STATE OF NEW YORK INSURANCE DEPARTMENT

REPORT ON EXAMINATION

OF THE

WILLIAM PENN LIFE INSURANCE COMPANY OF NEW YORK

CONDITION: DECEMBER 31, 2004

DATE OF REPORT: SEPTEMBER 9, 2005

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EXAMINER: DARLENE SINGLEMANN

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

George E. Pataki
Governor

Howard Mills
Superintendent

September 9, 2005

Honorable Howard Mills
Superintendent of Insurance
Albany, New York 12257

Sir:

In accordance with instructions contained in Appointment No. 22311, dated February 7, 2005, and annexed hereto, an examination has been made into the condition and affairs of the William Penn Life Insurance Company of New York, hereinafter referred to as "the Company," at its home office located at 100 Quentin Roosevelt Boulevard, Garden City, New York 11364.

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 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 2611 of the New York Insurance Law by failing to obtain from proposed insureds signed consent forms prior to obtaining blood samples. (See item 6C of this report)

The examiner recommends the Company review all policies issued to juveniles on form L-FPA5/91, and any other form with similar wording on the basis of mortality charges, with a rating class of standard for compliance with Section 3201(c)(5) of the New York Insurance Law. Where the cost of insurance rates actually charged exceed those based on the 1980 CSO Mortality Table (aggregate basis) below age 20, and the 1980 CSO Mortality Table (non-smoker basis) for age 20 and above, the examiner recommends that the Company restore the excess charge, with interest, to the policyholder. (See item 6B of this report)

The examiner recommends that the Company put in place administrative procedures to ensure that no future cost of insurance rates on standard policies exceed those based on the 1980 CSO Mortality Table (aggregate basis) below age 20, and the 1980 CSO Mortality Table (non-smoker basis) for age 20 and above. (See item 6B 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 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 as a stock life insurance company under the laws of New York on September 12, 1962, and was licensed on January 28, 1963. It commenced business on February 23, 1963 under the name Modern Life Insurance Company. Initial resources of $1,000,000, consisting of common capital stock of $500,000 and paid in and contributed surplus of $500,000 were provided through the sale of 100,000 shares of common stock (with a par value of $5 each) for $10 per share.

As of December 31, 2004, the Company's capital and paid in and contributed surplus totaled $2,002,500 and $54,058,416, respectively.

In 1967, ITT Hamilton Life Insurance Company, a subsidiary of Penncorp Financial, Inc., acquired the Company. In 1968, the Company's name changed to ITT Life Insurance Company of New York; in 1972, the Company's name changed to Penn Life Insurance Company of New York. In 1975, the Company adopted its present name.

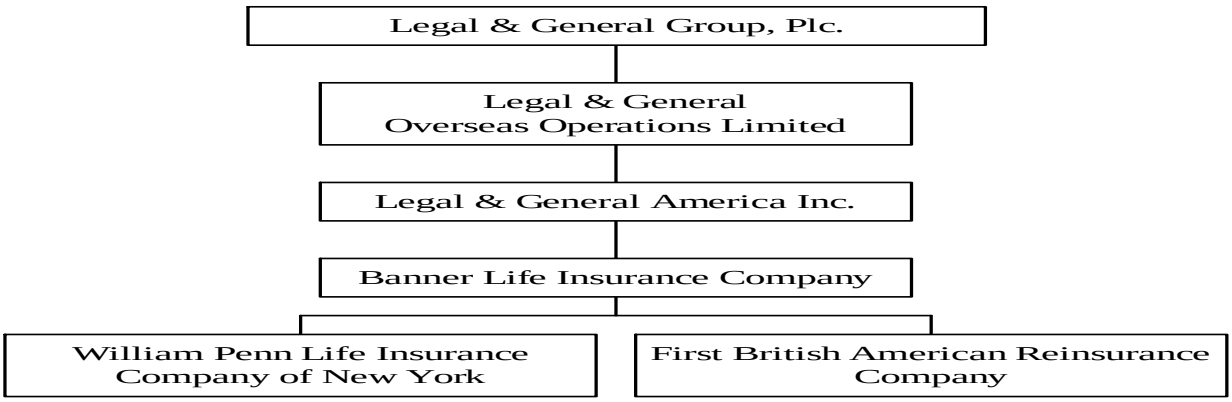
In 1983, Maiden Lane Life Insurance Company ("Maiden"), a subsidiary of Continental Corp., acquired the Company. Later that year, Maiden transferred ownership of the Company to Commercial Life Insurance Company, also a subsidiary of Continental Corp. In 1985, ownership was transferred directly to Continental Corp.

In 1989, Legal & General Group, Plc. ("L & G"), a United Kingdom company, acquired the Company. Later that year, L & G transferred ownership to its subsidiary, Legal & General Life Insurance Company of America, Inc. ("L & G Life"). In April 1999, the Company merged with its affiliate, Banner Life Insurance Company of New York. The Company was the surviving entity of that merger. At the same time, L & G Life transferred 100% ownership of the Company to its affiliate, Banner Life Insurance Company ("Banner Life").

B. Holding Company

The Company is a wholly-owned subsidiary of Banner Life, a Maryland stock life insurance company that is licensed in all states except New York. Banner Life is a wholly-owned subsidiary of L & G America, a Delaware holding company. The ultimate parent of the Company is L & G.

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 four service agreements 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	
Investment Management Agreement File Number 23267	4/1/96	Group Concepts, Inc.	the Company	Investment management services	2002	$(677,322)
					2003	$(720,748)
					2004	$(481,000)
Expense Sharing Agreement File Number 26116	10/22/99	Banner Life	the Company	Accounting and tax reconciliation	2002	$(264,647)
					2003	$(389,080)
					2004	$(373,000)
Expense Sharing Agreement File Number 26116	10/22/99	the Company	Banner Life	Underwriting services, claim services, reinsurance services and agency services	2002	$86,234
					2003	$81,142
					2004	$120,000

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	
Expense Sharing Agreement File Number 26116	10/22/99	L & G America	the Company	Accounting support services, internal auditing and tax related services, legal advisory services, payroll and personnel supervisory services, administrative services, and marketing and sales services, investment advisory services, underwriting and customer service	2002	$(4,357,872)
					2003	$(5,192,662)
					2004	$(10,768,000)

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

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

> "The following transactions . . . may not be entered into unless the insurer has notified the superintendent in writing of its intention to enter into any such transaction at least thirty days prior thereto . . . and he has not disapproved it within such period:
>
> 1) sales, purchases, exchanges, loans or extensions of credit, or investments, involving more than one-half of one percent but less than five percent of the insurer's admitted assets at last year-end . . . "

The examiner's review of inter-company transactions indicated that, in 2004, there was a large increase in expenses allocated to the Company under the Expense Sharing Agreement (File Number 26116). The Company explained that this was the result of a capital markets solution in establishing First British American Reinsurance Company ("First British") as a captive of L & G America to fund the Triple X reserves of both the Company and Banner Life. The expenses allocated to the Company were the Company's proportional share of such expenses. However, these expenses were never contemplated by the Department as a service under the Expense Sharing Agreement, and the Department should have been notified separately of such, pursuant to Section 1505(d) of the New York Insurance Law.

The examiner recommends that, in the future, the Company notify the Department of similar transactions, pursuant to Section 1505(d) of the New York Insurance Law.

The Company participates in a federal income tax allocation agreement with its parent and affiliates.

C. Management

The Company's by-laws provide that the board of directors shall be comprised of not less than 13 and not more than 20 directors. 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, 2004, the board of directors consisted of 13 members. Meetings of the board are held quarterly.

The 13 board members and their principal business affiliation, as of December 31, 2004, were as follows:

Name and Residence	Principal Business Affiliation	Year First Elected
Michael M. Cassell* Greenwich, CT	Founder and former President and Chief Executive Officer The Greenwich Bank & Trust Co.	1989
Timothy E. Deal* Washington, DC	Consultant Senior Vice President U.S. Council for International Business	1999
Robert E. Freeman* Estes Park, CO	Retired Former President William Penn Life Insurance Company of New York	1999
Gene R. Gilbertson Rockville, MD	Senior Vice President, Chief Financial Officer and Treasurer William Penn Life Insurance Company of New York and Legal & General America, Inc.	1989
Dewey D. Goodrich, Jr. Frederick, MD	Executive Vice President William Penn Life Insurance Company of New York and Legal & General America, Inc.	1995
Andrew S. Hedden* Hartsdale, NY	Partner Coudert Brothers	1989
Sharon M. Jenkins Hempstead, NY	Vice President William Penn Life Insurance Company of New York	2000

Name and Residence	Principal Business Affiliation	Year First Elected
David S. Lenaburg Rockville, MD	Chairman and Chief Executive Officer William Penn Life Insurance Company of New York Chief Executive Officer Legal & General America, Inc.	1989
Vincent R. McLean* Westfield, NJ	Retired Former Executive Vice President and Chief Financial Officer Sperry Corporation	1993
David J. Orr Monrovia, MD	Senior Vice President and Chief Actuary William Penn Life Insurance Company of New York and Legal & General America, Inc.	1990
Dimitri B. Papadimitriou* Annandale-on-Hudson, NY	Executive Vice President Bard College	1974
Joseph M. Sullivan Rye Brook, NY	President William Penn Life Insurance Company of New York	1992
James I. Wyer, Esq.* Locust, NJ	Counsel Robinson, St. John & Wayne	1991

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

In May 2005, Ramanathan K. Illango, M.D. was elected to the board.

Article III Section 3.01 of the Company's by-laws states, in part:

> "Executive Committee. (a) . . . The members of such committee shall be elected at the meeting of the Board following the annual meeting of shareholders or following the execution by the shareholders of a written consent in lieu thereof, and shall hold office at the pleasure of the Board or until its next annual meeting, which shall first occur . . ."

The Company's by-laws require that the executive committee be elected annually at the meeting of the board. During the examination period, the members of the executive committee held their positions on a continual basis; they had not been elected to the committee on an annual basis.

The examiner recommends that the Company comply with its by-laws and elect the members of the executive committee each year at the meeting of the board of directors following

the annual meeting of shareholders. The prior report on examination contained a similar recommendation.

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, 2004:

Name	Title
David S. Lenaburg	Chairman and Chief Executive Officer
Joseph M. Sullivan	President
David J. Orr	Senior Vice President and Chief Actuary
Gene R. Gilbertson	Senior Vice President, Chief Financial Officer and Treasurer
Kevin Harty	Senior Vice President and Chief Marketing Officer
Sharon M. Jenkins	Vice President, Underwriting
Dewey D. Goodrich, Jr.	Executive Vice President, Information System Services and Administrative Services
Charles A. Lingaas *	Senior Vice President, Administrative Services
Bryan Ross Newcombe	Vice President, Secretary, and General Counsel
Michael D. Mullaney	Vice President, Corporate Taxation
Barbara A. Esau	Vice President, Human Resources
Philip H. Muskatt	Vice President, Marketing

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

In May 2005, Ramanathan K. Illango, M.D. was elected Senior Vice President and Chief Medical Director. In June 2005, Michael D. Mullaney resigned as the Vice President of Corporate Taxation.

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 ceased writing accident and health insurance in 1975 and ceased writing annuities in 2005.

The Company is licensed to transact business in 12 states, namely Connecticut, Florida, Idaho, Maryland, New Jersey, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, and South Dakota, and the District of Columbia. In 2004, 79.4% of life insurance premiums and 80.7% of annuity considerations were received from New York; 7.6% of life insurance premiums and 7.3% of annuity considerations were received from New Jersey. Policies are written on a non-participating basis.

The Company's primary products during the examination period were individual life insurance, annuities and universal life insurance. The main focus is on its fully underwritten term life insurance product. The Company de-emphasized the sale of its universal life insurance and annuity products in 1995, and, as stated above, ceased writing annuities in 2005.

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

E. Reinsurance

As of December 31, 2004, the Company had 36 reinsurance treaties in effect with 24 companies, of which 13 were authorized or accredited. The Company's universal, term and whole life insurance businesses are reinsured on a coinsurance, modified-coinsurance, or yearly renewable term basis. Reinsurance is provided on an automatic and facultative basis.

The maximum retention limit for individual life contracts is $1,000,000. The total face amount of life insurance ceded, as of December 31, 2004, was $43,387,536,119, which represents 86.7% of the total face amount of life insurance in force. Reserve credit taken for reinsurance ceded to unauthorized companies and reinsurance recoverables from unauthorized companies, totaling $264,516,475, was supported by letters of credit, trust agreements and funds withheld.

The total face amount of life insurance assumed, as of December 31, 2004, was $2,370,465.

The Company entered into a reinsurance treaty with First British, effective December 1, 2004. The agreement was filed with and approved by the Department on November 10, 2004. The agreement provides for First British, a captive reinsurer, to reinsure, on an indemnity basis,

90% of the benefits paid under certain individual level premium term life insurance policies issued by the Company prior to the effective date and through December 31, 2004.

The examiner reviewed a sample of death claims covered under a coinsurance agreement between the Company and First Unum Life Insurance Company ("First Unum"). This agreement was filed with and approved by the Department. The agreement states that the reinsurer, First Unum, will perform "all normal and necessary policyholder's services on account of the Coinsured Policies . . . All such services will be provided by the Reinsurer, in the name of, and on behalf of, Ceding Company . . . ". The services include, but are not limited to, the calculation and payment of claims, response to complaints, payment of commissions, and collection of premiums. The agreement also specifically authorizes the reinsurer to open a bank account in the name of the Company for the payment of claims. However, all of the sampled claims that were paid by First Unum were in the name of First Unum and paid from a First Unum bank account.

The examiner recommends that the Company abide by the terms of its coinsurance agreement with First Unum.

Section 79.4 of Department Regulation No. 133 states, in part:

> "For a letter of credit issued by a bank or trust company which is not a qualified bank to be acceptable it must . . . meet all of the following conditions:
>
> (a) . . . name and formally designate the confirming bank (i.e., qualified bank) as agent for the receipt and payment of drafts;
>
> (b) contain an evergreen clause which provides at least 60 days' written notice to the beneficiary prior to expiry date for non-renewal;
>
> (c) be presentable and payable at an office of the confirming bank in the United States; . . .
>
> (e) be confirmed by a qualified bank and such confirmation must: . . . (6) contain a statement to the effect that the obligation of the confirming bank is an individual obligation of such bank and is in no way contingent upon reimbursement with respect thereto . . . (9) contain an evergreen clause which provides at least 60 days written notice to the beneficiary prior to expiry date prior to non-renewal . . . "

As of December 31, 2004, the Company maintained a reinsurance agreement with Security Life of Denver International Limited ("Security Life Ltd."), an unauthorized reinsurer. In its 2004 filed annual statement, the Company reported reserve credits taken for the reinsurance with Security Life Ltd, in the amount of $1,362,938, and a letter of credit of

$2,000,000. The examiner's review of the letter of credit revealed that it did not comply with the requirements of Department Regulation No. 133. Specifically, the examiner noted the following:

- The letter of credit was drawn on the London branch of ING Bank, a non-qualified bank, and was made payable through another non-qualified bank, Bayerische Hypo-und-Vereinsbank AG, New York Branch;

- The letter of credit did not contain the requisite 60-day evergreen clause; and,

- The letter of credit did not contain the requisite statement that the obligation of the confirming bank (i.e., Hypoverisbank) is an individual obligation of such bank and is in no way contingent upon reimbursement.

The examiner recommends that the Company consistently comply with the requirements of Department Regulation No. 133 when accepting letters of credit.

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, 2004	Increase
Admitted assets	$961,839,603	$1,021,808,428	$59,968,825
Liabilities	$881,391,912	$ 914,155,838	$32,763,926
Common capital stock	$ 2,002,500	$ 2,002,500	$ 0
Gross paid in and contributed surplus	54,058,416	54,058,416	0
Unassigned funds (surplus)	24,386,776	51,591,674	27,204,898
Total capital and surplus	$ 80,447,692	$ 107,652,590	$27,204,898
Total liabilities, capital and surplus	$961,839,603	$1,021,808,428	$59,968,824

The Company's invested assets as of December 31, 2004, were mainly comprised of bonds (94.7%) and policy loans (4.8%). The majority (94.3%) of the Company's 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:

	2002	2003	2004
Ordinary:			
Life insurance	$ (765,646)	$(14,298,516)	$(60,530,614)
Individual annuities	7,039,492	3,564,513	3,057,717
Supplementary contracts	149,537	169,039	(147,044)
Total ordinary	$6,423,383	$(10,564,964)	$(57,619,941)
Group:			
Life	$ (29)	$ (26)	$ 4,686
Total group	$ (29)	$ (26)	$ 4,686
Accident and health:			
Other	28,995	(68,159)	(36,269)
Total accident and health	$ 28,995	$ (68,159)	$ (36,269)
Total	$6,452,349	$(10,633,149)	$(57,651,525)

The significant losses in the ordinary life insurance line of business are due to the fact that the Company has experienced significant surplus strain generated from this line of business.

The decrease in the Company's individual annuity net gain is due to diminishing sales of annuities beginning in 2001. This line of business is in run off, with corresponding diminishing returns.

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	$ 925,159,722
Cash, cash equivalents and short term investments	4,973,227
Contract loans	46,639,711
Investment income due and accrued	15,725,253
Premiums and considerations:	
Uncollected premiums and agents' balances in the course of collection	(1,653,168)
Deferred premiums, agents' balances and installments booked but deferred and not yet due	18,165,623
Reinsurance:	
Amounts recoverable from reinsurers	8,322,528
Other amounts receivable under reinsurance contracts	574,282
Net deferred tax asset	3,901,250
Total admitted assets	$1,021,808,428

Liabilities, Capital and Surplus

Aggregate reserve for life policies and contracts	$ 851,708,525
Aggregate reserve for accident and health contracts	362,121
Liability for deposit-type contracts	3,803,877
Contract claims:	
Life	16,068,860
Provision for policyholders' dividends and coupons payable in following calendar year – Dividends apportioned for payment	592,939
Premiums and annuity considerations for life and accident and health contracts received in advance	108,385
Contract liabilities not included elsewhere:	
Other amounts payable on reinsurance	1,337,145
Interest maintenance reserve	4,737,625
Commissions to agents due or accrued	218,907
General expenses due or accrued	3,309,569
Taxes, licenses and fees due or accrued, excluding federal income taxes	1,417,051
Current federal and foreign income taxes	20,548,638
Unearned investment income	1,559,493
Amounts withheld or retained by company as agent or trustee	1,042,510
Amounts held for agents' account	4,739
Remittances and items not allocated	(2,141,491)
Miscellaneous liabilities:	
Asset valuation reserve	4,221,237
Reinsurance in unauthorized companies	2,617,850
Funds held under reinsurance treaties with unauthorized reinsurers	51,809
Payable to parent, subsidiaries and affiliates	950,039
Accrued interest on policy funds	738,397
Other liabilities	830,854
Modified coinsurance agreement	66,759
Total liabilities	$ 914,155,838
Common capital stock	$ 2,002,500
Gross paid in and contributed surplus	54,058,416
Unassigned funds (surplus)	51,591,674
Surplus	$ 105,650,090
Total capital and surplus	$ 107,652,590
Total liabilities, capital and surplus	$1,021,808,428

B. CONDENSED SUMMARY OF OPERATIONS

	2002	2003	2004
Premiums and considerations	$ 70,426,819	$ 90,586,611	$ 77,303,795
Investment income	59,410,566	58,319,911	60,784,620
Commissions and reserve adjustments on reinsurance ceded	10,982,566	12,978,174	9,229,087
Miscellaneous income	8,575	2,392	2,820
Total income	$140,828,526	$161,887,088	$147,320,322
Benefit payments	$ 78,351,617	$ 76,793,813	$ 87,901,713
Increase in reserves	5,117,447	42,860,810	47,926,704
Commissions	17,896,471	19,593,561	16,174,569
General expenses and taxes	29,956,482	31,688,776	33,897,523
Increase in loading on deferred and uncollected premium	(57,086)	(88,088)	(117,573)
Total deductions	$131,264,931	$170,848,872	$185,782,936
Net gain (loss)	$ 9,563,595	$ (8,961,784)	$(38,462,614)
Dividends	845,305	827,791	806,557
Federal and foreign income taxes incurred	2,265,352	843,575	18,382,354
Net gain (loss) from operations before net realized capital gains	$ 6,452,938	$ (10,633,150)	$(57,651,525)
Net realized capital gains (losses)	0	(678,388)	8,921
Net income	$ 6,452,938	$ (11,311,538)	$(57,642,604)

C. CAPITAL AND SURPLUS ACCOUNT

	2002	2003	2004
Capital and surplus, December 31, prior year	$80,447,692	$ 90,941,338	$ 82,110,114
Net income	$ 6,452,938	$(11,311,538)	$(57,642,604)
Change in net unrealized capital gains (losses)	0	0	62,941
Change in net deferred income tax	146,097	1,720,032	545,491
Change in non-admitted assets and related items	101,071	(881,529)	(2,218,057)
Change in liability for reinsurance in unauthorized companies	163,189	645	(2,617,850)
Change in asset valuation reserve	(283,265)	1,641,166	369,173
Cumulative effect of changes in accounting principles	3,913,616	0	0
Change in surplus as a result of reinsurance	0	0	87,043,384
Net change in capital and surplus for the year	$10,493,646	$ (8,831,224)	$ 25,542,478
Capital and surplus, December 31, current year	$90,941,338	$82,110,114	$107,652,592

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 51.6 of Department Regulation No. 60 states, in part:

> "(b) Where a replacement has occurred or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall:…
> (3) Examine any proposal used, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the "Disclosure Statement", and ascertain that they are accurate and meet the requirements of the Insurance Law and this Part . . ."

Section 243.2 of Department Regulation No. 152 states, in part:

> "(b) Except as otherwise required by law or regulation, an insurer shall maintain:
>
> (1) A policy record for each insurance contract or policy for six calendar years after the date the policy is no longer in force or until after the filing of the report on examination in which the record was subject to review, whichever is longer . . . A policy record shall include . . .
>
> (iv) other information necessary for reconstructing the solicitation, rating, and underwriting of the contract or policy . . ."

The examiner reviewed 25 replacement policies issued during the examination period, where the Company's agent had used an estimate on the Disclosure Statement. The review revealed that the Company was not maintaining the information supporting the estimates.

The examiner recommends that the Company maintain the supporting information used in establishing estimates on the Disclosure Statements, since the information used in completing the Disclosure Statement is required to be reviewed and maintained in

accordance with Section 51.6(b)(3) of Department Regulation No. 60 and Section 243.2 of Department Regulation No. 152, respectively.

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(c)(1) of the New York Insurance Law states:

> "The superintendent may disapprove any policy form for delivery or issuance for delivery in this state if he finds that the same contains any provision or has any title, heading, backing or other indication of the contents of any or all of its provisions, which is likely to mislead the policyholder, contract holder or certificate holder."

In addition, Section 3201(c)(5) of the New York Insurance Law states, in part:

> "The superintendent shall not approve any annuity or life insurance policy form which is subject to the provisions of section four thousand two hundred twenty, four thousand two hundred twenty-one or four thousand five hundred eleven of this chapter, unless a detailed statement of the method used by the insurer in calculating any cash surrender value and any paid-up nonforfeiture benefit in the policy form is stated therein . . . "

The Company issues insurance on the lives of juveniles. The application forms for such policies contain a question as to whether any person to be insured has ever used tobacco products. The Company has explained that juvenile policies issued at ages 0-19 utilize guaranteed cost of insurance rates based on 1980 CSO rates, as follows: attained ages 0-19 use 1980 CSO aggregate smoker/nonsmoker rates, and attained ages 20 and over use 1980 CSO smoker rates. The Company also indicated that this is their "standard" rate structure for juveniles.

In at least one juvenile case (issued on policy form L-FPA5/91), the application question regarding the use of tobacco products was answered "no" and the policy was issued with a rating class of standard. The policy form stated that "MINIMUM CASH SURRENDER VALUES ARE BASED ON THE COMMISSIONERS 1980 STANDARD ORDINARY MORTALITY TABLE, WITH INTEREST AT 4%" and described guaranteed maximum cost of insurance rates as "THESE RATES ARE BASED

ON THE 1980 CSO MORTALITY TABLE, AGE NEAREST BIRTHDAY". These rates were actually based on the 1980 CSO Smoker Mortality Table. The policy also states, in the "Basis of Computations" section that, "For attained ages below 20, the aggregate basis of the table will be used; otherwise, the smoker or nonsmoker basis will be used as appropriate."

With respect to the use of smoker rates as guaranteed maximum mortality rates, it appears that the policy form may be misleading under Section 3201(c)(1) of the New York Insurance Law. Given the policy language, it is misleading to apply smoker rates to a juvenile rated standard. In addition, because the description of the mortality table in the policy is ambiguous, the Company has not satisfied the requirement of Section 3201(c)(5) of the New York Insurance Law.

The examiner recommends the Company review all policies issued to juveniles on form L-FPA5/91, and any other form with similar wording on the basis of mortality charges, with a rating class of standard for compliance with Section 3201(c)(5) of the New York Insurance Law. Where the cost of insurance rates actually charged exceed those based on the 1980 CSO Mortality Table (aggregate basis) below age 20, and the 1980 CSO Mortality Table (non-smoker basis) for age 20 and above, the examiner recommends that the Company restore the excess charge, with interest, to the policyholder.

In addition, the examiner recommends that the Company put in place administrative procedures to ensure that no future cost of insurance rates on standard policies exceed those based on the 1980 CSO Mortality Table (aggregate basis) below age 20, and the 1980 CSO Mortality Table (non-smoker basis) for age 20 and above.

Also, the examiner recommends that, after a review of these issues, the Company confirm that the initial value of any prior or future paid-up insurance under standard policies were, or will be, based on the 1980 CSO Mortality Table (aggregate basis) below age 20, and the 1980 CSO Mortality Table (non-smoker basis) for age 20 and above.

Finally, the examiner recommends that the Company either provide non-smoker rates to juveniles or provide the Department with the following mortality and cost of insurance rates by issue age, attained age and rating class (standard/smoker/non-smoker and male/female):

i) the anticipated experience factors at issue;

ii) the anticipated current cost of insurance rages at issue, that may have been used in illustrations;

iii) subsequent cost of insurance rates, if changes were made;

iv) subsequent mortality experience (deaths and exposures);

v) comments on the credibility of the experience; and,

vi) any other information the Company considers to set the cost of insurance charges.

C. Treatment of Policyholders

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

Section 2611 of the New York Insurance Law states, in part:

> "(a) No insurer or its designee shall request or require an individual proposed for insurance coverage to be subject of an HIV related test without receiving the written informed consent of such individual prior to such testing and without providing general information about AIDS and the transmission of HIV infection.
> (b)Written informed consent to an HIV related test shall consist of a written authorization that is dated . . . "

The examiner reviewed a sample of 80 underwriting files. Each file contained a signed Notice and Consent form from the proposed insured regarding the HIV-related test. However, in ten cases, the Notice and Consent form was signed after the date the blood was drawn from the proposed insured.

The Company violated Section 2611 of the New York Insurance Law by failing to obtain from proposed insureds signed consent forms prior to obtaining blood samples.

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 1505(d) of the New York Insurance Law for not following its filed service agreements. A similar comment appears in this report on examination.
B	The examiner recommended that the Company report all expenses, both allocated and direct, in item 3.2 of the General Interrogatories – Part 2 of the annual statement. During the examination period, the Company properly reported all expenses in the General Interrogatories page of the annual statement.
C	The examiner recommended that the Company include all transactions with Banner Life and L & G America in Schedule Y, Part 2 in all future annual statements. During the examination period, the Company properly reported in Schedule Y all transactions with its parent and affiliates.
D	The Company violated Section 4211(a) of the New York Insurance Law by not filing, in the office of the Superintendent at least ten days before the day of such election, a notice of election of its directors. During the examination period, the Company properly filed its notice of election of directors.
E	The Company violated Section 4211(b) of the New York Insurance Law by not filing, in the office of the Superintendent, a notice of the election of Sharon M. Jenkins as a replacement for Otto Marcello. During the examination period, the Company properly notified the office of the Superintendent upon replacement of board members.
F	The examiner recommended that the Company retain a signed statement by each member of the board of directors confirming that such member has received and read such report.

Item	Description
	During the examination period, the Company retained a signed statement by each member of the board of directors confirming that such member had received and read the report on examination.
G	The Company violated Section 1202(b)(2) of the New York Insurance Law by not having an independent committee nominate candidates for director for election by shareholders or recommend to the board of directors the selection and compensation of officers. During the examination period, the Company's independent committee nominated candidates for director for election by shareholders and recommended to the board of directors the selection and compensation of its officers.
H	The examiner recommended that the Company comply with its by-laws and fill the vacancy on the executive committee and elect the members of the executive committee each year at the meeting of the board of directors following the annual meeting of shareholders. A similar recommendation appears in this report.
I	The Company violated Section 4230(a) of the New York Insurance Law by not first authorizing by a vote of the board of directors the salaries and bonuses paid to officers of the Company. During the examination period, the board of directors authorized, by vote, the salaries and bonuses paid to officers of the Company.
J	The Company violated Section 4230(c) of the New York Insurance Law by offering bonuses and a pension plan to officers and senior staff without such bonuses or pension plan being submitted to and approved by its board of directors. During the examination period, the board of directors authorized, by vote, the bonuses and pension plans offered to officers and senior staff members.
K	The Company violated Section 1405(a)(6) of the New York Insurance Law by regularly exceeding the two percent of admitted assets limitation in its investment in the Evergreen Money Market Fund. During the examination period, the Company did not exceed the limitations set forth in Section 1405(a)(6) of the New York Insurance Law.

Item	Description
L	The Company violated Section 2122(a)(2) of the New York Insurance Law by calling attention to its parent Banner Life, an unauthorized insurer, in their advertisements. During the examination period, the Company was in compliance with Section 2122(a)(2) of the New York Insurance Law.
M	The examiner recommended that the Company include an appropriate disclaimer on the Company's website, indicating that Banner Life's advertised products and services are not available in New York. The Company has included on its website the proper disclosure statement indicating Banner Life's advertised products are not available in New York.
N	The Company violated Section 219.5(a) of Department Regulation No. 34-A by not indicating the full manner and extent of distribution of their advertisements. During the examination period, the Company indicated the full manner and extent of distribution of their advertisements as contained in their advertising log.
O	The Company violated Section 51.6(a)(3) of Department Regulation No. 60 by not maintaining the Definition of Replacement forms in three replacement files. A review of replacements during the examination period revealed that, after instituting procedural changes in November 2003, the Company is now in compliance with Section 51.6(a)(3) of Department Regulation No. 60.
P	The Company violated Section 51.6(b)(2) of Department Regulation No. 60 by failing to require completed Disclosure Statements with two applications. A review of policies that were replaced during the examination period revealed that, after instituting procedural changes in November 2003, the Company is now in compliance with Section 51.6(b)(2) of Department Regulation No. 60.
Q	The Company violated Section 51.5(e) of Department Regulation No. 60 by failing to fully implement procedures to ensure compliance with the requirements of the Regulation. A review of policies that were replaced during the examination period revealed that, after instituting procedural changes in November 2003, the Company is now in compliance with Section 51.5(e) of Department Regulation No. 60.

8. SUMMARY AND CONCLUSIONS

Following are the violation and recommendations contained in this report:

Item	Description	Page No(s).
A	The examiner recommends that, in the future, the Company notify the Department of transactions involving more than one-half of one percent of admitted assets, pursuant to Section 1505(d) of the New York Insurance Law.	6 - 7
B	The examiner recommends that the Company comply with its by-laws and elect the members of the executive committee each year at the meeting of the board of directors following the annual meeting of shareholders. The prior report on examination contained a similar recommendation.	8 - 9
C	The examiner recommends that the Company abide by the terms of its coinsurance agreement with First Unum.	11
D	The examiner recommends that the Company consistently comply with the requirements of Department Regulation No. 133.	11 - 12
E	The examiner recommends that the Company maintain the supporting information used in establishing estimates on the Disclosure Statements, since the information used in completing the Disclosure Statement is required to be reviewed and maintained in accordance with Section 51.6 (b)(3) of Department Regulation No. 60, and Section 243.2 of Department Regulation No. 152, respectively.	19 - 20
F	The examiner recommends the Company review all policies issued to juveniles on form L-FPA5/91, and any other form with similar wording on the basis of mortality charges, with a rating class of standard for compliance with Section 3201(c)(5) of the New York Insurance Law, and restore any excess charges, with interest, to the policyholder.	20 - 21
G	The examiner recommends that the Company put in place administrative procedures to ensure that no future cost of insurance rates on standard policies exceed those based on the 1980 CSO Mortality Table (aggregate basis) below age 20, and the 1980 CSO Mortality Table (non-smoker basis) for age 20 and above.	20 - 21

Item	Description	Page No(s).
H	The examiner recommends that the Company confirm that the initial value of any prior or future paid-up insurance under standard policies were, or will be, based on the 1980 CSO Mortality Table (aggregate basis) below age 20, and the 1980 CSO Mortality Table (non-smoker basis) for age 20 and above.	20 - 21
I	The examiner recommends that the Company either provide non-smoker rates to juveniles or provide the Department with certain mortality and cost of insurance rates.	20 - 22
J	The Company violated Section 2611 of the New York Insurance Law by failing to obtain from proposed insureds signed consent forms prior to obtaining blood samples.	22

Respectfully submitted,

/s/
Darlene Singlemann
Senior Insurance Examiner

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

Darlene Singlemann, being duly sworn, deposes and says that the foregoing report, subscribed by her, is true to the best of her knowledge and belief.

/s/
Darlene Singlemann

Subscribed and sworn to before me

this_____ day of _____

APPOINTMENT NO. 22311

STATE OF NEW YORK

INSURANCE DEPARTMENT

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

DARLENE SINGLEMANN

as a proper person to examine into the affairs of the

WILLIAM PENN LIFE INSURANCE COMPANY OF NEW YORK

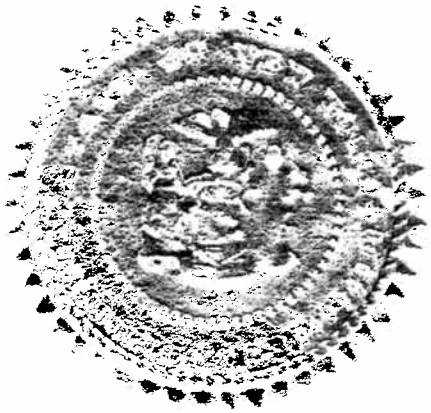
and to make a report to me in writing of the condition of the said

COMPANY

with such other information as she 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 7th day of February, 2005



HOWARD MILLS
Acting Superintendent of Insurance

Acting Superintendent