

REPORT ON EXAMINATION
OF THE
FIRST ATLANTIC TITLE INSURANCE CORPORATION
AS OF
DECEMBER 31, 2002

DATE OF REPORT

FEBRUARY 15, 2004

EXAMINER

ROBERT A. VARGAS

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

February 15, 2004

Honorable Gregory V. Serio
Superintendent of Insurance
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 21811, dated December 6, 2001, attached hereto, I have made an examination into the condition and affairs of the First Atlantic Title Insurance Corporation as of December 31, 2002, and submit the following report thereon.

The examination was conducted at the office of the Company's president, which is located at 99 West Hawthorne Street, Valley Stream, New York 11580.

Wherever the designations "Company" or "FATIC" appear herein without qualification, they should be understood to indicate First Atlantic Title Insurance Corporation.

Wherever the designation "Department" appears herein without qualification, it should be understood to indicate The New York State Insurance Department.

The Company's home office is located at 585 Stewart Avenue, Suite 302, Garden City, New York 11530.

1. SCOPE OF EXAMINATION

The previous examination was conducted as of December 31, 1997. This examination covers the five-year period from January 1, 1998 through December 31, 2002. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

The examination comprised a complete verification of the assets and liabilities as of December 31, 2002, a review of income and disbursements deemed necessary to accomplish such verification and utilized, to the extent considered appropriate, work performed by the Company's independent certified public accountants. A review or audit was also made of the following items as called for in the Examiners Handbook of the National Association of Insurance Commissioners:

- History of Company
- Management and control
- Corporate records
- Fidelity bond and other insurance
- Employees' welfare and pension plans
- Territory and plan of operation
- Market conduct activities
- Growth of the Company
- Business in force
- Loss experience
- Reinsurance
- Accounts and records
- Financial statements

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 incorporated on November 10, 1988, under the provisions of Article 64 of the New York Insurance Law, with an authorized capital of \$500,000 and gross paid in and contributed surplus of \$250,000.

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 7 nor more than 14 members.

As of December 31, 2002, the Company had seven directors. The board of directors met once a year during the examination period. The directors as of December 31, 2002 were as follows:

<u>Name and Residence</u>	<u>Principal Occupation</u>
Allan Goldstein Spencertown, NY	Retired
Cindy Lynn Gottshall White Plains, NY	Secretary/Treasurer, First Atlantic Title Insurance Corp.
Chester John Gottshall White Plains, NY	Electronic Technician, Westchester Television Service
Irwin M. Haims Woodmere, NY	President, First Atlantic Title Insurance Corp.
Irwin Port Woodmere, NY	Attorney and CPA
Sally Port Woodmere, NY	Vice President, First Atlantic Title Insurance Corp.
Barry Bailin Englewood Cliffs, NJ	Computer Technician, NATO

The minutes of all meetings of the board of directors during the examination period were reviewed. All meetings were well attended.

The principal officers of the Company as of December 31, 2002 were as follows:

<u>Name</u>	<u>Title</u>
Irwin M. Haims	President
Sally Port	Vice President
Cindy Lynn Gottshall	Secretary/Treasurer

The officers listed above and in the annual statements filed with the Department are not employees of the Company. The business and affairs of the Company are managed by Port Abstract Inc., which is owned by Peter Port, who is the son of Sally Port. Port Abstract Inc. also acts as an agent for the Company for which it receives a commission of 82 percent of the gross premiums written. Peter Port does not own any shares of the Company.

It was noted in the prior report on examination that the Company's method of operation changed from the "original plan of operation" filed with the Department. The original plan included the Company employees to direct the affairs of the Company. As noted, the Company has no employees. It was recommended that the Company amend its "plan of operation" and to file such plan with the Department to reflect its current mode of operations. Included in such plan should be a proposed management agreement between the Company and Port Abstract Inc.

It is recommended that the Company amend its "plan of operation" to reflect its current mode of operations and file such plan, which should include a proposed management agreement, with the Department.

B. Territory and Plan of Operation

At December 31, 2002, the Company is licensed to do title insurance business in New York State only. The following schedule shows direct premiums written in the State of New York compared to direct business written as determined by the examiner during the five year examination period:

Direct Premiums Written

<u>Calendar Year</u>	<u>Per Company</u>	<u>Per Examination</u>	<u>Difference</u>
1998	124,896	\$693,873	\$568,977
1999	113,345	629,695	516,350
2000	70,723	392,924	322,201
2001	165,685	920,473	754,788
2002	<u>184,378</u>	<u>1,024,317</u>	<u>839,939</u>
Totals	<u>\$659,027</u>	<u>\$3,661,282</u>	<u>\$3,002,255</u>

The difference between the Company's direct premiums written and the examination amount was due to the fact that the Company reported its direct premiums written net of commissions paid to agents. The Annual Statement Instructions for Title Insurance Companies published by the National Association of Insurance Commissioners prescribes the method of reporting direct premiums written in Schedule T and other schedules or exhibits in the annual statement and requires that such premiums be reported gross of commissions. Additionally, Paragraph 7 of SSAP 57 provides that "Amounts paid to or retained by agents shall be reported as an expense."

A review of the Schedules T contained in the annual statements filed for the five-year examination period did not accurately reflect the Company's "gross direct premiums written" and the Operations and Investment exhibits did not accurately report the "amounts paid to or retained by title agent."

It is recommended that the Company report "gross direct premiums written" gross of commissions on Schedule T of its filed annual statement, in accordance with the provisions of the Annual Statement Instructions for Title Companies and SSAP No. 57.

It is further recommended that the Company correctly report agents' commissions as "amounts paid to or retained by title agent" on the operations and investment exhibits of its filed annual statements,

in accordance with the provisions of the Annual Statement Instructions for Title Companies and SSAP No. 57.

As of the examination date, the Company was authorized to transact the kind of insurance as defined in paragraph 18 of Section 1113(a) of the New York Insurance Law.

Based upon the line of business for which the Company is licensed, and the Company's current capital structure, and pursuant to the requirements of Article 64 of the New York Insurance Law, the Company is required to maintain a minimum surplus to policyholders in the amount of \$500,000.

The Company writes only direct business through Port Abstract Incorporated, which transacts title insurance on behalf of the Company.

C. Reinsurance

The Company did not enter into any reinsurance agreements during this examination period. The Company has established a maximum retention of \$250,000 for any one risk. The amount is within the limits prescribed by Section 6403(c) of the New York Insurance Law.

D. Holding Company System

The Company is controlled by Sally Port, a private individual, who owns a 70% interest in First Atlantic Title Insurance Corporation. The Company registered with the Department as a controlled insurer and has not filed annual reports in accordance with the requirements of Article 15 of the New York Insurance Law and Department Regulation 52.

It is recommended that the Company file annual reports in accordance with the requirements of Article 15 of the New York Insurance Law.

The following represents the ownership interests in First Atlantic Insurance Corp.:

<u>Stockholder</u>	<u>No. of Shares</u>	<u>Percentage of ownership</u>
Sally Port	140	70.0
Cindy Gottshall	10	5.0
Barry Bailin	25	12.5
Debora Schwartz	5	2.5
Barbara Bailin	5	2.5
June Reich	5	2.5
Alan Goldstein	5	2.5
Irwin M. Haims	2.5	1.25
Alvin M. Glasser	<u>2.5</u>	<u>1.25</u>
Totals	<u>200.0</u>	<u>100.00</u>

Neither the Company or any of the above stockholders has an interest in Port Abstract Inc.

E. Segregated Funds Held For Others

During the examination period, the Company reported no amounts for segregated funds held for others in the footnote of its filed annual statement. It contended that its agent did not hold escrow deposits on its behalf during the period under examination. However, the examiner's review of a sample of title insurance closing files revealed that the Company has no procedures to account for and determine the escrow on deposit with the agent. It is recommended that the Company establish procedures to account for and determine the escrow amount on deposit with its agent.

The Company does not require the agent to enter into an escrow agreement nor does it require the agent to remit the unpaid escrow deposit to the Company. It is recommended that the Company require the agent to execute an escrow agreement.

The Company has a fiduciary responsibility to its policyholders for custody and accountability of escrow deposits. It is recommended that the Company establish procedures to account for and determine the amount of escrow on deposit with its agent. It is recommended that the Company disclose all escrow deposits held on behalf of its policyholders in a footnote to its annual statements.

F. Accounts, Records and Internal Controls

During the period under examination, the Company showed the following deficiencies in its system of accounts, records and internal controls:

- i. The Company did not have any fidelity bond and business interruption insurance;
- ii. The Company requires only one signature for issued checks and for bank transfers;
- iii. The Company did not segregate the required amount of reinsurance reserve per Section 6405(c) of the NYS Insurance Law.

It is recommended that the Company:

- i. Obtain fidelity bond and business interruption insurance;
- ii. Require two authorized signatures for checks and for transactions drawn on the Company's bank accounts;
- iii. Segregate the required amount of reinsurance reserve as specified in Section 6405(c) of the NYS Insurance Law.

G. Custodian Agreement

A review of the Company's custodian and safekeeping agreement indicated that it lacked the following protective covenants, which are evident of good business practices and adequate internal control as stated in the NAIC Financial Examiners Handbook Part 1 Section 1V H:

- 1) That the custodian shall secure and maintain insurance protection in an adequate amount.
- 2) That the national bank, state bank, or trust company, as custodian is obligated to indemnify the insurance company for any insurance company's loss of securities in the custodian's custody, except that, unless domiciliary state law, regulation, or administrative action otherwise require a stricter standard (Section 2.b. sets forth an example of such a stricter standard), the bank or trust company shall not be so obligated to the extent that such loss was caused by other than the negligence or dishonesty of the custodian;
- 3) If domiciliary state law, regulation, or administrative action requires a stricter standard of liability for custodians of insurance company securities than that set forth in Section 2.a., then such stricter standard shall apply. An example of a stricter standard that may be used is that the custodian is obligated to indemnify the insurance company for any loss of securities of the insurance company in the custodian's custody occasioned by the negligence or dishonesty of the custodian's officers or employees, or burglary, robbery, holdup, theft, or mysterious disappearance, including loss by damage or destruction;

- 4) That in the event of a loss of the securities for which the custodian is obligated to indemnify the insurance company, the securities shall be promptly replaced or the value of the securities and the value of any loss of rights or privileges resulting from said loss of securities shall be promptly replaced; and may provide;
- 5) That the national bank, state bank or trust company as custodian shall not be liable for any failure to take any action required to be taken hereunder in the event and to the extent that the taking of such action is prevented or delayed by war (whether declared or not and including existing wars), revolution, insurrection, riot, civil commotion, act of God, accident, fire, explosions, stoppage of labor, strikes or other differences with employees, laws, regulations, orders or other acts of any governmental authority, or any other cause whatever beyond its reasonable control;
- 6) That in the event that the custodian gains entry in a clearing corporation through an agent, there should be [an] a written agreement between the custodian and the agent that the agent shall be subjected to the same liability for loss of securities as the custodian. If the agent is governed by laws that differ from the regulation of the custodian, the Commissioner of Insurance of the state of domicile may accept a standard of liability applicable to the agent that is different from the standard liability;
- 7) That if the custodial agreement has been terminated or if 100% of the account assets in any one custody account have been withdrawn, the custodian shall provide written notification, within three business days of termination or withdrawal, to the insurer's domiciliary commissioner;
- 8) That during regular business hours, and upon reasonable notice, an officer or employee of the insurance company, an independent accountant selected by the insurance company and a representative of an appropriate regulatory body shall be entitled to examine, on the premises of the custodian, its records relating to securities, if the custodian is given written instructions to that effect from an authorized officer of the insurance company;
- 9) The custodian and its agents, upon reasonable request, shall be required to send all reports which they receive from a clearing corporation or the Federal Reserve book-entry system which the clearing corporation or the Federal Reserve permits to be redistributed and reports prepared by the custodian's outside auditors, to the insurance company on their respective systems of internal control;
- 10) That the custodian shall provide, upon written request from a regulator or and authorized officer of the insurance company, the appropriate affidavits, with respect to the insurance company's securities held by the custodian;
- 11) That the foreign bank acting as a custodian, or a U.S. custodian's foreign agent, or a foreign clearing corporation is only holding foreign securities or securities required by the foreign country in order for the insurer to do business in that country. A U.S. custodian must hold all other securities.

It is recommended that the Company establish a formal written custodian agreement for its securities held in a bank or trust company, chartered by the United States or any State thereof, which contains safeguards and controls that are in accordance with the NAIC Financial Examiners Handbook Part 1 Section 1V H.

I. Significant Operating Ratios

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

	<u>Amounts</u>	<u>Ratios</u>
Loss and loss adjustment expenses incurred	\$ 40,000	6.47%
Other operating expenses incurred	162,456	26.31
Net operating gain	<u>415,055</u>	<u>67.22</u>
Premiums earned	<u>\$617,511</u>	<u>100.00%</u>

3. FINANCIAL STATEMENTS

A. Balance Sheet

The following shows the assets, liabilities and surplus as regards policyholders as determined by this examination. It is the same as the balance sheet filed by the Company:

<u>Assets</u>	<u>Ledger Assets</u>	<u>Not-Admitted Assets</u>	<u>Net-Admitted Assets</u>
Short-term investments	\$897,422	\$	\$897,422
Cash on hand and on deposit	354,193		354,193
Title insurance premiums and fees receivable	37,028		37,028
Deposits	<u>1,550</u>	<u> </u>	<u>1,550</u>
Total assets	<u>\$1,290,193</u>	<u>\$ 0</u>	<u>\$1,290,193</u>
 <u>Liabilities</u>			
Statutory premiums reserve			\$97,239
Commissions, brokerage and other charges due or accrued to attorneys, agents and real estate brokers			<u>3,900</u>
Total liabilities			<u>\$101,139</u>
Common capital stock			\$500,000
Gross paid in and contributed surplus			250,000
Unassigned funds (surplus)			<u>439,054</u>
Surplus as regards policyholders			<u>\$1,189,054</u>
Total liabilities and surplus			<u>\$1,290,193</u>

Note: The Company's tax returns have never been audited by the Internal Revenue Service. 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. Operations and Investment Exhibit

Surplus as regards policyholders increased \$298,603 during the five year examination period ending December 31, 2002, detailed as follows:

Statement of Income

Operating Income

Title insurance premiums earned		\$617,511
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Deductions:

Losses and loss expenses incurred	\$ 40,000	
Other operating expenses incurred	<u>162,456</u>	

Total operating deductions		<u>202,456</u>
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Net operating gain		\$415,055
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Investment Income

Net investment income earned		<u>187,147</u>
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Net income before federal and foreign income taxes incurred		\$602,202
Federal and foreign income taxes incurred		<u>33,599</u>

Net income		<u>\$568,603</u>
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Capital and Surplus Account

Surplus as regards policyholders, per report on examination as of December 31, 1997			\$890,451
	<u>Gains in Surplus</u>	<u>Losses in Surplus</u>	
Net income	\$568,603	\$	
Dividends to stockholders	_____	<u>270,000</u>	
Total increases and decreases	<u>\$568,603</u>	<u>\$270,000</u>	
Net increase to surplus as regards policyholders			<u>298,603</u>
Surplus as regards policyholders, per report on examination as of December 31, 2002			<u>\$1,189,054</u>

4. 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 major areas:

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

No discrepancies were noted.

5. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior report on examination as of December 31, 1997 contained twenty-seven recommendations (page numbers refer to the prior report on examination).

<u>ITEM</u>	<u>PAGE NO.</u>
A <u>Management</u>	
i. It was recommended that the Company amend its charter and/or by-laws so that the two documents agree on a common date for convening the annual meeting of shareholders.	4
The Company has complied with this recommendation.	
ii. It was recommended that the Company amend its "plan of operation" to reflect its current mode of operation and to file such plan with the Department.	4-5
The Company has not complied with this recommendation. A similar recommendation is made in this report.	
iii. It was recommended that the Company monitor and control its agency activities.	5
The Company has complied with this recommendation.	
B. <u>Territory and Plan of Operation</u>	
i. It was recommended that the Company record premiums written in such a manner as shall give a true exhibit of the result of its operations.	6
The Company has not complied with this recommendation; a similar recommendation is made in this report.	
ii. It was recommended that the Company report the portion of premiums paid by applicants for the title insurance and retained by agents as incurred expenses on the operations and investment exhibit of its filed annual statements.	6
The Company has not complied with this recommendation; a similar recommendation is made in this report.	
It was further recommended that the Company prepare its annual statement in accordance with the provisions of Section 307(a)(2) of the New York Insurance Law.	6
The Company has not complied with this recommendation; a similar recommendation is made in this report.	

<u>ITEM</u>	<u>PAGE NO.</u>
C. <u>Abandoned Property Law</u>	
It was recommended that the Company comply with Section 1316 of the Abandoned Property Law.	7
The Company has complied with this recommendation.	
D. <u>Segregated Funds Held For Others</u>	
i. It was recommended that the Company establish procedures to account for and determine the escrow amount on deposit with its agent.	7
The Company has not complied with this recommendation; a similar recommendation is made in this report.	
ii. It was recommended that the Company require its agent to execute an escrow agreement.	7-8
The Company has not complied with this recommendation; a similar recommendation is made in this report.	
iii. It was recommended that the Company disclose all escrow deposits held on behalf of its policyholders in a footnote to its annual statements.	8
The Company has not complied with this recommendation; a similar recommendation is made in this report.	
E. <u>Audited Financial Statements</u>	
It was recommended that the Company comply with the provisions of Section 307(b) of the New York Insurance Law and Section 89.2 of the Department Regulation 118.	8
The Company has complied with this recommendation.	
F. <u>Conflict of Interest</u>	
i. It was recommended that the Company establish a proper procedure for distributing conflict of interest statements annually to officers, directors and key employees.	9
The Company has complied with this recommendation.	
ii. It was recommended the Company establish a procedure for enforcing such a policy and permit the board of directors to properly oversee and correctly handle any conflict disclosed.	9
The Company has complied with this recommendation.	

<u>ITEM</u>	<u>PAGE NO.</u>
iii. It was further recommended that the board of directors keep complete minutes of its proceedings on such matters.	9
The Company has complied with this recommendation.	
G. <u>Accounts, Records and Internal Controls</u>	
It was recommended that the Company do the following:	
i. Obtain fidelity bond and business interruption insurance.	10
The Company has not complied with this recommendation. A similar recommendation is made in this report.	
ii. Require two authorized signatures for checks and for transactions drawn on the Company's bank accounts;	10
The Company has not complied with this recommendation. A similar recommendation is made in this report.	
iii. Keep its corporate records in a place where they are readily available for examination.	10
The Company has complied with this recommendation.	
iv. File a Management Discussion and Analysis with the Department by April 1 of each year.	10
The Company has complied with this recommendation.	
v. Exercise greater care in preparing the General Interrogatories in its future filed annual statements.	10
The Company has complied with this recommendation.	
vi. Comply with the provisions of Section 1302 of the New York Insurance Law as regards to allowing office equipment and deposits as admitted assets.	10
The Company has complied with this recommendation.	
vii. Keep adequate documentation to show its calculation of the statutory premium reserve and calculate such premium reserve in accordance with Section 6405(a)(2) of the New York Insurance Law.	10
The Company has complied with this recommendation.	

<u>ITEM</u>	<u>PAGE NO.</u>
H. <u>Custodial Agreement</u>	
It was recommended that the Company establish a formal written custodial agreement for its securities with a bank or trust company, licensed by the United States or any State thereof, which contains safeguards and controls that are satisfactory to the Department.	11
The Company has not complied with this recommendation; a similar recommendation is made in this report.	
I. <u>Statement of Actuarial Opinion</u>	
It was recommended that the Company file a statement of actuarial opinion as required by the NAIC Annual Statement Instructions when preparing its future annual statements.	11
The Company received a filing exemption from this Department.	
J. <u>Market Conduct Activities</u>	
i. It was recommended that the Company establish procedures to verify that the premiums charged by its agents are accurate.	15
The Company has complied with this recommendation.	
ii. It was recommended that the Company establish procedures to keep its title underwriting or claim files under its control.	15
The Company has complied with this recommendation.	
iii. It was again recommended that the Company seek to have the three title policies amended to reflect the correct face amounts of insurance.	15-16
The Company has complied with this recommendation.	
iv. It is recommended that the Company comply with Department Circular Letter No. 11 (1978) by keeping a central complaint log.	16
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 amend its “plan of operation” to reflect its current mode of operations and file such plan, which should include a proposed management agreement, with the Department.	4
B. <u>Territory and Plan of Operation</u>	
i. It is recommended that the Company report “gross direct premiums written” gross of commissions on Schedule T of its filed annual statement, in accordance with the provisions of the Annual Statement Instructions for Title Companies and SSAP No. 57.	5
ii. It is further recommended that the Company correctly report agents’ commissions as “amounts paid to or retained by title agent” on the operations and investment exhibits of its filed annual statements, in accordance with the provisions of the Annual Statement Instructions for Title Companies and SSAP No. 57.	5
C. <u>Holding Company System</u>	
It is recommended that the Company file annual reports in accordance with the requirements of Article 15 of the New York Insurance Law.	6
D. <u>Segregated Funds Held For Others</u>	
i. It is recommended that the Company establish procedures to account for and determine the escrow amount on deposit with its agent.	7
ii. It is recommended that the Company require its agent to execute an escrow agreement.	7
iii. It is recommended that the Company disclose all escrow deposits held on behalf of its policyholders in a footnote to its annual statements.	7
E. <u>Accounts, Records and Internal Controls</u>	
i. It is again recommended that the Company obtain fidelity bond and business interruption insurance.	8
ii. It is again recommended that the Company require two authorized signatures for checks and for transactions drawn on the Company’s bank accounts.	8
iii. It is recommended that the Company segregate the required amount of reinsurance reserve as specified in Section 6405(c) of the NYS Insurance Law.	8

ITEMF. Custodial Agreement

It is recommended that the Company establish a formal written custodian agreement for its securities held in a bank or trust company, chartered by the United States or any State thereof, which contains safeguards and controls that are in accordance with the NAIC Financial Examiners Handbook Part 1 Section 1V H. 10

Respectfully submitted,

_____/s/_____
Robert A. Vargas
Senior Insurance Examiner

STATE OF NEW YORK)
)SS.
)
COUNTY OF NASSAU)

ROBERT A. VARGAS, being duly sworn, deposes and says that the foregoing report submitted by him is true to the best of his knowledge and belief.

_____/s/_____
Robert A. Vargas

Subscribed and sworn to before me

this _____ day of _____ 2003.

Appointment No. 21811

**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:*

Robert Vargas

as proper person to examine into the affairs of the

FIRST ATLANTIC TITLE INSURANCE COMPANY

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

Company

with such other information as he shall deem requisite.

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

this 6th day of December, 2001





GREGORY V. SERIO
Superintendent of Insurance