

REPORT ON EXAMINATION

OF THE

SOMPO JAPAN FIRE AND MARINE INSURANCE COMPANY OF AMERICA

AS OF

DECEMBER 31, 2012

DATE OF REPORT

APRIL 23, 2014

EXAMINER

HAILS TAYLOR, CFE

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

April 23, 2014

Andrew M. Cuomo  
Governor

Benjamin M. Lawsky  
Superintendent

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 31031 dated October 21, 2013, attached hereto, I have made an examination into the condition and affairs of Sompo Japan Fire and Marine Insurance Company of America as of December 31, 2012, and submit the following report thereon.

Wherever the designation “the Company” appears herein without qualification, it should be understood to indicate Sompo Japan Fire and Marine Insurance Company of America.

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 11405 North Community House Rd, Suite 600, Charlotte, North Carolina. The Company’s statutory home office is located at 777 Third Avenue, 28<sup>th</sup> Floor, New York, NY 10017.

## 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, 2007. This examination covered the five year period from January 1, 2008 through December 31, 2012. 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. This examination also included a review and evaluation of the Company’s own control environment assessment and an evaluation based upon the Company’s Sarbanes Oxley documentation and testing. 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:

- Significant subsequent events
- Company history
- Corporate records
- Management and control
- Fidelity bonds and other insurance
- Pensions, stock ownership and insurance plans
- Territory and plan of operation
- Growth of Company
- Loss experience
- Reinsurance
- Accounts and records
- Statutory deposits
- 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.

## **2. DESCRIPTION OF COMPANY**

The Company was incorporated on December 21, 2001 to serve as the vehicle for the domestication of the United States Branch of the Nissan Fire & Marine Insurance Company, Ltd. It commenced business on July 1, 2002. The Nissan Fire & Marine Insurance Company, Ltd. was established in 1911 under the laws of Japan. The United States Branch was licensed under the laws of the State of New York on October 1, 1980. Effective July 1, 2002, a merger was consummated in Japan between the Yasuda Fire & Marine Insurance Company, Ltd. and the Nissan Fire & Marine Insurance Company, Ltd. The name of the surviving entity was Sompo Japan Insurance, Inc., which was the Company's ultimate parent.

As of December 31, 2012, capital paid in was \$5,000,000 consisting of 5,000 shares of common stock at \$1,000 par value per share. Gross paid in and contributed surplus was \$55,967,997. The capital paid in and gross paid in and contributed surplus were unchanged during the examination period.

### **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 thirteen nor more than twenty one members. At December 31, 2012, the board of directors was comprised of the following thirteen members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Ellen Caldwell Denver, NC	Chief Operating Officer, SJA Insurance Agency, LLC
John Calotta New York, NY	Secretary, Sompo Japan Fire and Marine Insurance Company of America Senior Vice President & General Counsel, Sompo Japan Insurance Company of America

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Richard Case Charlotte, NC	Chief Underwriting Officer, SJA Insurance Agency, LLC
Susan DeVito Edison, NJ	Vice President and Director, DeVito & Company, Inc.
H. Clark Jackson Charlotte, NC	Executive Vice President, Sompo Japan Insurance Company of America
Hiroshi Kida Charlotte, NC	President and Chief Operating Officer, Sompo Japan Fire and Marine Insurance Company of America and Sompo Japan Insurance Company of America
Steve Lindsley Charlotte, NC	Senior Manager, SJA Insurance Agency, LLC
John McElroy Randolph, NJ	Retired Insurance Executive
Hirohiko Morisaki Charlotte, NC	Treasurer & Chief Financial Officer, Sompo Japan Fire and Marine Insurance Company of America
David Nichols Long Island, NY	Chief Executive Officer, Interboro Insurance Company
Phil Tumbarello Westchester, NY	Partner, Wilson Elser Moskowitz Edelman & Dicker LLP
Hiroyuki Yamaguchi New York, NY	Chief Executive Officer, Sompo Japan Fire and Marine Insurance Company of America and Sompo Japan Insurance Company of America
Tom Yodice Fair Lawn, NJ	Senior Vice President, Broadspire Crawford, 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 and each board member had an acceptable record of attendance.

The minutes of the board of directors meeting held on June 25, 2009 indicate that the report on examination as of December 31, 2007 was distributed to and reviewed by each of the board members and the minutes also indicate that the report was discussed at that meeting. However, upon request, the Company could not provide signed statements from each director confirming that they had received and read the report on examination.

Section 312(b) of the New York Insurance Law states: “A copy of the report shall be furnished by such insurer or other person to each member of its board of directors and each such member shall sign a statement which shall be retained in the insurer’s files confirming that such member has received and read such report”.

It is recommended that the Company have each board member sign a statement confirming that they have received and read the report on examination and retain such statements in its files pursuant to the provisions of Section 312(b) of the New York Insurance Law.

As of December 31, 2012, the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
Hiroshi Kida	President
Hiroyuki Yamaguchi	Chief Executive Officer
Hirohiko Morisaki	Treasurer
John Calotta	Secretary

B. Territory and Plan of Operation

As of December 31, 2012, the Company was licensed to write business in twenty states and the District of Columbia.

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>
3	Accident & health
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 was also licensed to write special risks pursuant to Article 63 of the New York Insurance Law.

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, 41 and 63 of the New York Insurance Law, the Company is required to maintain a minimum surplus to policyholders in the amount of \$4,400,000.

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>New York State</u>	<u>Total Premiums</u>	<u>Premiums Written in New York State as a Percentage of Total Premium</u>
2008	\$ 0	\$ 413,140	0.00%
2009	\$ 0	\$1,378,454	0.00%
2010	\$ 0	\$2,749,027	0.00%
2011	\$109,828	\$3,622,163	3.03%
2012	\$204,674	\$4,797,645	4.27%

The Company's major lines of business are workers' compensation, commercial auto liability and commercial auto physical damage, which accounted for 92.3%, 4.9% and 2.8%, respectively, of the Company's 2012 direct written business. The Company's business is produced through approximately 94 agents/brokers.

#### C. Reinsurance

##### Assumed

The Company did not assume any premiums under reinsurance contracts and reported only \$58 thousand in mandatory pooled assumed premiums from the National Workers' Compensation Reinsurance Pool.

##### Ceded

In 2008, the management of its parent, Sampo Japan Insurance Company of America ("SJA") and the Company announced plans to expand the business through Company at which point the two companies entered into an agreement where the Company cedes 100% of direct business after November 2008 to its parent. The only net written premiums that reside with the Company are assumed business from pools and associations.



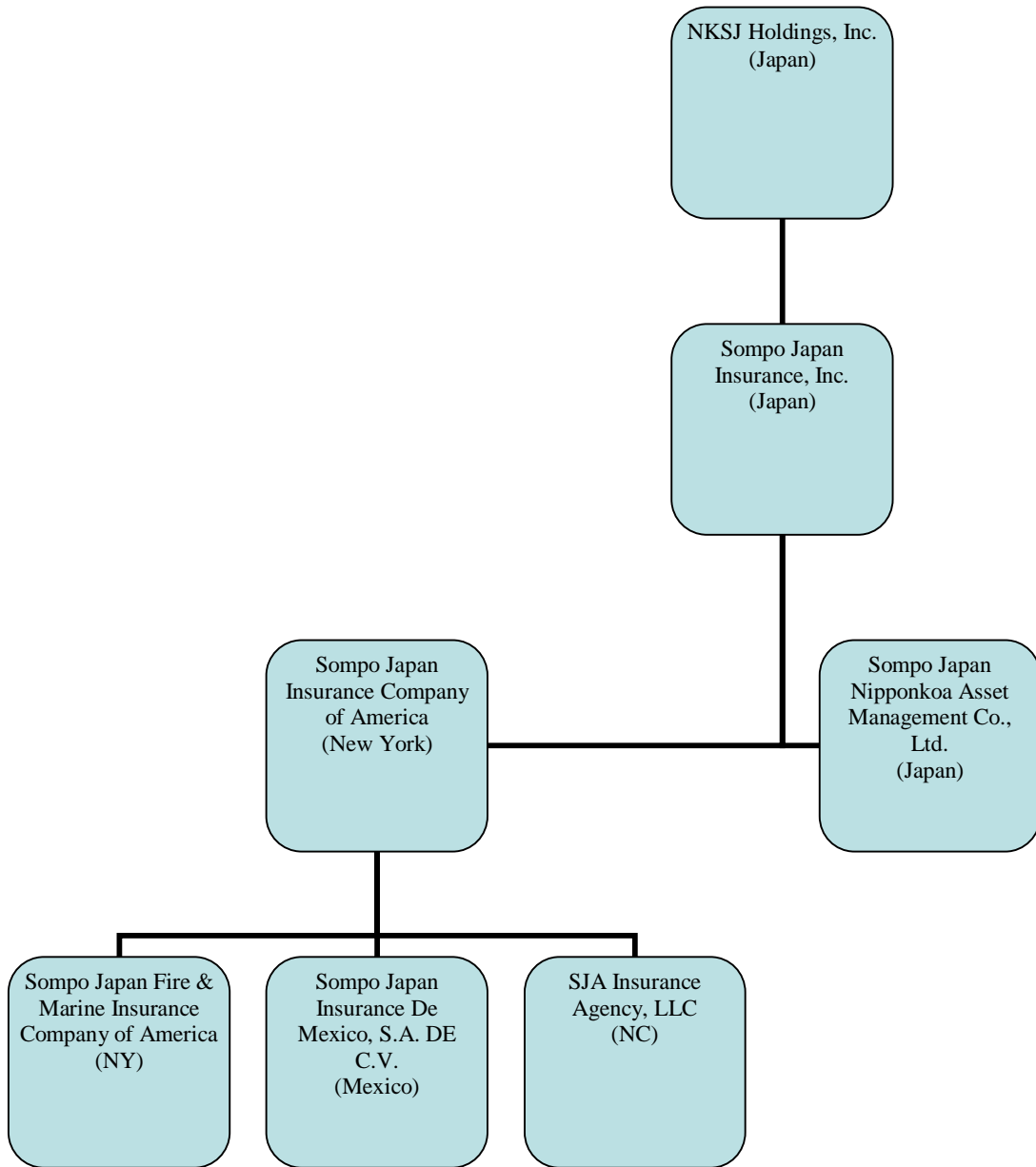
In order to facilitate the ceding of substantially 100% of its written business, the Company entered into a retroactive and prospective reinsurance agreement effective October 1, 2008 with SJA whereby SJA assumes 100% of the ultimate net loss of the Company arising out of or under, any policies with a policy start date on or after July 1, 2007, except losses and case reserves incurred by the Company prior to October 1, 2008. The remaining outstanding reserves on retroactive reinsurance were \$7,985 and \$12,632 in 2012 and 2011, respectively. These amounts were reported as restricted surplus.

D. Holding Company System

The Company is a member of the NKSJ Holdings, Inc. Group. The Company is 100% owned by Sompo Japan Insurance Company of America, a New York domiciled insurance company.

A review of the Holding Company Registration Statements filed with this Department indicated that such filings were complete and were filed in a timely manner pursuant to Article 15 of the New York Insurance Law and Department Regulation 52.

The following is an abridged chart of the holding company system at December 31, 2012:



At December 31, 2012, the Company was party to the following agreements with other members of its holding company system:

Tax Allocation Agreement

Pursuant to this agreement effective July 1, 2003, the Company files consolidated federal income tax returns with SJA and its affiliates. The agreement was submitted to the Department prior to its implementation as required by Article 15 of the New York Insurance Law and meets the requirements of Circular Letter No. 33 (1979).

Salary Allocation Agreement

This agreement with effective date of March 29, 2012 is between the Company, Sompo Japan Insurance, Inc., Sompo Japan Insurance Company of America, Sompo Japan Nipponkoa Asset Management Company Ltd. and SJA Insurance agency. The agreement states that the salaries of shared employees shall be allocated and charged to all such parties based upon the proportion of time that such shared employee performs services for each of such parties in accordance with laws and regulations applicable to such party including Regulation 30. The agreement was non-disapproved by the Department on March 8, 2012.

Space Allocation Agreement

This agreement with effective date of March 29, 2012 is between the Company, Sompo Japan Insurance, Inc., Sompo Japan Insurance Company of America, Sompo Japan Nipponkoa Asset Management Company Ltd. and SJA Insurance agency. Pursuant to the agreement, the parties share office space in New York and Charlotte. The agreement states that the cost of such shared office space shall be fairly allocated among the parties based upon the cost of such shared office space and in all cases subject to the limits and requirements of applicable law and regulations. The agreement was non-disapproved by the Department on March 8, 2012.

E. Significant Operating Ratios

The following ratios have been computed as of December 31, 2012, based upon the results of this examination:

Net premiums written to surplus as regards policyholders	0%
Liabilities to liquid assets (cash and invested assets less investments in affiliates)	3%
Premiums in course of collection to surplus as regards policyholders	0%

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	\$ 934,424	412.94%
Other underwriting expenses incurred	689,030	304.53
Net underwriting loss	<u>(1,397,091)</u>	<u>(617.46)</u>
Premiums earned	<u>\$ 226,263</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, 2012 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	\$70,633,457	\$0	\$70,633,457
Cash, cash equivalents and short-term investments	2,442,453	0	2,442,453
Investment income due and accrued	709,495	0	709,495
Uncollected premiums and agents' balances in the course of collection	191,342	0	191,342
Deferred premiums, agents' balances and installments booked but deferred and not yet due	1,100,920	0	1,100,920
Amounts recoverable from reinsurers	1,029,897	0	1,029,897
Funds held by or deposited with reinsured companies	<u>1,180</u>	<u>0</u>	<u>1,180</u>
Total assets	<u>\$76,108,744</u>	<u>\$0</u>	<u>\$76,108,744</u>

#### Liabilities, surplus and other funds

Losses and loss adjustment expenses	\$ 194,525
Other expenses (excluding taxes, licenses and fees)	120,527
Taxes, licenses and fees (excluding federal and foreign income taxes)	1,322
Current federal and foreign income taxes	830,470
Net deferred tax liability	28,943
Unearned premiums	20,004
Ceded reinsurance premiums payable (net of ceding commissions)	1,411,634
Provision for reinsurance	1,036
Payable to parent, subsidiaries and affiliates	428,933
Retroactive reinsurance reserve ceded	<u>(7,895)</u>

Total liabilities \$ 3,029,408

#### Surplus and Other Funds

Special surplus from retroactive reinsurance account	\$ 7,985
Common capital stock	5,000,000
Gross paid in and contributed surplus	55,967,997
Unassigned funds (surplus)	<u>12,103,353</u>
Surplus as regards policyholders	<u>\$73,079,335</u>

Total liabilities, surplus and other funds \$ 76,108,744

B. Statement of Income

Surplus as regards policyholders increased \$8,770,896 during the five-year examination period January 1, 2008 through December 31, 2012, detailed as follows:

Underwriting Income

Premiums earned		\$ 226,263
Deductions:		
Losses and loss adjustment expenses incurred	\$ 934,324	
Other underwriting expenses incurred	<u>689,030</u>	
Total underwriting deductions		<u>1,623,354</u>
Net underwriting loss		\$(1,397,091)

Investment Income

Net investment income earned	\$13,699,593	
Net realized capital gain	<u>472,598</u>	
Net investment gain		14,172,191

Other Income

Net gain or (loss) from agents' or premium balances charged off	\$ 61	
Finance and service charges not included in premiums	2,069	
Aggregate write-ins for miscellaneous income	<u>8,011</u>	
Total other income		<u>10,141</u>
Net income before dividends to policyholders and before federal and foreign income taxes		\$12,785,241
Federal and foreign income taxes incurred		<u>3,984,366</u>
Net Income		\$ <u>8,800,875</u>

Surplus as regards policyholders per report on examination as of December 31, 2007			\$64,308,439
	<u>Gains in</u> <u>Surplus</u>	<u>Losses in</u> <u>Surplus</u>	
Net income	\$8,800,875		
Change in net deferred income tax		\$ 28,943	
Change in nonadmitted assets	1		
Change in provision for reinsurance	<u>0</u>	<u>1,037</u>	
Total gains and losses	\$8,800,876	\$ 29,980	
Net increase (decrease) in surplus			<u>8,770,896</u>
Surplus as regards policyholders per report on examination as of December 31, 2012			<u>\$73,079,335</u>

#### 4. LOSSES AND LOSS ADJUSTMENT EXPENSES

The examination liability for the captioned items of \$194,525 is the same as reported by the Company as of December 31, 2012. The examination analysis of the loss and loss adjustment expense reserves was conducted in accordance with generally accepted actuarial principles and statutory accounting principles, including the NAIC Accounting Practices & Procedures Manual, Statement of Statutory Accounting Principle No. 55 (“SSAP No. 55”).

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

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

<u>ITEM</u>		<u>PAGE NO.</u>
A	It is recommended that the Company notify the Department within 30 days of entering into a tax allocation agreement, pursuant to the provisions of Circular Letter No. 33 (1979).	9
	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 the Company have each board member sign a statement confirming that they have received and read the report on examination and retain such statements in its files pursuant to the provisions of Section 312(b) of the New York Insurance Law.	5





*NEW YORK STATE*

***DEPARTMENT OF FINANCIAL SERVICES***

*I, BENJAMIN M. LAWSKY, Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:*

***Hails Taylor***

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

***Sompo Japan Fire and Marine Insurance Company***

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

***COMPANY***

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

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

*this 21st day of October, 2013*

***BENJAMIN M. LAWSKY***  
*Superintendent of Financial Services*



By:

*Jean Marie Cho*  
*Deputy Superintendent*