STATE OF NEW YORK INSURANCE DEPARTMENT

REPORT ON EXAMINATION

OF THE

THE MANHATTAN LIFE INSURANCE COMPANY

CONDITION: DECEMBER 31, 2005

DATE OF REPORT: MARCH 16, 2007

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EXAMINER: JOSHUA WEISS

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

Eliot Spitzer
Governor

Eric Dinallo
Superintendent

March 16, 2007

Honorable Eric Dinallo
Superintendent of Insurance
Albany, New York 12257

Sir:

In accordance with instructions contained in Appointment No. 22528, dated June 29, 2006**,** and annexed hereto, an examination has been made into the condition and affairs of The Manhattan Life Insurance Company, hereinafter referred to as "the Company" or "MLIC", at its home office located at 225 Community Drive, Great Neck, NY 11021.

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

The Company violated Section 325(a) of the New York Insurance Law by failing to keep and maintain its books of account at its principal office New York. This is a repeat violation. (See item 3B of this report)

The Company violated Section 1505(d)(3) of the New York Insurance Law and its filed service agreement by not maintaining electronic access to its books of account at its principal office in New York. This is a repeat violation. (See item 3B of this report)

The Department has not certified, as to accuracy or adequacy, the Company's reserves for the year ending December 31, 2005. The Department conducted a review of reserves as of December 31, 2005. During the review, concerns were raised regarding a potential lack of conservatism with respect to the Company's life insurance and annuity reserves. In response, the Company committed to refine its reserving methodology and to strengthen reserves in a manner acceptable to the Department. The examiner recommends that the Company continue to use the reserving methodology as agreed upon with the Department. . (See item 5D of this report)

The Company did not have an internal audit function during the years under examination. Internal audit is an integral part of corporate governance that also includes the audit committee, the board of directors, senior management and the external auditors. Consideration of the work of internal auditors is essential for the audit committee to gain a complete understanding of the Company's operations. The examiner recommends that the Company establish and maintain an independent, adequately resourced, and competently staffed internal audit function to provide management and the audit committee with ongoing assessments of the Company's risk management processes and the accompanying system of internal controls.(See item 3C of this report)

The Company violated Section 2112(a) when it failed to appoint agents who sold insurance for the Company and Sections 2114(a) (1) of the New York Insurance Law when it paid commissions to agents who were not appointed with the Company. (See item 6A 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, 2005. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2005 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, 2005 to determine whether the Company's 2005 filed annual statement fairly presents its financial condition. With respect to the verification of liabilities, it is noted that the Department has not certified, as to accuracy or adequacy, the Company's reserves as of December 31, 2005 (see item 5D of this report). 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 and recommendations contained in the prior report on examination. The results of the examiner's review are contained in item 7 of this report.

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

## 3. DESCRIPTION OF COMPANY

### A. History

The Company was incorporated on May 29, 1850 and commenced business on August 1, 1850 under Chapter 308 of the laws of 1849 as an entity with a guarantee capital of $100,000. It was authorized to write participating life insurance policies.

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

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

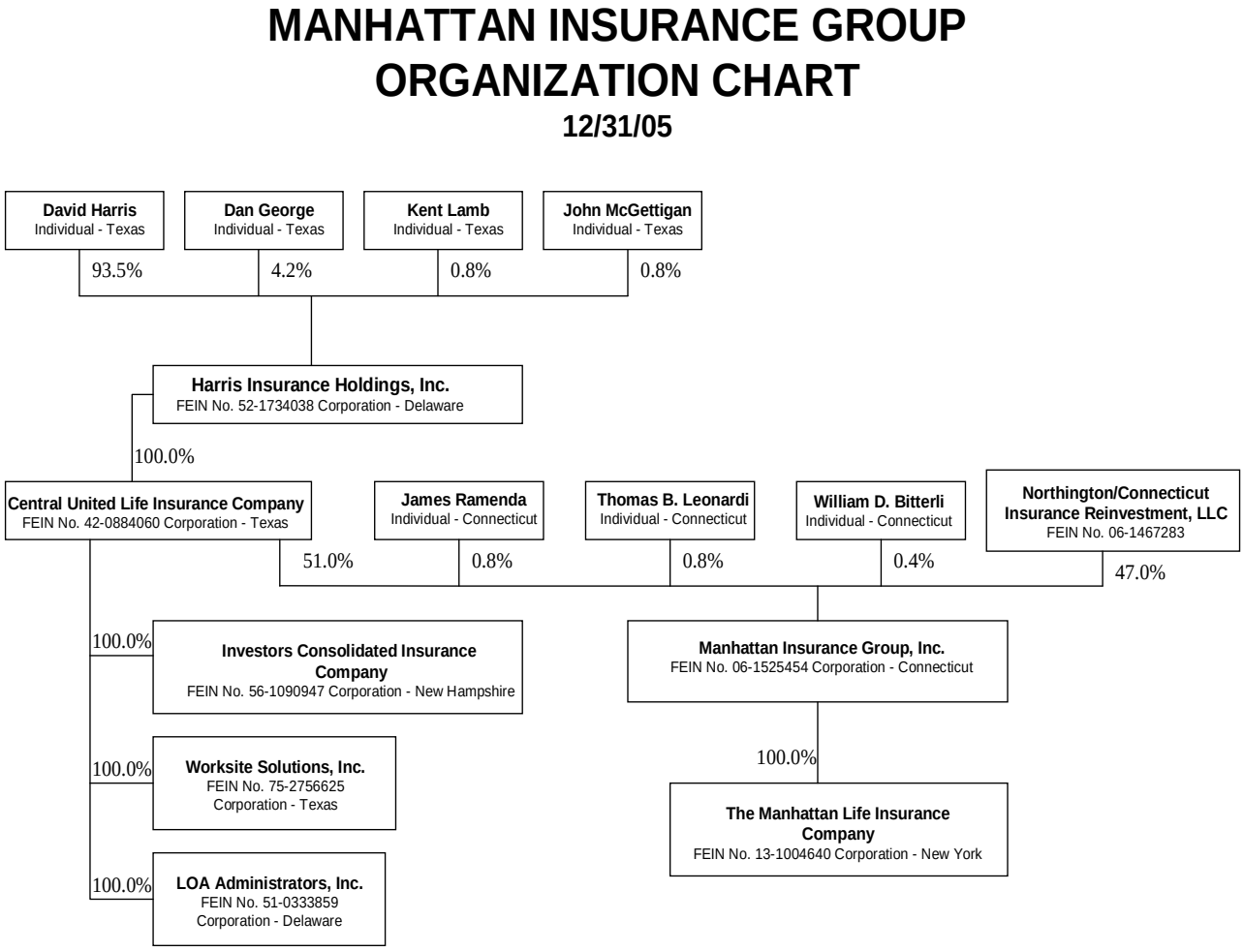
On February 4, 2000, Union Central completed the sale of all of the guarantee capital shares of MLIC to Connecticut Reassurance Corporation, which subsequently changed its name to Manhattan Insurance Group, Inc. ("MIG"). MIG is principally owned by Central United Life Insurance Company ("CUL") (51%) and Northington/Connecticut Insurance Reinvestment, LLC, ("Northington") (47%). CUL is owned by Harris Insurance Holdings, Inc., which in turns is ultimately owned by David Harris (93.5%), Dan George (4.2%), Kent Lamb (0.8%), and John McGettigan (0.8%).

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

B. Holding Company

The Company is a wholly owned subsidiary of Manhattan Insurance Group ("MIG"), a Connecticut insurance holding company. MIG is in turn ultimately owned by four individuals.

An organization chart reflecting the relationship between the Company and significant entities in its holding company system as of December 31, 2005 follows:



The Company had one service agreement in effect with affiliates during the examination period.

| Type of Agreement and Department File Number | Effective Date | Provider(s) of Service(s) | Recipient(s) of Service(s) | Specific Service(s) Covered | Income/ (Expense)* For Each Year of the Examination |
|---|---|---|---|---|---|
| Service Agreement File # 26946 | Feb 4, 2000 | Central United Life Ins Co | Manhattan Life Ins Co | Administrative, accounting. and financial management., IT, legal | 2005 – ($1,966,123)<br>2004 – ($1,842,010)<br>2003 – ($2,206,389)<br>2002 – ($2,773,367) |

* Amount of Income or (Expense) Incurred by the Company

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

> "Every domestic insurer . . . shall . . . keep and maintain at its principal office in this state its books of account . . ."

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

> "The following transactions between a domestic controlled insurer and any person in its holding company system may not be entered into unless the insurer has notified the superintendent in writing of its intention to enter into any such transaction as least thirty days prior thereto, or such shorter period as he permit, and he has not disapproved it within such period . . .
> (3) rendering of services on a regular or systematic basis . . . "

Article 1.5 of the service agreement between the Company ("MLIC") and CUL states, in part:

> "(c) . . . A computer terminal which is linked to the electronic system that generates the electronic records that constitute MLIC's books of accounts shall be kept and maintained at MLIC's principal office in New York. During all normal business hours, there shall be ready availability and easy access through such terminal to the electronic media used to maintain the records comprising MLIC's books of account . . . "
> "(e) CUL shall maintain acceptable backup (hard copy or any other durable medium as long as the means to access the durable medium is also maintained at MLIC's principal office in New York) of the records constituting MLIC's books

> of account. Such backup shall be forwarded to MLIC on a monthly basis and shall be maintained by MLIC at its principal office in New York."

The Company did not keep and maintain an updated (monthly or quarterly) trial balance, general ledger, transaction register or claims register at its principal office in this state.

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

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

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

The above noted violations are repeated from the prior report on examination.

C. Management

The Company's by-laws provide that the board of directors shall be comprised of not less than nine and not more than 15 directors. The number of directors shall be increased to not less than 13 within one year following the end of the calendar year in which the corporation exceeds one and one-half billion dollars in admitted assets. Directors are elected for a period of one year at the annual meeting of the stockholders held in May of each year. As of December 31, 2005, the board of directors consisted of 11 members. Meetings of the board are held quarterly.

The 11 board members and their principal business affiliation, as of December 31, 2005, were as follows:

| Name and Residence | Principal Business Affiliation | Year First Elected |
|---|---|---|
| Charles H. Avery*<br>The Woodlands, TX | Insurance agent | 2003 |
| William Bitterli<br>Avon, CT | Managing Director<br>Northington Partners, Inc. | 2000 |
| Daniel A. Hargraves*<br>New York, NY | Attorney<br>Hargraves, McConnel&Costigan | 2004 |

| Name and Residence | Principal Business Affiliation | Year First Elected |
|---|---|---|
| Deborah L. Hargraves*<br>New York, NY | Attorney<br>Not practicing | 2004 |
| Daniel J. George<br>Houston, TX | President & Treasurer<br>The Manhattan Life Insurance Company | 2000 |
| David W. Harris<br>Houston, TX | Chairman of the Board & Chief Executive Officer<br>The Manhattan Life Insurance Company<br>President and Chief Executive Officer<br>Harris Insurance Holdings, Inc. | 2000 |
| Thomas B. Leonardi<br>Avon, CT | President<br>Northington Partners, Inc. | 2000 |
| Dale R. Oldham<br>Houston, TX | Chief Operating Officer<br>The Manhattan Life Insurance Company | 2000 |
| Brandon W. Pierce*<br>Houston, TX | Partner/Instructor<br>Calvin Murphy's Basketball, U.S.A. | 2003 |
| Mary Lou Rainey<br>Houston, TX | Vice President & Secretary<br>The Manhattan Life Insurance Company | 2000 |
| James Ramenda<br>Avon, CT | Managing Director<br>Northington Partners, Inc. | 2000 |

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

In January 2006, Charles Avery resigned from the board and was replaced by Phil Martin.

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

The following is a listing of the principal officers of the Company as of December 31, 2005:

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

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

MLIC's conflict of interest resolution of May 14, 2002 indicates that the Company is directed to have a conflict of interest statement signed by each officer, director and responsible employee once a year. The Company did not have its officers, directors and responsible employees fill out conflict of interest statements for the years 2003, 2004 and 2005. The examiner recommends that conflict of interest statements be filled out by all required employees and directors annually in accordance with its Board resolution.

The Company did not have an internal audit function during the years under examination. Internal audit is an integral part of corporate governance that also includes the audit committee, the board of directors, senior management and the external auditors. In particular, internal auditors and audit committees are mutually supportive. Consideration of the work of internal auditors is essential for the audit committee to gain a complete understanding of the Company's operations. Internal audit identifies strategic, operational and financial risks facing the organization, and assesses controls put in place by management to mitigate those risks.

The examiner recommends that the Company establish and maintain an independent, adequately resourced, and competently staffed internal audit function to provide management and the audit committee with ongoing assessments of the Company's risk management processes and the accompanying system of internal controls.

D. Territory and Plan of Operation

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

The Company is licensed to transact business in all 50 states and the District of Columbia. In 2005, 52% of life premiums were received from New York (25.4%), Florida (8.7%), Pennsylvania (6.1%), California (6.1%) and Texas (5.9%). The Company ceased writing participating business in March 1998. All policies written prior to that date were participating.

MLIC is now positioned primarily as a worksite carrier with a full portfolio of supplemental health and life products. The active product portfolio includes a simplified issue universal life product available on both an individual and worksite basis and a voluntary group term product. A fully underwritten level term life product with a critical condition rider is presently being filed in selected states.

The Company's agency operations are conducted on a general agency basis.

E. Reinsurance

As of December 31, 2005, the Company had reinsurance treaties in effect with 16 companies, of which 12 were authorized or accredited. The Company's life business is reinsured on a coinsurance and/or yearly renewable term basis. Reinsurance is provided on an automatic and facultative basis.

The maximum retention limit for individual life contracts is $400,000. The total face amount of life insurance ceded as of December 31, 2005, was $332,774,000, which represents 21% of the total face amount of life insurance in force.

The total face amount of life insurance assumed as of December 31, 2005 was $224,284,860. In November 2005, the Company acquired a block of single premium whole life and interest sensitive business from Western United Life Assurance Company. The face amount of life insurance assumed on the Western United transaction was $164 million. As a result of this transaction the Company received cash of $45.3 million, policy loans of $16.4 million, and assumed reserves of $64 million.

## 4. SIGNIFICANT OPERATING RESULTS

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

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

| | December 31, 2001 | December 31, 2005 | Increase |
|---|---|---|---|
| Admitted assets | $372,444,638 | $400,457,058 | $ 28,001,240 |
| Liabilities | $348,732,565 | $356,810,010 | $ 8,077,445 |
| Common capital stock | $ 6,683,248 | $ 6,683,248 | $ 0 |
| Gross paid in and contributed surplus | 19,701,338 | 23,422,338 | 3,721,000 |
| Unassigned funds (surplus) | ( 2,672,513) | 13,541,462 | 16,213,975 |
| Total capital and surplus | $ 23,712,073 | $ 43,647,048 | $ 19,934,975 |
| Total liabilities, capital and surplus | $372,444,638 | $400,457,058 | $ 28,012,420 |

The increase in assets and liabilities is primarily due to acquisition of a block of business from Western United Life Assurance Company (WULA).

The Company's invested assets as of December 31, 2005 were mainly comprised of bonds (61.2%), cash and short term investments (14.3%), mortgage loans (12.3%) and policy loans (11.9%).

The Company's entire bond portfolio, as of December 31, 2005, 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:

| | 2002 | 2003 | 2004 | 2005 |
|---|---|---|---|---|
| Ordinary: | | | | |
| Life insurance | $23,693,046 | $20,573,706 | $20,119,924 | $17,432,423 |
| Individual annuities | 1,259 | 1,000 | 1,000 | 0 |
| Total ordinary | $23,694,305 | $20,574,706 | $20,120,924 | $17,432,423 |
| Group Life | $ 0 | $ 0 | $ 16,355 | $ 267,338 |
| Group Accident and Health | $ 0 | $ 0 | $ 6,677 | $ 9,339 |
| Total | $23,694,305 | $20,574,706 | $20,143,956 | $17,709,100 |

## 5. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital and surplus as of December 31, 2005, as contained in the Company's 2005 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, 2005 filed annual statement; however the Department has not certified, as to accuracy or adequacy, the Company's reserves as of December 31, 2005. (see item 5D of this report)..

### A. ASSETS, LIABILITIES, CAPITAL AND SURPLUS AS OF DECEMBER 31, 2005

Admitted Assets

| | |
|---|---|
| Bonds | $236,882,460 |
| Mortgage loans on real estate: | |
| First liens | 47,633,371 |
| Real estate: | |
| Properties held for sale | 456,282 |
| Cash, cash equivalents and short term investments | 55,445,744 |
| Contract loans | 45,844,749 |
| Receivable for securities | 733,564 |
| Investment income due and accrued | 5,029,916 |
| Premiums and considerations: | |
| Uncollected premiums and agents' balances in the course of collection | 1,382,998 |
| Deferred premiums, agents' balances and installments booked but deferred and not yet due | 2,904,772 |
| Reinsurance: | |
| Amounts recoverable from reinsurers | 160,437 |
| Other amounts receivable under reinsurance contracts | 23,558 |
| Net deferred tax asset | 3,924,586 |
| Guaranty funds receivable or on deposit | 20,905 |
| Electronic data processing equipment and software | 13,716 |
| Total admitted assets | $400,457,058 |

Liabilities, Capital and Surplus

| | |
|---|---|
| Aggregate reserve for life policies and contracts | $311,110,386 |
| Liability for deposit-type contracts | 32,248,063 |
| Contract claims: | |
| Life | 4,400,882 |
| Accident and health | 3,100 |
| Provision for policyholders' dividends and coupons payable in following calendar year – estimated amounts | |
| Dividends apportioned for payment | 482,823 |
| Dividends not yet apportioned | 810,391 |
| Premiums and annuity considerations for life and accident and health contracts received in advance | 42,524 |
| Contract liabilities not included elsewhere: | |
| Interest maintenance reserve | 5,898,615 |
| Commissions and expense allowances payable on reinsurance assumed | 62,545 |
| Taxes, licenses and fees due or accrued, excluding federal income taxes | (13,866) |
| Current federal and foreign income taxes | 17,093 |
| Unearned investment income | 276,418 |
| Amounts withheld or retained by company as agent or trustee | 472 |
| Remittances and items not allocated | 232,756 |
| Liability for benefits for employees and agents if not included above | 24,367 |
| Miscellaneous liabilities: | |
| Asset valuation reserve | 1,117,333 |
| Reinsurance in unauthorized companies | 2,806 |
| Payable to parent, subsidiaries and affiliates | 93,302 |
| Total liabilities | $356,810,010 |
| Common capital stock | $ 6,683,248 |
| Surplus notes | 10,000,000 |
| Gross paid in and contributed surplus | 13,422,338 |
| Unassigned funds (surplus) | 13,541,462 |
| Surplus | $ 36,963,800 |
| Total capital and surplus | $ 43,647,048 |
| Total liabilities, capital and surplus | $400,457,058 |

## B. CONDENSED SUMMARY OF OPERATIONS

| | 2002 | 2003 | 2004 | 2005 |
|---|---|---|---|---|
| Premiums and considerations | $23,694,305 | $20,574,706 | $20,143,957 | $17,709,100 |
| Investment income | 24,101,238 | 20,812,608 | 18,778,289 | 18,891,198 |
| Commissions and reserve adjustments on reinsurance ceded | 228,096 | 196,496 | 139,365 | 215,552 |
| Total income | $48,023,639 | $41,583,810 | $39,061,611 | $38,815,850 |
| Benefit payments | $52,821,722 | $44,223,690 | $40,936,940 | $38,461,747 |
| Increase in reserves | (15,048,830) | (15,237,529) | (13,964,366) | (13,198,741) |
| Commissions | 1,227,706 | 1,036,833 | 683,814 | 749,466 |
| General expenses and taxes | 6,793,847 | 5,253,971 | 4,782,835 | 5,553,897 |
| Increase in loading on deferred and uncollected premiums | 33,427 | 258,283 | 443,404 | 400,046 |
| Total deductions | $45,827,872 | $35,535,248 | $32,882,627 | $31,966,415 |
| Net gain | $ 2,195,767 | $ 6,048,562 | $ 6,178,984 | $ 4,849,435 |
| Dividends | 1,601,269 | 951,229 | 1,447,211 | 1,154,095 |
| Federal and foreign income taxes incurred | 0 | 0 | 13,129 | 147,093 |
| Net gain from operations before net realized capital gains | $ 594,498 | $ 5,097,333 | $ 4,718,644 | $3,548,247 |
| Net realized capital gains (losses) | (1,154,333) | (1,249,056) | 0 | *1,984,642 |
| Net income | $ (559,835) | $3,848,277 | $ 4,718,644 | $5,532,889 |

*Included in the net realized capital gains line for 2005 was the sale of the Company's real estate property at Lake Success, New York. During the course of the Company's audit, the external auditors determined that the Company should have amortized the gain from this transaction. As a result the Company made an adjustment in its September 2006 quarterly financial statements of $1,817,000, which has been reflected in its capital and surplus.

## C. CAPITAL AND SURPLUS ACCOUNT

| | 2002 | 2003 | 2004 | 2005 |
|---|---|---|---|---|
| Capital and surplus, December 31, prior year | $23,712,073 | $19,155,479 | $25,186,373 | $40,047,856 |
| Net income | $ (559,835) | $ 3,848,277 | $ 4,718,644 | $ 5,532,889 |
| Change in net unrealized capital gains (losses) | (1,306,572) | 3,614,070 | 0 | 0 |
| Change in net deferred income tax | 13,115,210 | 1,007,720 | (3,807,579) | (793,740) |
| Change in non-admitted assets and related items | (10,979,114) | (741,673) | 5,312,777 | (1,244,627) |
| Change in liability for reinsurance in unauthorized companies | (4,324) | 476 | 1,174 | (133) |
| Change in asset valuation reserve | 1,037,363 | 160,806 | 128,746 | 104,803 |
| Change in surplus notes | 0 | 0 | 10,000,000 | 0 |
| Aggregate write ins for gains and losses in surplus | (5,859,322) | (1,858,782) | (1,492,279) | 0 |
| Net change in capital and surplus for the year | $(4,556,594) | $ 6,030,894 | $14,861,483 | $ 3,599,192 |
| Capital and surplus, December 31, current year | $19,155,479 | $25,186,373 | $40,047,856 | $43,647,048 |

## D. RESERVES

The Department conducted a review of reserves as of December 31, 2005. This review included an examination of related asset adequacy analysis in accordance with Department Regulation No. 126. During the review, concerns were raised regarding a potential lack of conservatism with respect to the Company's life insurance and annuity reserves. In response, the Company committed to refine its reserving methodology and to strengthen reserves in a manner acceptable to the Department. The examiner recommends that the Company continue to use the reserving methodology as agreed upon with the Department. This methodology would lead to additional reserves for December 31, 2008 of approximately $6 million. Additional reserve increases may be required pending subsequent Company analysis and Department monitoring.

The Department has not certified, as to accuracy or adequacy, the Company’s reserves for the year ending December 31, 2005. However, the Department expects to issue the certificate of reserve valuation for December 31, 2005 reserves once the Company completes its implementation of the refinements to their asset adequacy analysis as recommended.

## 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 2112(a) of the New York Insurance Law states, in part:

> "Every insurer . . . doing business in this state shall file a certificate of appointment in such form as the superintendent may prescribe in order to appoint insurance agents to represent such insurer . . . "

Section 2114(a) of the New York Insurance Law states, in part:

> "(1) No insurer . . . doing business in this state shall pay any commission or other compensation to any person, firm or corporation, for any services in obtaining in this state any new contract of life insurance or any new annuity contract, except to a licensed life insurance agent of such insurer . . .

During the examiner's review of producer licensing, five agents, out of a sample of ten, were discovered to have been soliciting business for MLIC without having a valid current appointment certificate. These five agents wrote 33 life policies during the examination period.

The Company violated Section 2112(a) when it failed to appoint agents who sold insurance for the Company. The Company violated Sections 2114(a) (1) of the New York Insurance Law when it paid commissions to agents who were not appointed with the Company.

B. Underwriting and Policy Forms

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

Based upon the sample reviewed, no significant findings were noted.

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.

1. Section 3206 (d) of the New York Insurance Law states:

> "(d) The insurer shall for any such policy:
> (1) notify the policyholder at the time a cash loan is made of the initial rate of interest on the loan;
> (2) notify the policyholder with respect to premium loans of the initial rate of interest on the loan as soon as it is reasonably practical to do so after making the initial loan. Notice need not be given to the policyholder when a further premium loan is added, except as provided in paragraph three hereof;
> (3) send to policyholders with loans reasonable advance notice of any increase in the rate; and
> (4) include in the notices required above the substance of the pertinent policy provisions permitting an adjustable maximum interest rate on policy loans established from time to time by the insurer as permitted by law, and specifying the frequency at which the interest rate is to be determined by the insurer as permitted by law."

The Company failed to provide documentation showing that the policyholder was notified of the initial rate of interest on the loan as required by Section 3206(d) (1) (2) and (4) of the New York Insurance Law; and the Company failed to provide documentation showing that reasonable advance notice of increases in the interest rate was given in compliance to policyholders with Section 3206(d) (3) and (4) of the New York Insurance Law.

The Company violated Section 3206 (d)(1) (2)and(4) of the New York Insurance Law when it failed to provide documentation showing that the policyholder was notified of the initial rate of interest on the loan and Section 3206(d)(3) and (4) of the New York Insurance Law by failing to provide documentation that reasonable advance notice of increases in the interest rate was given to the policyholder.

2. A review of death claim payments in excess of $5,000 revealed that MLIC has a policy of depositing all New York claim proceeds into a retained asset account. As part of their correspondence to beneficiaries concerning death claim proceeds, the Company states that "If the proceeds are $5,000 or more, they will be placed in our Capital Account. A checkbook will be issued once the claim is finalized."

The Company indicated in writing to the examiners, that the Company will pay the proceeds directly to the beneficiary as follows:

> "There are several circumstances that cause us to pay proceeds directly to the beneficiary rather than placing the proceeds in the Capital Account. They are:
>
> For all other states (other than FL or AK), our initial claim letter states that the proceeds will be deposited to the Capital Account if over $5,000. If they should notify us that they do not want us to do so, we will comply with their request."

Although this is stated in their response, nowhere in its correspondence to the beneficiaries does the Company advise the beneficiaries of their option not to have their proceeds deposited into the Capital Account.

The examiner found three cases where the beneficiary requested that the funds not be deposited into the Capital Account. In all three cases the request for a check paid directly to the beneficiary was not complied with. Rather the Company opened up checkbook for the beneficiaries, contrary to their written request.

The examiner recommends that the Company follow the instructions of beneficiaries and pay a lump sum when so requested. The examiner also recommends that, MLIC prepare a clearly worded option form for New York policyholders, and present that form to the beneficiaries, in order to avail them of the choice of having a lump sum paid directly to them.

## 7. 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:

| Item | Description |
|---|---|
| A | The Company violated Section 325(a) of the New York Insurance Law for failing to keep and maintain its charter and by-laws, board minutes and books of account at its principal office in this state.<br><br>The Company again violated Section 325(a) of the New York Insurance Law for failing to keep and maintain its books of account at its principal office in this state. The Company did maintain its charter and by-laws and board minutes in New York. |
| B | The Company violated Section 1505(d)(3) of the New York Insurance Law and its filed service agreement by not maintaining electronic access to its books of account at its principal office in New York.<br><br>The Company again violated Section 1505(d)(3) of the New York Insurance Law and its filed service agreement by not maintaining electronic access to its books of account at its principal office in New York. |
| C | The Company violated Section 1202(b)(1) of the New York Insurance Law by failing to have not less than one-third unaffiliated members on its investment committee.<br><br>The Company complied with Section 1202(b)(1) of the New York Insurance Law by having not less than one-third unaffiliated members on its investment committee. |
| D | The Company violated Section 3214(c) of the New York Insurance Law by failing to pay interest on death claims.<br><br>The Company paid interest on death claims during the current period. |
| E | The Company violated Section 91.4(f)(6) of Department Regulation No. 33 by allocating general insurance expenses on the basis of net investment income.<br><br>The Company no longer allocates general insurance expenses on the basis of net investment income. The expenses are now allocated based on acceptable unit values listed in Department Regulation No. 33. |

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

The Company maintained records with sufficient detail to show the allocation method used for expenses in the period under review.

G The examiner recommends that the Company reverse the re-allocation of surplus from the "Other participating line" to the "Universal life type" participating line of business.

The Company reversed the re-allocation of surplus from the "Other participating line" to the "Universal life type" participating line of business.

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

The Company included expenses on the appropriate lines of Exhibit 5 of its filed annual statement.

I The Company violated Section 421.10 of Department Regulation No. 173 by not having an information security program in place by June 1, 2002.

The Company has implemented an information security program.

## 8. SUMMARY AND CONCLUSIONS

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

| Item | Description | Page No(s). |
|---|---|---|
| A | The Company violated Section 325(a) of the New York Insurance Law by failing to keep and maintain its books of account at its principal office in this state. | 7 |
| B | The Company violated Section 1505(d)(3) of the New York Insurance Law and its filed service agreement by not maintaining electronic access to its books of account at its principal office in New York. | 7 |
| C | The examiner recommends that the Company establish and maintain an independent, adequately resourced, and competently staffed internal audit function to provide management and the audit committee with ongoing assessments of the Company's risk management processes and the accompanying system of internal controls. | 9 |
| D | The Company did not have its officers, directors and responsible employees fill out conflict of interest statements for the years 2003, 2004 and 2005. The examiner recommends that conflict of interest statements should be filled out by all required employees and directors annually | 9 |
| E | The examiner recommends that the Company continue to use the reserving methodology as agreed upon with the Department. | 17 |
| F | The Department has not certified, as to accuracy or adequacy, the Company’s reserves for the year ending December 31, 2005. | 17 |
| G | The Company violated Section 2112(a) when it failed to appoint agents who sold insurance for the Company and Sections 2114(a) (1) of the New York Insurance Law when it paid commissions to agents who were not appointed with the Company. | 18 |
| H | The Company violated Section 3206 (d) of the New York Insurance Law when it failed to provide documentation showing that the policyholder was notified of the initial rate of interest on a loan and that reasonable advance notice of increases in the interest rate was given to the policyholder | 19 |

| Item | Description | Page No(s). |
|---|---|---|
| I | The examiner recommends that the Company follow the instructions of beneficiaries and pay a lump sum when so requested. | 19 |
| J | The examiner recommends that the Company prepare a clearly worded option form for New York policyholders, and present that form to the beneficiaries, in order to avail them of the choice of having a lump sum paid directly to them. | 20 |

Respectfully submitted,

/s/
Joshua Weiss
Associate Insurance Examiner

STATE OF NEW YORK )
)SS:
COUNTY OF NEW YORK )

Joshua Weiss, being duly sworn, deposes and says that the foregoing report, subscribed by him, is true to the best of his knowledge and belief.

/s/
Joshua Weiss

Subscribed and sworn to before me

this_____ day of _____

*APPOINTMENT NO.* *22528*

*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:*

***JOSHUA WEISS***

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

***MANHATTAN LIFE INSURANCE COMPANY***

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

***COMPANY***

*with such other information as he shall deem requisite.*

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

*this 29th day of June, 2006*

***HOWARD MILLS***
*Superintendent of Insurance*

*Superintendent*