualifying phrase “to the best of my knowledge.” This policy form would not have been approved by the Department with this paragraph because of the reference to the unapproved form and because the Department requires questions regarding the applicant’s health to be answered as an opinion to the best of his knowledge, not stated as a fact.

The Company violated Section 3203(a) of the New York Insurance Law by allowing an unapproved form to be incorporated into the policy contract by reference.

The Company did not comply with the requirements of Department Circular Letter No. 4 (1963) Part V (B) because questions regarding the past or present health of a person proposed for coverage were not asked as opinion but were stated and taken as facts.

C. Treatment of Policyholders

The examiner reviewed a sample of various types of claims, surrenders, changes and lapses. The examiner also reviewed the various controls involved, checked the accuracy of the computations and traced the accounting data to the books of account.

Department Circular Letter No. 33 (1999) which gives guidance to the insurance industry with respect to the Electronic Signatures and Records Act (“the Act”) as part of the State Technology Law, advises, in part:

“ . . . Insurers should be aware that Section 109 of the Act provides that the use of electronic records and signatures is voluntary and that ‘ . . . [nothing] in this article shall require any entity or person to use an electronic record or an electronic signature unless otherwise provided by law.’ Thus, if any one party to the transaction does not wish, or is not able, to participate fully in an electronic transaction, such party cannot be required to do so. . . . ”

The Company’s “Select Term” product was marketed and sold from the Company’s on-line internet platform. The completion of the application process required that the initial and all future premiums be paid by credit card and authorized by an electronic signature. The Company did not accept cash or draft payments for premiums for the “Select Term” policies.

The examiner recommends that the Company change the requirement that all premiums be paid by credit card and authorized by electronic signature as advised by Department Circular Letter No. 33 (1999). A similar comment appeared in the prior report on examination. (See item 9J of this report.)

Department Circular Letter No. 11 (1978) advises, in part:

“ . . . As part of its complaint handling function, the company's consumer services department will maintain an ongoing central log to register and monitor all complaint activity. The log should be kept in a columnar form and list the following . . .

4. The responsible internal division, i.e., personal lines underwriting, property damage claims, etc.
5. The person in the company with whom the complainant has been dealing.
6. The person within the company to whom the matter has been referred for review.
7. The date of such referral.
8. Bearing in mind the appropriate regulation mandating timely substantive replies, the dates of correspondence to the Insurance Department’s Consumer Services Bureau . . .

C. The chronology of further contacts with this Department . . .
11. Remarks about internal remedial action taken as a result of the
investigation. . . .”

The Company provided several versions of its complaint log for the years under examination. None of the complaint logs provided contained any of the above captioned information.

The examiner recommends that the Company include in all future complaint logs all of the information listed in Department Circular Letter No. 11 (1978).

7. REVIEW OF THIRD PARTY ADMINISTERED CLAIMS

The Company maintains a closed block of business which consists of traditional whole life, universal life insurance and annuities. This business was retained by the Company after the purchase of the Company by Inviva. During most of the period under examination, from January 1, 2002 until December 15, 2004, the claims of the Company's closed block of business were administered by USI Administrators, a third party administrator ("TPA"). USI Administrators changed its name to CBCA Administrators ("CBCA") on August 1, 2002. The examiner requested inventories of the death claims, policy surrenders, disability waiver of premium claims, policy lapses, policy maturities, and policy expirees which were related to the closed block.

1. Section 3214(c) of the New York Insurance Law states, in part:

“. . . interest upon the principal sum paid to the beneficiary . . . shall be computed daily at the rate of interest currently paid by the insurer on proceeds left under the interest settlement option, from the date of the death of an insured or annuitant in connection with a death claim on such a policy of life insurance or contract of annuity . . . to the date of payment and shall be added to and be a part of the total sum paid.”

The review of the 17 New York death claims related to the Company's closed block of business indicated that:

- a) Six of the death claims reviewed were not paid any interest;
- b) One of claims was paid interest at an incorrect rate (4%, instead of 4.75%);
- c) The Company incorrectly computed the number of days from the date of death to the date of payment for one of the death claims; and
- d) Two of the claims reviewed included instructions, at the beneficiary's request, to pay the funeral expenses of the deceased to a funeral parlor with any remaining balance to be paid to the beneficiary. The Company did not pay interest on the portion of the proceeds that was paid to the funeral parlor in these cases.

The Company violated Section 3214(c) of the New York Insurance Law when it failed to pay interest on some death claims and improperly computed the interest paid on other death claims.

The examiner recommends that the Company review all death claims paid by CBCA during the period under examination to determine whether there were any other errors in the calculation of delayed settlement interest and make additional payments where necessary.

2. The Company provided inventories for the claims related to their closed block of business. The inventories contained irregularities and discrepancies which in some cases resulted in the examiner not being able to reconcile the inventory to the Exhibit of Life Insurance in the Company's annual statement. The irregularities and discrepancies included:

- a) In force policies being misclassified as terminated;
- b) Incorrect classification of the cause for termination;
- c) Policies appearing on more than one type of claim inventory; and
- d) Policies indicated as issued in New York when these policies were not issued in New York.

The examiner recommends that the Company take greater care in the maintenance of the inventories used to support the amounts reported in the Exhibit of Life Insurance in its annual statement.

3. The Company was requested to provide copies of any internal audits performed by its internal audit department on the claims administered by the TPA. The Company indicated it did not perform any internal audits on the TPA during the period under examination.

The examiner recommends that in the future the Company establish an internal audit program that would include regular periodic audits of all claims administered by third parties.

8. SEPARATE ACCOUNTS

Section 4240(e) of the New York Insurance Law states, in part:

“No authorized insurer shall make any such agreement in this state providing for the allocation of amounts to a separate account until such insurer has filed with the superintendent a statement as to its methods of operation of such separate account and the superintendent has approved such statement . . . An amendment of any such statement that changes the investment policy of a separate account shall be treated as an original filing.”

During the period under examination, the Company made several amendments to the Plan of Operations for Separate Account No. 5. The amendments included additions and deletions to the fund options available to contract holders; such amendments were not submitted to the Department for prior approval. In a letter to the Department dated January 25, 2005, the Company acknowledged that it failed to file and obtain approval for the amendments to the Separate Account Plan of Operations and that it would obtain such approval for any future amendments.

The Company violated Section 4240(e) of the New York Insurance Law when it failed to file the changes to the Plan of Operations for Separate Account No. 5 and obtain the Superintendent’s approval for such amendments to the Plan.

9. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violations and recommendations contained in the prior report on examination and the subsequent actions taken by the Company in response to each citation:

<u>Item</u>	<u>Description</u>
A	<p>The Company violated Section 219.4(p) of Department Regulation No. 34-A by using advertisements that are misleading as to the true identity of the insurer.</p> <p>A review of the Company's advertising indicated that the Company is not using any advertisements that are misleading as to the true identity of the insurer. The Company shut down the websites with the above captioned misleading advertisements.</p>
B	<p>The Company violated Section 3201(b)(1) of the New York Insurance Law by using application forms and policy forms (Form Nos. 6728-DMAPP-FYT and 1-350 21-84) in New York State that were not filed with and approved by the Superintendent.</p> <p>The Company no longer uses the aforementioned forms; however, a similar violation appears in this report on examination. (See Section 6B of this report.)</p>
C	<p>The Company violated Section 3201(b)(2) of the New York Insurance Law by using application forms and policy forms (Form Nos. 6728-DMAPP-FYT and 1-350 21-84) outside of New York State that were not filed with the Superintendent.</p> <p>The Company no longer uses the aforementioned forms.</p>
D	<p>The Company violated Section 3201(b)(1) of the New York Insurance Law by issuing policy forms (90-day guaranteed term life) in New York State that were not filed with and approved by the Superintendent.</p> <p>The Company withdrew this product from the New York market. The examiners review of underwriting and sales practices did not indicate the use of this 90-day guaranteed term life product.</p>
E	<p>The Company violated Section 3201(b)(2) of the New York Insurance Law by issuing policy forms (90-day guaranteed term life) that were not filed with the Superintendent for use outside of New York State.</p> <p>The Company withdrew this product from use outside New York State.</p>

<u>Item</u>	<u>Description</u>
F	<p>The Company violated Section 52.53(i) of Department Regulation No. 62 for failing to refund premiums to declined applicants.</p> <p>The Company refunded premiums to the declined applicants and updated its practices and procedures to ensure declined applicant's premiums are refunded. A review determined that all declined applicants receive a premium refund.</p>
G	<p>The examiner recommends that the Company refund the premiums to all applicants it declined, with interest.</p> <p>The Company refunded the premiums with interest to the declined applicants.</p>
H	<p>The Company violated Section 3201(b)(1) of the New York Insurance Law by using the "Terms of Service: Life Product" agreement which is not filed and approved by the Superintendent for use in New York State.</p> <p>The Company revised the above referenced agreement. As a result of these changes, the form is now an administrative form not a policy form as defined in Section 3201(a) of the New York Insurance Law.</p>
I	<p>The Company violated Section 3201(b)(2) of the New York Insurance Law by using the "Terms of Service: Life Product" agreement which it did not file with the Superintendent for use outside of New York State.</p> <p>The Company revised the above referenced agreement. As a result of these changes, the form is now an administrative form not a "policy form" as defined in Section 3201(a) of the New York Insurance Law.</p>
J	<p>The Company's requirement for policyholders to continue all policy maintenance electronically or surrender their policy is contrary to Department Circular Letter No. 33 (1999) with respect to the Electronic Signatures and Records Act as part of the State Technology Law.</p> <p>The examiners review indicated that policy maintenance is no longer required to be processed only electronically; however, a similar comment appears in this report on examination. (See item 6C of this report.)</p>

<u>Item</u>	<u>Description</u>
K	<p>The Company violated Sections 421.2 and 421.3 of Department Regulation No. 173 by transferring the Company's responsibility to safeguard and protect against unauthorized use of information that could cause harm to the consumer, to the policyholder.</p> <p>A review of the Company's current products indicated that the Company is now responsible for protecting and safeguarding the information of consumers and policyholders against unauthorized use.</p>
L	<p>The examiner recommends that the Company periodically review its group long-term disability policies to determine changes in claimants' status with regard to Social Security benefits.</p> <p>The Company amended its practices and procedures such that it annually reviews its group long-term disability policies to determine the claimant's status.</p>
M	<p>The examiner again recommends that the Company notify all group long-term disability certificate holders of the Company's claims paying procedures with regard to the coordination of Social Security benefits.</p> <p>The annual notification to the group long-term disability certificate holders contains wording that explains the claim paying procedures with regard to the coordination of Social Security benefits.</p>
N	<p>The Company violated Section 90.7(a)(3) of Department Regulation No. 33 when it failed to itemize expenses or enter expenses in sufficient detail to indicate their precise nature.</p> <p>The Company adopted procedures that require expenses to be itemized and entered in sufficient detail to indicate an expense's precise nature. The 2003 expense study contained sufficient details as to the nature of those expenses.</p>
O	<p>The Company violated Section 91.4(a)(2) of Department Regulation No. 33 when it failed to provide records and/or time studies that showed the basis for the allocation of expenses.</p> <p>The Company provided records and time studies that showed the basis for its allocation of expenses. The examiners review of the 2003 expense study contained sufficient records to enable the examiners to determine how the Company allocated expenses in 2004 and 2005.</p>

10. SUMMARY AND CONCLUSIONS

Following are the violations, recommendations and the comment contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The Company violated Section 1202(b)(2) of the New York Insurance Law by failing to have the independent committee of the board of directors nominate candidates for the board of directors in 2002 and 2003 and by failing to evaluate the performance of officers and recommend their selection and compensation to the board of directors in 2002 or 2003.	9
B	The Company violated Section 4230(a) of the New York Insurance Law by failing to have the salary, compensation, or emoluments paid to its principal officers and directors authorized by a vote by the board of directors.	9
C	The Company did not comply with its own by-laws when it did not have any board of director elections in 2002 and 2003.	9
D	The Company violated Section 3209(b)(1) of the New York Insurance Law by failing to provide the prospective purchaser with a copy of the most recent buyer's guide at or prior to the time the application was taken.	18
E	The Company violated Section 51.6(a) of Department Regulation No. 60 by failing to require or obtain a completed Definition of Replacement.	19
F	The Company violated Section 3201(b)(1) of the New York Insurance Law by using policy forms that were neither filed with nor approved by the Superintendent. A similar violation appeared in the prior report on examination.	20
G	The Company violated Section 3203(a) of the New York Insurance Law by allowing an unapproved form to be incorporated into a contract by reference.	20
H	The Company did not comply with the requirements of Department Circular Letter No. 4 (1963) Part V (B) because questions regarding the past or present health of a person proposed for coverage were not asked as opinion but were stated and taken as facts.	20

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
I	The examiner recommends that the Company change the requirement that all premiums be paid by credit card and authorized by electronic signature as advised by Department Circular Letter No. 33 (1999). A similar comment appeared in the prior report on examination.	21
J	The examiner recommends that the Company include in all future complaint logs all of the information listed in Department Circular Letter No. 11 (1978).	22
K	The Company violated Section 3214(c) of the New York Insurance Law when it failed to pay interest on some death claims and improperly computed the interest paid on other death claims.	23
L	The examiner recommends that the Company review all death claims paid by CBCA during the period under examination to determine whether there were any other errors in the calculation of delayed settlement interest and make any additional payments where necessary.	24
M	The examiner recommends that the Company take greater care in the maintenance of the inventories used to support amounts it reported in the Exhibit of Life Insurance in its annual statement.	24
N	The examiner recommends that in the future the Company establish an internal audit program that would include regular periodic audits of all claims administered by third parties.	24
O	The Company violated Section 4240(e) of the New York Insurance Law when it failed to file the changes to the Plan of Operations for Separate Account No. 5 and obtain the Superintendent's approval for such amendments to the Plan.	25

APPOINTMENT NO. 22377

STATE OF NEW YORK
INSURANCE DEPARTMENT

I, HOWARD MILLS, Superintendent of Insurance of the State of New York,
pursuant to the provisions of the Insurance Law, do hereby appoint:

DENNIS BENSEN

as a proper person to examine into the affairs of the

AMERICAN LIFE INSURANCE COMPANY OF NEW YORK

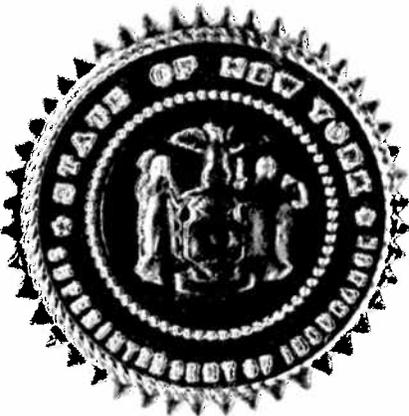
and to make a report to me in writing of the condition of the said

COMPANY

with such other information as he shall deem requisite.

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

this 1st day of June, 2005



HOWARD MILLS

Superintendent of Insurance

A handwritten signature in black ink, appearing to read "Howard Mills", written over a horizontal line.

Superintendent