

REPORT ON EXAMINATION  
OF THE  
ERIE AND NIAGARA INSURANCE ASSOCIATION  
AS OF  
DECEMBER 31, 2003

DATE OF REPORT:

AUGUST 12, 2005

EXAMINER:

WARREN YOUNGS

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STATE OF NEW YORK  
INSURANCE DEPARTMENT  
ONE COMMERCE PLAZA  
ALBANY, NEW YORK 12257

George E. Pataki  
Governor

Howard Mills  
Superintendent

August 12, 2005

Honorable Howard Mills  
Superintendent of Insurance  
Albany, New York 12257

Pursuant to the requirements of the New York Insurance Law, and in compliance with the instructions contained in Appointment Number 22218, dated May 3, 2004, attached hereto, I have made an examination into the condition and affairs of the Erie and Niagara Insurance Association as of December 31, 2003 and submit the following report thereon.

The examination was conducted at the Company's home office located at 8800 Sheridan Drive, Williamsville, New York 14221.

Wherever the designations "the Company" or "ENIA" appear herein without qualification, they should be understood to indicate the Erie and Niagara Insurance Association.

Wherever the term "Department" appears herein without qualification, it should be understood to mean the New York Insurance Department.

## 1. SCOPE OF EXAMINATION

The previous examination was conducted as of December 31, 1999. This examination covered the four-year period from January 1, 2000 through December 31, 2003, and was limited in its scope to a review or audit of only those balance sheet items considered by this Department to require analysis, verification or description, including: invested assets, inter-company balances, loss and loss adjustment expense reserves and the provision for reinsurance. The examination included a review of income, disbursements and company records deemed necessary to accomplish such analysis or verification and utilized, to the extent considered appropriate, work performed by the Company's independent public accountants.

A review was also made to ascertain what action was taken by the Company with regard to comments and recommendations contained in the prior report on examination.

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

## 2. DESCRIPTION OF COMPANY

The Company was organized on January 1, 1875 as the Erie and Niagara Farmers' Insurance Association. On June 7, 1887 the Company was incorporated for the purpose of transacting business as an assessment co-operative fire insurance company in Erie and Niagara counties of New York State.

In 1958, a merger was effected with the Ashford Mutual Fire Insurance Company of Delevan, New York. Erie and Niagara Farmers' Insurance Association was the surviving corporation.

The Company's name was changed by authorization of this Department on April 18, 1961, to the Erie and Niagara Insurance Association.

On November 1, 1982, a merger was effected with the Amherst and Clarence Insurance Company, of Williamsville, New York. On January 1, 1983, a merger was effected with the Cattaraugus and Allegany County Patron's Fire Relief Association, of Randolph, New York. In both instances, the Erie and Niagara Insurance Association was the surviving corporation.

A. Management

Pursuant to the Company's charter and by-laws, management of the Company is vested in a board of directors consisting of not less than nine nor more than fifteen members. As of the examination date, the board of directors was comprised of eleven members.

At least four board meetings were held each year for the period under examination, thereby complying with Section 6624(b) of the New York Insurance Law.

The directors as of December 31, 2003 were as follows:

<u>Director</u>	<u>Principal Business Affiliation</u>
Leonard Joseph Almquist Buffalo, NY	Certified Public Accountant; Vice Chairman of the board of ENIA
Gordon Paul Assad East Aurora, NY	President/CEO of ENIA; Chairman of the board & President of Cherry Valley Cooperative Insurance Company; Director and President of E & N Financial Services, Inc.
James Walter Fulmer LeRoy, NY	President of Tompkins Trustco, Inc.; Director of Cherry Valley Cooperative Insurance Company
Robert Milton Hoover Orchard Park, NY	Senior Vice President of Information Technology and Chief Information Officer of Independent Health

DirectorPrincipal Business Affiliation

Robert Harmon Lowe  
Geneseo, NY

Vice President/Secretary of ENIA; Director and Vice President/Secretary of Cherry Valley Cooperative Insurance Company; Director and Vice President/Secretary of E & N Financial Services, Inc.

Benjamin Charles Mancuso  
Batavia, NY

Chairman of the board of ENIA; Director of Cherry Valley Cooperative Insurance Company

Maureen Jill Marshall  
Elba, NY

Owner and Vice President of Torrey Farms, Inc.

Russell Glenn Miller  
Arcade, NY

Owner of Plato Brook Farms

John Alan Noble  
Pavilion, NY

Owner of NobleHurst Farms; Director of Cherry Valley Cooperative Insurance Company

Erik Mo O'Neill  
Lockport, NY

Senior Vice President of Advest, Inc.

Linwood Dean Poelma  
East Amherst, NY

Vice President of M&T Bank

The minutes of all of the Board of Directors' meetings and committees thereof held during the examination period were reviewed. Such review indicated that all of the meetings were well attended. Each of the directors had a satisfactory attendance record for the board meetings held.

Each of the director's qualifications, as set forth in Article VII of the Company's charter and Article IV Section 1 of its by-laws, was reviewed and it appears that each director was duly qualified.

At December 31, 2003, the officers of the Company were as follows:

Chairman of the Board  
Vice Chairman of the Board  
President/CEO

Benjamin Charles Mancuso  
Leonard Joseph Almquist  
Gordon Paul Assad

Vice President & Secretary  
 Vice President & Treasurer  
 Claims Manager

Robert Harmon Lowe  
 Norman John Orłowski, Jr.  
 Nelson Bernard Dahl

B. Territory and Plan of Operation

The Company is authorized to transact business within all the counties of the State of New York, excluding the Counties of Bronx, Kings, New York, Queens and Richmond. The Company writes only in New York State.

The following table shows the direct premiums written by the Company in New York for the period under examination:

<u>Calendar Year</u>	<u>Direct Premiums Written (000's)</u>
2000	\$24,412
2001	28,242
2002	33,317
2003	38,858

As of December 31, 2003, the Company was authorized to transact the kinds of insurance as defined in the following numbered paragraphs of Section 1113(a) of the New York Insurance Law:

<u>Paragraph</u>	<u>Kind of Insurance</u>
4	Fire
5	Miscellaneous property
6	Water damage
7	Burglary and theft
8	Glass
9	Boiler and machinery
12	Collision
13	Personal injury liability
14	Property damage liability
15	Workers' compensation and employers' liability (excluding workers' compensation)

<u>Paragraph</u>	<u>Kind of Insurance</u>
19	Motor vehicle and aircraft physical damage (excluding aircraft physical damage)
20	Marine and inland marine (inland marine only)

The Company was also licensed as of December 31, 2003, to accept and cede reinsurance as provided in Section 6606 of the Insurance Law of the State of New York.

It is noted that effective December 3, 2002 the Company added paragraph 9 “Boiler and Machinery” to its license. That was the only change to the Company’s license since January 11, 1988.

Based upon the lines of business for which the Company is licensed, and pursuant to the requirements of Articles 13 and 66 of the New York Insurance Law, the Company is required to maintain a minimum surplus to policyholders in the amount of \$100,000.

At December 31, 2003, the Company wrote insurance through independent agents. The Company’s predominate lines of business are fire, farmowners multiple peril, homeowners multiple peril and commercial multiple peril, which accounted for 19.16%, 18.64%, 22.86% and 38.28%, respectively, of the Company’s 2003 direct written business.

### C. Reinsurance

The Company assumed no business during the examination period.

The examiner reviewed all ceded reinsurance contracts effected during the examination period. These contracts, as amended, all contained the required standard clauses including insolvency clauses meeting the requirements of Section 1308 of the New York Insurance Law.

As of December 31, 2003 the Company had the following excess of loss reinsurance

program in place:

Property 3 layers                   \$1,840,000 in excess of \$160,000 each risk, each loss. The second and third layers have a maximum reinsurer liability limit for all risks involved in one occurrence as follows: Second--\$225,000 and Third--\$5,250,000. It is noted that the first layer is placed with an affiliate. See section 2(D) of the report for additional information.

Casualty 2 layers                   \$1,325,000 in excess of \$175,000 each occurrence.

The second and third layers of the property coverage and the two layers of the casualty coverage noted above are subject to an NBCR Terrorist Activity Aggregate Limit for all loss, cost or expense caused directly or indirectly by NBCR Terrorist Activity as follows: Second Property & First Casualty--\$225,000 and Third Property and Second Casualty--\$5,250,000 ultimate net loss in the aggregate for all occurrences each agreement year.

Property and Casualty  
Occurrence                   In the event the property and casualty business covered under the second property layer and the first casualty layer noted above are both involved in the same loss, the Company retains only the first \$175,000 of the combined ultimate net loss in respect of both classes, provided that respects property business, only one risk may be combined in the same occurrence. Such loss and the Company's retention thereon shall be apportioned to each class in the same proportion that the Company's ultimate net loss for each class bears to the Company's combined ultimate net loss from both classes. The reinsurer shall reimburse the Company for the difference between the Company's first \$175,000 of ultimate net loss under each class and the Company's pro rated retention on each class.

Casualty Clash                   \$1,000,000 in excess of \$1,500,000 each occurrence. The reinsurer's liability for ultimate net loss from casualty business is further limited to the following NBCR Terrorist Activity Annual Aggregate Limit for all loss, cost or expense caused directly or indirectly by NBCR Terrorist Activity: \$1,000,000 ultimate net loss in the aggregate for all occurrences each agreement year.

As of December 31, 2003, the Company also maintained catastrophe excess of loss coverage on a per occurrence basis:

Property                           100% in excess of \$750,000.

At December 31, 2003 the Company had a 100% quota share reinsurance treaty for equipment breakdown coverage up to a limit of \$25,000,000 on any one risk.

The Company also had in effect, as of the examination date, accident year aggregate excess of loss coverage of \$2,000,000 in excess of a 70.0% accident year loss ratio. In addition, the Company maintained property facultative facilities for higher limit risks.

All of the Company's cessions during the period under examination were to authorized reinsurers.

Since the date of the prior examination, December 31, 1999, the Company increased its net retention from \$140,000 to \$160,000 on its property business and from \$150,000 to \$175,000 on its casualty business.

#### D. Holding Company System

##### Cherry Valley Cooperative Insurance Company ("Cherry Valley")

As of December 31, 2003, the Company was affiliated with the Cherry Valley Cooperative Insurance Company, by virtue of common officers, directors and management.

The two insurers entered into a service agreement, effective July 2, 1990, whereby the Company provides specified services to Cherry Valley.

The agreement further provides for expenses incurred and paid for by the Company in the course of providing services under this agreement, to be allocated between the two companies in a manner consistent with Department Regulation 30. This Department issued a letter of non-objection relative to the implementation of the agreement on August 23, 1990.

The Company ceded business during the examination period, to its affiliate, the Cherry Valley Cooperative Insurance Company. As of December 31, 2003, the property excess of loss

contract provided for the assumption, on the part of Cherry Valley from Erie and Niagara, of \$15,000 in excess of \$160,000 per risk, per occurrence.

It is noted that, as of December 31, 2003, the Company held \$150,000 of Section 1307 Surplus Notes issued by Cherry Valley.

E & N Financial Services, Inc. ("E & N Financial")

On May 5, 1995, this Department issued a non-exception letter to the organization of a wholly owned subsidiary of the Company called E & N Financial Services, Inc. The purpose of E & N Financial is to act as an insurance agency and service subsidiary for the Company. The subsidiary is licensed by other insurance companies that offer insurance products not otherwise available from ENIA.

Initially the Company purchased 100 shares of E & N Financial \$.01 par common stock, at \$60 per share, for a total investment of \$6,000. On November 3, 1997, this Department issued a non-objection letter relative to the Company purchasing another 400 shares of E & N Financial at \$60 per share, for a total of \$24,000. The Company's total investment in E & N Financial as of December 31, 2003 was \$30,000.

E & N Financial is sited at the Company's home office. An agreement was entered into between the Company and the subsidiary on January 1, 1996 whereby the Company provides specified management and operational services to E & N Financial. The agreement also provides for operating expenses incurred and paid for by the Company in the course of providing services under this agreement, to be allocated between the two companies in a manner consistent with Department Regulation 30.

### E. Significant Operating Ratios

The following ratios have been computed as of December 31, 2003, based upon the results of this examination:

Net premiums written in 2003 to Surplus as regards policyholders	1.03 to 1
Liabilities to liquid assets (cash and invested assets less investments in affiliates)	49.92%
Premiums in course of collection to Surplus as regards policyholders	2.63%

The above ratios fall within the benchmark ranges set forth in the Insurance Regulatory Information System of the National Association of Insurance Commissioners.

The underwriting ratios presented below are on an earned-incurred basis and encompass the four-year period covered by this examination:

	<u>Amounts</u>	<u>Ratios</u>
Losses incurred	\$49,417,903	45.60%
Loss expenses incurred	5,940,775	5.48%
Other underwriting expenses incurred	48,500,457	44.75%
Net underwriting gain (loss)	<u>4,513,494</u>	<u>4.17%</u>
Premiums earned	<u>\$108,372,629</u>	<u>100.00%</u>

### F. Abandoned Property

During the period covered by this examination, the Company filed reports with the state comptroller that generally complied with the requirements of the New York Abandoned Property Law.

It is noted that the Company has written procedures related to the handling of unclaimed funds.

G. Real Estate: Arrangement with Industrial Development Agency

On January 20, 1993, this Department granted approval for the Company to purchase a parcel of land at a cost of \$275,000, for use as a building site for a new home office. On March 2, 1993, the New York Insurance Department approved the Company spending \$1,801,106 to construct a new home office building. The March 2, 1993 Department approval letter noted that the building construction was being accomplished through the auspices of the Clarence Industrial Development Agency and that the Company had entered into a sale/leaseback arrangement with that agency. Such arrangement is intended to provide tax benefits to the Company. The Company funded the land purchase and the building construction.

The Company and the Town of Clarence, Erie County, Industrial Development Agency (“IDA”) entered into a lease agreement dated as of March 1, 1993. The term of the lease is March 1, 1993 to December 31, 2004, or such earlier date as the lease agreement may be terminated as provided in such agreement.

On March 26, 1993, the Company executed a deed in favor of the IDA, granting it title to ENIA’s home office property.

The lease agreement provides that upon expiration, or sooner termination, of the lease the IDA will reconvey said leased premises and property to ENIA, by quit claim deed, for a purchase price of \$1.00 and any other amounts then due under the lease agreement.

The Company is obligated to make payments in lieu of taxes to the Town of Clarence, the Clarence Central School District and the County of Erie during the term of the lease.

## H. Accounts and Records

### i. Approval of Investments

Section 1411(a) of the New York Insurance Law states, in part, that “No domestic insurer shall make any loan or investment ... unless authorized or approved by its board of directors or a committee thereof responsible for supervising or making such investment or loan. The committee’s minutes shall be recorded and a report submitted to the board of directors at its next meeting.”

During the review of the Company’s investments to determine if they were properly approved, it was determined that the Company was not having its board approve all of its investments. Thus, the Company was not complying with the requirements of Section 1411(a).

Therefore, it is recommended that the Company comply with the requirements of Section 1411(a) of the New York Insurance Law by having all of its investments authorized or approved as indicated in such section.

### ii. CPA Contracts

The Company’s CPA contracts for 2001, 2002 and 2003 did not meet all the requirements of Department Regulation 118. After bringing such requirements to the attention of Company management, they attempted to have the CPA firm modify the 2003 agreement, but the revised agreement still did not comply with all the requirements of Regulation 118. Thus, it is recommended that the Company ensure that its contracts with its CPA firm covering all future audit years meet the requirements of Department Regulation 118.

### 3. FINANCIAL STATEMENTS

#### A. Balance sheet

The following shows the assets, liabilities and surplus as regards policyholders as determined by this examination as of December 31, 2003. This statement is the same as the balance sheet filed by the Company. The figures included in these financial statements have been rounded.

<u>Assets</u>	<u>Assets</u>	Non Admitted <u>Assets</u>	Net Admitted <u>Assets</u>
Bonds	\$43,963,626		\$ 43,963,626
Common stocks	7,433,981		7,433,981
Real Estate: Properties occupied by the Company	2,305,096		2,305,096
Cash	(25,503)		(25,503)
Short-term investments	6,405,324		6,405,324
Other invested assets	150,000		150,000
Investment income due and accrued	559,332		559,332
Uncollected premiums and agents' balances in the course of collection	1,093,577	178,190	915,387
Deferred premiums, agents' balances and installments booked but deferred and not yet due	5,152,865		5,152,865
Reinsurance: Amounts recoverable from reinsurers	97,267		97,267
Current federal and foreign income tax recoverable and interest thereon	74,308		74,308
Net deferred tax asset	2,163,603	292,645	1,870,958
Electronic data processing equipment and software	417,724	284,687	133,037
Furniture and equipment	308,137	308,137	0
Receivables from parent, subsidiaries and affiliates	8,790		8,790
Other assets nonadmitted	410,153	410,153	0
Aggregate write-ins for other than invested assets	<u>49,349</u>	<u>          </u>	<u>49,349</u>
Total assets	<u>\$70,567,629</u>	<u>\$1,473,812</u>	<u>\$69,093,817</u>

Liabilities & Surplus

Losses	\$8,425,291
Loss adjustment expenses	1,605,304
Commissions payable, contingent commissions and other similar charges	2,062,411
Other expenses (excluding taxes, licenses and fees)	1,334,984
Taxes, licenses and fees (excluding federal and foreign income taxes)	31,393
Unearned premiums	19,690,228
Advance premiums	556,711
Ceded reinsurance premiums payable (net of ceding commissions)	72,532
Amounts withheld or retained by company for account of others	39,492
Aggregate write-ins for liabilities	<u>421,488</u>
 Total liabilities	 <u>\$34,239,834</u>
 Required surplus	 \$ 100,000
Unassigned funds (surplus)	<u>34,753,983</u>
 Surplus as regards policyholders	 <u>\$34,853,983</u>
 Total liabilities and surplus as regards policyholders	 <u>\$69,093,817</u>

The Internal Revenue Service did not audit the Company's federal income tax returns for the years under examination. Audits covering subsequent tax years have yet to commence. The examiner is unaware of any potential exposure of the Company to any further tax assessment and no liability has been established herein relative to such contingency.

B. Underwriting and Investment Exhibit

Surplus as regards policyholders increased by \$9,699,300 during the four-year examination period, January 1, 2000 to December 31, 2003, detailed as follows:

Statement of Income

Underwriting Income

Premiums earned		\$108,372,629
Losses incurred	\$49,417,903	
Loss expenses incurred	5,940,775	
Other underwriting expenses incurred	<u>48,500,457</u>	
Total underwriting deductions		<u>103,859,135</u>
Net underwriting gain (loss)		\$4,513,494

Investment Income

Net investment income earned	\$9,307,776	
Net realized capital gains or (losses)	<u>320,678</u>	
Net investment gain or (loss)		9,628,454

Other Income

Net gain or (loss) from agents' or premium balances charged off	\$(355,040)	
Finance and service charges not included in premiums	1,397,263	
Aggregate write-ins for miscellaneous income	<u>(107,445)</u>	
Total other income		<u>934,778</u>
Net income before federal income taxes		\$15,076,726
Federal income taxes incurred		<u>4,905,000</u>
Net income (loss)		<u>\$10,171,726</u>

Capital and Surplus Account

Surplus as regards policyholders, December 31, 1999, per prior report on examination			\$25,154,683
	<u>Gains in Surplus</u>	<u>Losses in Surplus</u>	
Net income or loss	\$10,171,726	\$ 0	
Net unrealized capital gains or (losses)	0	1,587,452	
Change in net deferred income tax	713,790	0	
Change in non-admitted assets	0	1,004,560	
Cumulative effect of changes in accounting principles	<u>1,405,796</u>	<u>0</u>	
Total gains and losses	<u>\$12,291,312</u>	<u>\$2,592,012</u>	
Net increase in surplus as regards policyholders			<u>9,699,300</u>
Surplus as regards policyholders, December 31, 2003 per report on examination			<u>\$34,853,983</u>

#### 4. LOSSES

The examination liability of \$8,425,291 is the same as the amount reported by the Company in its 2003 filed annual statement.

The Department's analysis was conducted in accordance with generally accepted actuarial principles and practices and was based on statistical information contained in the Company's internal records and in its filed annual statements. Such analysis indicated that the Company's loss reserves appear adequate as of December 31, 2003.

#### 5. LOSS ADJUSTMENT EXPENSES

The examination liability of \$1,605,304 is the same as the amount reported by the Company in its 2003 filed annual statement.

The Department's analysis was conducted in accordance with generally accepted actuarial principles and practices and was based on statistical information contained in the Company's internal records and in its filed annual statements. Such analysis indicated that the Company's loss adjustment expense reserves appear adequate as of December 31, 2003.

#### 6. MARKET CONDUCT ACTIVITIES

In the course of this examination, a review was made of the manner in which the Company conducts its business practices and fulfills its contractual obligations to policyholders and claimants.

The review was general in nature and is not to be construed to encompass the generally more precise scope of a market conduct investigation.

The general review was directed at practices of the Company in the following areas:

- 1) Sales and advertising
- 2) Underwriting
- 3) Rating
- 4) Treatment of policyholders and claimants

Except as noted below, no unfair practices were encountered.

#### Section 3245 of the New York Insurance Law

During the review of cancellation notices issued by the Company, it was found that the Company cancelled personal lines policies in effect 60 days for other than the statutory reasons put forth in Section 3425(c)(2) of the New York Insurance Law.

In correspondence dated January 17, 2005 the Company indicated that it would take corrective action regarding this matter. Nevertheless, it is recommended that the Company comply with Section 3425(c)(2) of the New York Insurance Law and only allow policies that have been in effect 60 days to be canceled for one of the statutory reasons put forth in such section. It is noted that a similar recommendation regarding compliance with Section 3425 of the New York Insurance Law was included in the prior report; however, that recommendation dealt with the non-renewal provisions of such section.

#### Section 6615 of the Insurance Law

During the review of the Company's rating practices it was found that the Company was not having its board of directors approve its rates of assessment.

Section 6615(a)(1) of the New York Insurance Law states, in part, that "Every assessment corporation may, if so directed by its board of directors levy an assessment upon all of its members ..."

In correspondence dated January 19, 2005 the Company indicated that it would take corrective action regarding this matter. Nevertheless, it is recommended that the Company comply with Section 6615(a)(1) of the New York Insurance Law and have its rates of assessment approved by its board of directors.

#### Department Regulation 64

Department Regulation 64 Part 216.4(a) states, in part, that “Every insurer, upon notification of a claim, shall, within 15 working days, acknowledge the receipt of such notice. Such acknowledgment may be in writing. If an acknowledgment is made by other means, an appropriate notation shall be made in the claim file of the insurer ...” During the review of the Company’s claim files it was found that in instances when an outside adjuster was utilized, whether acknowledgement of the notice of claim within the required 15 day period took place could not be determined from the information in the claim file. In correspondence dated January 19, 2005 the Company indicated that it would take corrective action regarding this matter.

Department Regulation 64 Part 216.11 states, in part, that “... All communications and transactions, whether written or oral, emanating from or received by the insurer shall be dated by the insurer ...” During the review of the Company’s claim files it was found that some written correspondence therein was not dated when received by the Company. In correspondence dated January 6, 2005 the Company indicated that it would take corrective action regarding this matter.

While the Company indicated that it would take corrective action regarding the two Regulation 64 issues noted above, it is nevertheless recommended that the Company comply with the requirements of Department Regulation 64 Parts 216.4(a) and 216.11 regarding the acknowledgement of notice of claim and the dating of all communications and transactions.

## 7. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior report contained comments and recommendations as follows: (page numbers refer to the prior report on examination):

<u>Item</u>	<u>Page No.</u>
<p>A. <u>Custodianship of Securities</u></p> <p style="padding-left: 40px;">Recommendation that the Company comply with Department Circular Letter No. 2 (1977) and only allow its investments to be held under custodial arrangements that meet the requirements put forth in the circular letter.</p> <p style="padding-left: 80px;">The Company has complied with this recommendation.</p>	<p style="text-align: right;">12</p>
<p>B. <u>Undocumented Travel Expenses</u></p> <p style="padding-left: 40px;">Recommendation that the Company comply with Section 1217 of the New York Insurance Law.</p> <p style="padding-left: 80px;">The Company has complied with this recommendation.</p>	<p style="text-align: right;">13</p>
<p>C. <u>Fiduciary Responsibilities of Directors and Officers</u></p> <p style="padding-left: 40px;">Recommendation that the board of directors and the officers of the Company remain mindful of their responsibilities to the Company and its policyholders, as set forth in Sections 717 and 715 of the New York Business Corporation Law and that the Company is directed to replace any director and/or officer who cannot or does not fulfill his/her duties in good faith and with that degree of care, which an ordinarily prudent person in a like position would use under similar circumstances.</p>	<p style="text-align: right;">14</p>

<u>Item</u>	<u>Page No.</u>
The Company has complied with this recommendation.	
D. . <u>Market Conduct Activities</u>	
i. Recommendation that the Company comply with all the provisions of Section 3403 of the New York Insurance Law and Department Regulation No. 96, henceforth.  The Company has complied with this recommendation.	21
ii. Recommendation that the Company comply with all the provisions of Sections 3425 and 3426 of the New York Insurance Law.  The Company has not complied with the part of the recommendation dealing with Section 3425. However, it is noted that the recommendation in the prior report dealt with the non-renewal provisions of Section 3425 and the recommendation in the current report deals with the cancellation provisions of such section. See Section 6 of this report.	22

## 8. SUMMARY OF COMMENTS AND RECOMMENDATIONS

The following is a summary of comments and recommendations made in the body of this report:

<u>Item</u>	<u>Page No.</u>
A. <u>Accounts and Records</u>	
<u>Approval of Investments</u>	12
i. It is recommended that the Company comply with the requirements of Section 1411(a) of the New York Insurance Law by having all of its investments authorized or approved as indicated in such section.	
<u>CPA Contracts</u>	12
ii. It is recommended that the Company ensure that its contracts with its CPA firm covering all future audit years meet the requirements of Department Regulation 118.	
B. <u>Market Conduct Activities</u>	
i. It is recommended that the Company comply with Section 3425(c)(2) of the New York Insurance Law and only allow policies that have been in effect 60 days to be canceled for one of the statutory reasons put forth in such section. It is noted that a similar recommendation regarding compliance with Section 3425 of the New York Insurance Law was included in the prior report, however, that recommendation dealt with the non-renewal provisions of such section.	18

<u>Item</u>	<u>Page No.</u>
ii. It is recommended that the Company comply with Section 6615(a)(1) of the New York Insurance Law and have its rates of assessment approved by its board of directors.	19
iii. It is recommended that the Company comply with the requirements of Department Regulation 64 Parts 216.4(a) and 216.11 regarding the acknowledgement of notice of claim and the dating of all communications and transactions.	19



Appointment No 22218

STATE OF NEW YORK  
INSURANCE DEPARTMENT

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

**Warren Youngs**

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

**Erie & Niagara Insurance Association**

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

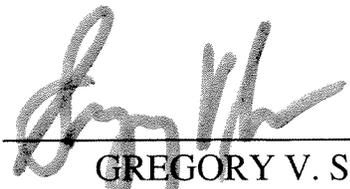
**Company**

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

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

*this 3rd day of May-2004*



  
\_\_\_\_\_  
GREGORY V. SERIO  
Superintendent of Insurance