

REPORT ON EXAMINATION

OF THE

GOTHAM INSURANCE COMPANY

AS OF

DECEMBER 31, 2010

DATE OF REPORT

MAY 21, 2012

EXAMINER

DILBRINA BELGRAVE

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawsky
Superintendent

May 21, 2012

Honorable Benjamin M. Lawsky
Superintendent of Financial Services
Albany, New York 12257

Sir:

Pursuant to the requirements of the New York Insurance Law, and in compliance with the instructions contained in Appointment Number 30627 dated January 4, 2011, attached hereto, I have made an examination into the condition and affairs of Gotham Insurance Company as of December 31, 2010, and submit the following report thereon.

Wherever the designation “the Company” appears herein without qualification, it should be understood to indicate Gotham Insurance Company.

Wherever the term “Department” appears herein without qualification, it should be understood to mean the New York State Department of Financial Services.

The examination was conducted at the Company’s administrative office located at 412 Mt. Kemble Avenue, Suite 300C, Morristown, NJ 07960.

1. SCOPE OF EXAMINATION

The Department has performed an individual examination of the Company, a multi-state insurer. The previous examination was conducted as of December 31, 2005. This examination covered the five-year period from January 1, 2006 through December 31, 2010. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

This examination was conducted in accordance with the National Association of Insurance Commissioners (“NAIC”) Financial Condition Examiners Handbook (“Handbook”), which requires that we plan and perform the examination to evaluate the financial condition and identify prospective risks of the Company by obtaining information about the Company including corporate governance, identifying and assessing inherent risks within the Company and evaluating system controls and procedures used to mitigate those risks. This examination also includes assessing the principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation, management’s compliance with Statutory Accounting Principles and annual statement instructions when applicable to domestic state regulations.

All financially significant accounts and activities of the Company were considered in accordance with the risk-focused examination process. The examiners also relied upon audit work performed by the Company’s independent public accountants when appropriate.

This examination report includes a summary of significant findings for the following items as called for in the Handbook:

- Company history
- Corporate records
- Management and control
- Fidelity bonds and other insurance
- Territory and plan of operation
- Growth of Company
- Loss experience
- Reinsurance
- Financial statements
- Summary of recommendations

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 that involve departures from laws, regulations or rules, or that are deemed to require explanation or description.

The Company was examined concurrently with its immediate parent, New York Marine and General Insurance Company (“NY Marine”). A separate report thereon has been rendered.

2. DESCRIPTION OF COMPANY

The Company was incorporated on October 17, 1986 under the laws of New York and commenced operations on February 26, 1987.

On November 24, 2010, the outstanding capital stock of the Company’s parent, NYMAGIC, Inc., was purchased through a joint venture by GS Capital Partners and TPG Capital. At the close of the transaction, all of NYMAGIC Inc.’s publicly held shares were retired and its name was changed to ProSight Specialty Insurance Group, Inc. (“ProSight”). The acquisition is described in more detail in Item 2D herein, “Holding Company System.”

Capital paid in is \$5,000,000 consisting of 50,000 shares of \$100 par value per share common stock. Gross paid in and contributed surplus of \$17,500,000 has remained unchanged for the period covered by this examination.

A. Management

The Company and an affiliate, ProSight Specialty Management Company, Inc. (“PSMC”), formerly known as Mutual Marine Office, Inc., are parties to a service agreement. Under this agreement PSMC supplies all services and facilities necessary for Company operations. The agreement is described in more detail in Item 2D herein, “Holding Company System”.

Pursuant to the Company’s charter and by-laws, management of the Company is vested in a board of directors consisting of not less thirteen nor more than nineteen members. The board meets

at least quarterly during each calendar year. At December 31, 2010, the board of directors was comprised of the following thirteen members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Anthony Arnold New York, NY	Vice President, Goldman Sachs & Co.
Robert Bailey Petaluma, CA	Chief Underwriting Officer Gotham Insurance Company
Joseph Beneducci Far Hills, NJ	Chairman, President and CEO, Gotham Insurance Company
Steven Carlsen Chappaqua, NY	President, Shadowbrook Advising, Inc.
Henry Cornell New York, NY	Managing Director, Goldman, Sachs & Co.
Clement Dwyer, Portsmouth, NH	President, URSA Advisors, Inc.
Jonathan Garfinkel San Francisco, CA	Principal TPG Capital, L.P.
Lawrence Hannon, Tewsbury, NJ	US Field Operations Officer, Gotham Insurance Company
Paul Joseph Hart, Morristown, NJ	Chief Legal Officer, Gotham Insurance Company
Thomas Iacopelli, Irvington, NY	Chief Financial Officer, Gotham Insurance Company
Sumit Rajpal, New York, NY	Managing Director, Goldman, Sachs & Co.
Richard Schifter New York, NY	Managing Partner TPG Capital, L.P.
Bruce Schnitzer, New York, NY	Chariman and Managing Director, Wand Partner, Inc.

A review of the minutes of the board of directors' meetings held during the examination period indicated that the meetings were generally well attended with the exception of Henry Cornell, who attended less than 50% of the meetings for which they were eligible to attend.

Members of the board have a fiduciary responsibility and must evince an ongoing interest in the affairs of the insurer. It is essential that board members attend meetings consistently and set forth their views on relevant matters so that the board may reach appropriate decisions. Individuals who fail to attend at least one-half of the regular meetings do not fulfill such criteria. It is recommended that board members who are unable or unwilling to attend meetings consistently should resign or be replaced.

As of December 31, 2010, the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
Joseph Beneducci	President and Chief Executive Officer
Paul Hart	Secretary
Thomas Iacopelli	Treasurer

B. Territory and Plan of Operation

As of December 31, 2010, the Company was licensed to write business in New York only. It is also licensed to write Special Risk pursuant to Article 63 of the New York Law. It also operates on surplus lines in all states except New York.

As of the examination date, 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>Line of Business</u>
4	Fire
5	Miscellaneous property
6	Water damage
7	Burglary and theft
8	Glass
9	Boiler and machinery
10	Elevator
11	Animal
12	Collision
13	Personal injury liability
14	Property damage liability
15	Workers' compensation and employers' liability
16	Fidelity and surety
17	Credit
19	Motor vehicle and aircraft physical damage
20	Marine and inland marine
21	Marine protection and indemnity

The Company is empowered to transact such workers' compensation insurance as may be incident to coverages contemplated under paragraphs 20 and 21 of Section 1113(a) of the New York Insurance, including insurances described in the Longshoremen's and Harbor Workers' Compensation Act (Public Law No. 803, 69 Congress as amended; 33 USC Section 901 et seq. as amended).

Based on the lines of business for which the Company is licensed and the Company's current capital structure, and pursuant to the requirements of Articles 13 and 41 of the New York Insurance Law, the Company is required to maintain a minimum surplus to policyholders in the amount of \$4,200,000. Surplus to policyholders as of December 31, 2010 was \$62,466,525.

The following schedule shows the direct premiums written by the Company both in total and in New York for the period under examination:

<u>Calendar Year</u>	<u>Direct Premiums Written ("DPW")</u>		<u>% of Total DPW in New York</u>
	<u>New York State</u>	<u>Total DPW</u>	
2006	(\$215,086)	\$47,489,228	-0.45%
2007	\$154,092	\$39,329,826	0.39%
2008	\$127,468	\$39,928,430	0.32%
2009	\$129,683	\$48,250,359	0.27%
2010	(\$110,766)	\$54,027,047	-0.21%

Business is written through insurance underwriting pools managed by ProSight Specialty Management Company (PSMC) and its affiliates. Going forward the group's business mix is expected to change somewhat as it will focus on more profitable industry niches that are expected to replace books of business in runoff. The group participates in lines of business produced by business pools which include ocean marine, inland marine and other liability.

C. Reinsurance

Inter-company Reinsurance Agreement

The Company entered into a reinsurance agreement, effective January 1, 1987, with NY Marine. Under the terms of the agreement, the Company cedes 100% of its writings to NY Marine and then assumes 15% of NY Marine's "net pooled business" (direct business, plus assumed

business, minus cessions to non-affiliated insurers) and related expenses, except for federal and foreign income taxes and investment expenses.

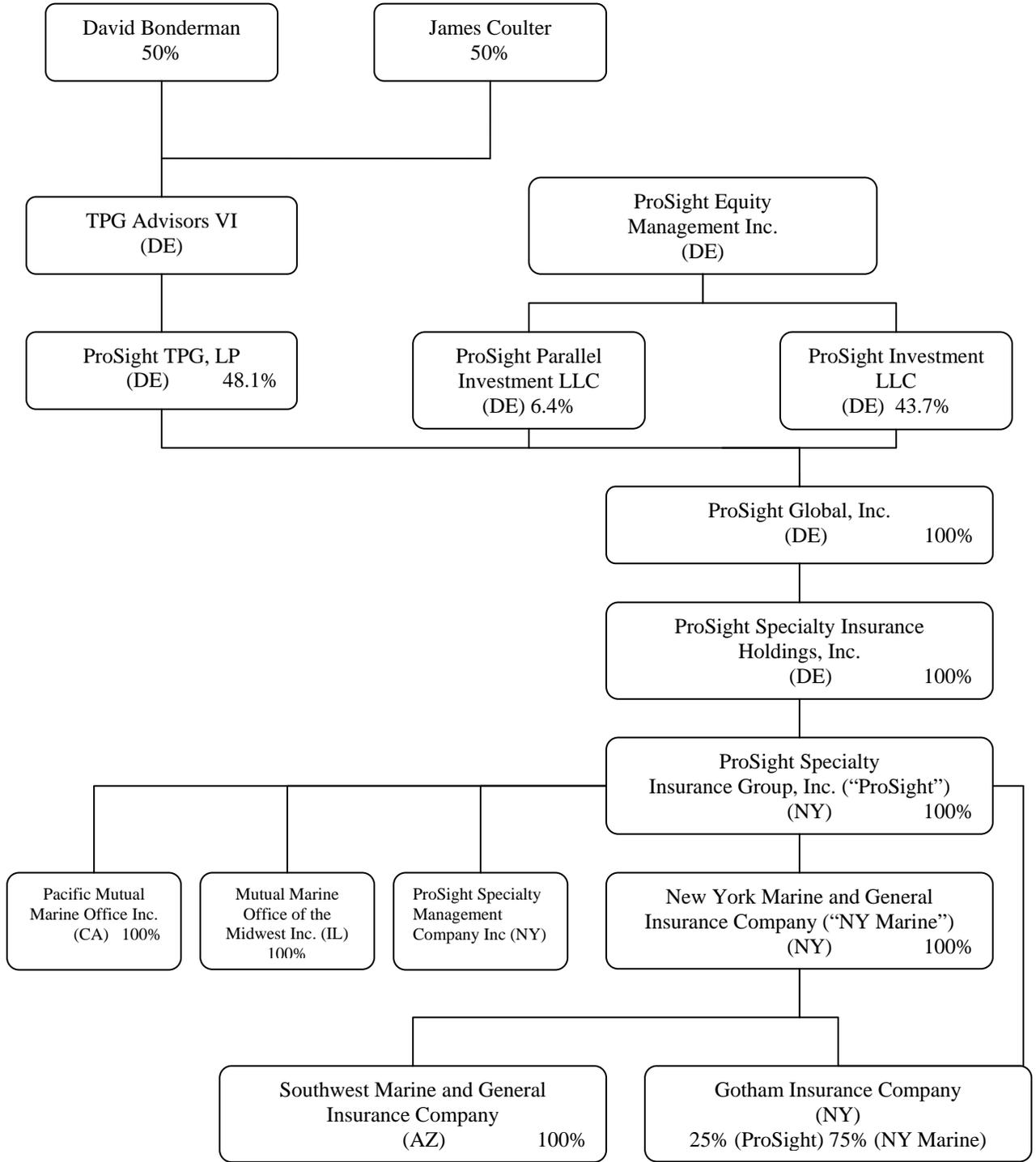
The agreement has been submitted to the Department pursuant to Section 1505(d)(3) of the New York Insurance Law and was non-disapproved. No changes were made to the agreement during the period covered by this examination.

D. Holding Company System

The Company is 75% owned by New York Marine and General Insurance Company (“NY Marine”), a New York corporation, and the remaining 25% is owned by NY Marine’s parent ProSight Specialty Insurance Group (“ProSight”) (formerly known as NYMAGIC Inc.). ProSight is a wholly owned subsidiary of ProSight Specialty Insurance Holdings, Inc. (“PSIH”), a Delaware corporation, which is a wholly owned subsidiary of ProSight Global, Inc. (“PGI”), a Delaware corporation. PGI is owned by two private equity funds, ProSight Equity Management owned by Goldman Sachs and TPI Advisors VI, Inc. owned equally by David Bonderman and James Coulter.

Effective on November 23, 2010, the Company's immediate parent, ProSight, was acquired by PSIH, pursuant to an Agreement and Plan of Merger, dated July 15, 2010. This agreement was approved pursuant to a certificate of merger by the Department on November 23, 2010. PSIH was ultimately founded by a group of executives from the property and casualty industry and is backed by affiliates of TPG Capital and GS Capital Partners.

The following is a chart of the holding company system at December 31, 2010:



As a controlled insurer the Company is required to file registration statements and amendments with this Department, pursuant to Section 1504 of the Insurance Law and Department Regulation 52. Part 80-1.2 of Regulation 52 requires that the amendments be filed annually within 120 days following the end of its ultimate holding company's fiscal year (April 30). The prior examination noted that the Company failed to file amendments on a timely basis for years 2002 and 2005. A review of the years covered by the current examination also noted that amendments were not filed on a timely basis for years 2006, 2007, 2008, 2009 and 2010. It is recommended that the Company comply with Part 80-1.2 of Regulation 52 and file the amendments to its holding company filings by April 30 annually.

In addition to the inter-company reinsurance agreement between the Company and New York Marine noted in Item 2C herein, "Reinsurance", the Company was party to the following agreements with members of its holding company system at December 31, 2010:

1. Service Agreement

The Company entered into an amended and restated service agreement with its affiliate, ProSight Specialty Management Company, Inc. ("PSMC") (formerly known as Mutual Marine Office, Inc.), effective April 22, 2004. Under this agreement the Company appoints PSMC as its attorney in fact for the transaction of the business of insurance and reinsurance for all risks written by the Company. PSMC supplies all services and facilities necessary for the conduct of the Company's business. The Company pays PSMC a service fee of one-percent of the gross premiums written on business produced or obtained through insurance pools and an additional one-percent of all direct premiums. The agreement also states that any service fee payable pursuant to the above formula shall be reduced to the extent that it is paid on the same business under PSMC's management agreement with NY Marine. The agreement was submitted to and non-disapproved by the Department.

PSMC's compensation for its services shall not exceed the actual cost and expenses incurred by PSMC in connection with fulfilling its obligations under the agreement.

Subsequent to the period covered by this examination, the aforementioned management agreement was amended and restated, effective January 15, 2011. The amendment states that commencing as of the date hereof, the Company will allow Pro Sight Management as compensation for its services an amount equal to the actual costs and expenses incurred by or on behalf of PSMC

connection with rendering such services to the Company, including, without limitation, all reasonable employee, benefits and overhead costs and expenses incurred by or on behalf of Pro Sight Management.

It was noted that PSMC does not provide The Company with reports disclosing the nature and details of its service fees. Section 1505(b) of the New York Insurance Law states that the books, accounts and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties. It is recommended that the Company amend its service agreement to clearly disclose service fees and require quarterly statements to support the fees charged, and file the amendment with the Department pursuant to Section 1505(b) of the New York Insurance Law.

2. Tax Allocation Agreement

Effective January 1, 2006 the Company entered into an amended and restated tax allocation agreement. Under this agreement, commencing with the tax year ending December 31, 2006, the Company and its affiliates file a consolidated federal income tax return.

The agreement was approved by the Company's board of directors and a copy of the agreement was filed with this Department in accordance with Department Circular Letter 1979-33.

E. Significant Operating Ratios

The following ratios have been computed as of December 31, 2010, based upon the results of this examination:

Net premiums written to surplus as regards policyholders	.41 to 1
Liabilities to liquid assets (cash and invested assets less investments in affiliates)	53%
Premiums in course of collection to surplus as regards policyholders	5%

All of 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 five-year period covered by this examination:

	<u>Amounts</u>	<u>Ratios</u>
Losses and loss adjustment expenses incurred	\$67,265,893	56.26%
Other underwriting expenses incurred	41,376,808	34.61
Net underwriting gain	<u>10,921,781</u>	<u>9.13</u>
Premiums earned	<u>\$119,564,482</u>	<u>100.00%</u>

3. FINANCIAL STATEMENTS

A Balance Sheet

The following shows the assets, liabilities and surplus as regards policyholders as of December 31, 2010 as determined by this examination and as reported by the Company:

<u>Assets</u>	<u>Assets</u>	<u>Assets Not Admitted</u>	<u>Net Admitted Assets</u>
Bonds	\$ 50,654,361	\$ 0	\$ 50,654,361
Cash, cash equivalents and short-term investments	47,472,211	0	47,472,211
Other invested assets	1,836,817	0	1,836,817
Receivables for securities	18,551,515	0	18,551,515
Investment income due and accrued	69,553	0	69,553
Uncollected premiums and agents' balances in the course of collection	3,228,662	0	3,228,662
Current federal and foreign income tax recoverable and interest thereon	57,109	0	57,109
Net deferred tax asset	<u>3,884,922</u>	<u>1,845,594</u>	<u>2,039,328</u>
Total assets	<u>\$125,755,150</u>	<u>\$1,845,594</u>	<u>\$123,909,556</u>

Liabilities, Surplus and Other Funds

Liabilities

Losses and Loss Adjustment Expenses	\$49,784,925
Commissions payable, contingent commissions and other similar charges	619,656
Other expenses (excluding taxes, licenses and fees)	322,474
Taxes, licenses and fees (excluding federal and foreign income taxes)	141,916
Unearned premiums	<u>10,574,060</u>
Total liabilities	<u>\$61,443,031</u>

Surplus and Other Funds

Increase in admitted DTAs due to paragraph 10.e of SSAP No. 10R	\$ 1,116,940	
Common capital stock	5,000,000	
Gross paid in and contributed surplus	17,500,000	
Unassigned funds (surplus)	<u>38,849,585</u>	
Surplus as regards policyholders		<u>62,466,525</u>
Total liabilities, surplus and other funds		<u>\$123,909,556</u>

NOTE: The Internal Revenue Service has not performed any audits of the consolidated federal income tax returns filed on behalf of the Company, for the years covered by this examination. 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. Statement of Income

Surplus as regards policyholders increased \$653,746 during the five-year examination period January 1, 2006 through December 31, 2010, detailed as follows:

Underwriting Income

Premiums earned		\$119,564,482
Deductions:		
Losses and loss adjustment expenses incurred	\$67,265,893	
Other underwriting expenses incurred	<u>41,376,808</u>	
Total underwriting deductions		<u>108,642,701</u>
Net underwriting gain or (loss)		\$ 10,921,781

Investment Income

Net investment income earned	\$13,931,712	
Net realized capital gain	<u>5,651,446</u>	
Net investment gain or (loss)		19,583,158

Other Income

Net gain or (loss) from agents' or premium balances charged off	\$104,273	
Aggregate write-ins for miscellaneous income	<u>10,984</u>	
Total other income		<u>115,257</u>
Net income after dividends to policyholders but before federal and foreign income taxes		\$30,620,196
Federal and foreign income taxes incurred		<u>6,713,337</u>
Net Income		<u>\$23,906,859</u>

C. Capital and Surplus Statement

Surplus as regards policyholders per report on examination as of December 31, 2005	<u>Gains in Surplus</u>	<u>Losses in Surplus</u>	<u>\$61,812,779</u>
Net income	\$23,906,859		
Net unrealized capital gains or (losses)		\$ 9,512,041	
Change in net deferred income tax	1,385,442		
Change in nonadmitted assets		1,543,454	
Dividends to stockholders		14,700,000	
Increase in admitted DTAs due to paragraph 10.e of SSAP No. 10R	<u>1,116,940</u>	<u>0</u>	
Total gains and losses in surplus	<u>\$26,409,241</u>	<u>\$25,755,495</u>	
Net increase (decrease) in surplus			<u>653,746</u>
Surplus as regards policyholders per report on examination as of December 31, 2010			<u>\$62,466,525</u>

4. LOSSES AND LOSS ADJUSTMENT EXPENSES

The examination liability for the captioned items of \$49,784,925 is the same as reported by the Company as of December 31, 2010. The examination 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.

5. **COMPLIANCE WITH PRIOR REPORT ON EXAMINATION**

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

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Holding Company System</u>	
It is recommended that the Company comply with Part 80-1.2 of Department Regulation 52 and file the amendments to its holding company filings by April 30 annually.	9
The Company has not complied with this recommendation. A similar comment is made in this report.	
B. <u>Accounts and Records</u>	
i. It is recommended that the Company amend its custodial agreements to include the missing safeguards.	11
ii. The Company has complied with this recommendation.	
It is also recommended that the Company take due care to correctly complete the General Interrogatories of its filed annual statement.	11
The Company has complied with this recommendation.	

6. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>		<u>PAGE NO.</u>
A	<u>Management</u>	
	It is recommended that board members who are unable or unwilling to attend meetings consistently should resign or be replaced	5
B	<u>Holding company</u>	
i	It is recommended that the Company comply with Part 80-1.2 of Regulation 52 and file the amendments to its holding company filings by April 30 annually.	9
ii	It is recommended that the Company amend its service agreement to clearly disclose service fees and require quarterly statements to support the fees charged, and file the amendment with the Department pursuant to Section 1505(b) of the New York Insurance Law.	10

Appointment No. 30627

STATE OF NEW YORK
INSURANCE DEPARTMENT

I, James J. Wrynn Superintendent of Insurance of the State of New York,
pursuant to the provisions of the Insurance Law, do hereby appoint:

Dilbrina Belgrave

as proper person to examine into the affairs of the

GOTHAM INSURANCE COMPANY

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

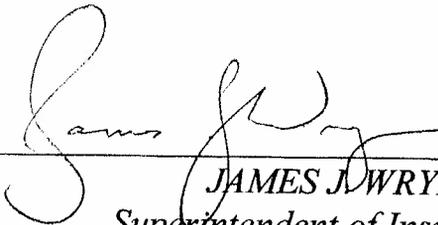
Company

with such other information as she shall deem requisite.

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

this 4th day of January, 2011





JAMES J. WRYNN
Superintendent of Insurance