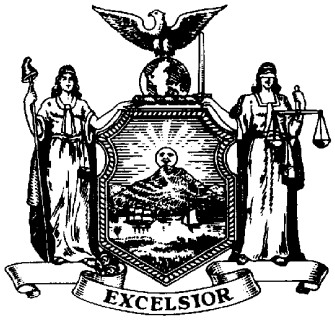


NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

REPORT ON EXAMINATION

OF THE

BANKERS CONSECO LIFE INSURANCE COMPANY

CONDITION: DECEMBER 31, 2008

DATE OF REPORT: APRIL 14, 2010

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EXAMINER: CHONG KIM

TABLE OF CONTENTS

October 18, 2013

Honorable Benjamin M. Lawsky
Superintendent of Financial Services
New York, New York 10004

Sir:

In accordance with instructions contained in Appointment No. 30319, dated April 2, 2009 and annexed hereto, an examination has been made into the condition and affairs of Bankers Conseco Life Insurance Company, hereinafter referred to as "the Company," at its home office located at 350 Jericho Turnpike, Suite 304, Jericho, New York, 11753.

On October 3, 2011, the Insurance Department merged with the Banking Department to create the New York State Department of Financial Services. Wherever "Department" appears in this report, it refers to the New York State Department of Financial Services.

The report indicating the results of this examination is respectfully submitted.

## 1. EXECUTIVE SUMMARY

The material events and violations contained in this report are summarized below:

- The Company's incurred losses were significantly higher in the years 2006 and 2007 due to the need for a strengthening of reserves. The additional reserves were established due to changes required by the Department for use in the long-term care asset adequacy analysis and experience which has generally been worse than original pricing expectations. The Company decreased long-term care asset adequacy reserves by $11.1 million in 2008, compared to an increase of $14 million in 2007 and an increase of $15 million in 2006 due to improvements in investment yield rates and to increase the consistency with the approach used to establish the reserve in 2006. (See item 4 of this report)
- The Company received surplus contributions from its parent, Conseco Life Insurance Company of Texas ("Conseco Life Texas"), in the amounts of $17 million and $24.5million in the years 2006 and 2007, respectively, to meet the additional reserve needs as well as the additional operating losses generated by the long-term care business. (See item 4 of this report)
- On May 7, 2008, Conseco, Inc. ("Conseco") announced a settlement among state insurance regulators and two of its insurance subsidiaries, Conseco Senior Health Insurance Company and Bankers Life and Casualty Company. The settlement concluded a multi-state market conduct examination led by Pennsylvania, Illinois, Indiana, Texas, and Florida related to long-term care claims practices and procedures, complaint handling, and sales and marketing practices. In the agreement, Conseco will review certain long term care claims from 2005 through 2007 and provide up to $4 million of remediation. (See item 6D of this report)
- The Company violated the following Sections of Department Regulation No. 60: 51.6(a)(2) by failing to require a completed "Definition of Replacement" signed by the applicant and agent; 51.6(b)(2) by failing to require proof of receipt by the applicant of the IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts and the completed Disclosure Statement; 51.6(b)(3) in the cases where it failed to examine the Disclosure Statements to ascertain that they were accurate

and met the requirements of the Regulation; 51.6(b)(7), because in the cases where the required forms did not meet the requirements of the Regulation or were not accurate, or were left blank, the Company failed to, within ten days from the date of receipt of the application, either have the deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason for such rejection; 51.6(e) by not implementing its established procedures that would ensure compliance with Section 51.5(c)(2); 51.6(b)(4) by failing to furnish the insurer whose coverage was being replaced, within ten days of receipt of the application, a copy of any proposal, and a completed Disclosure Statement, and; 51.7(b) by failing to comply with the orderly working of this Regulation in accomplishing its intended purpose in the protection of policyholders and contract holders. (See item 6A of this report)

- The Company violated Sections 243.2(b)(1) and (8) of Department Regulation No. 152 when it failed to maintain an illustration for the replaced policy or contract, or any other information from the company being replaced that was used to complete the Disclosure Statement. (See item 6A of this report)
- The Company violated Section 3224-a (b) of the New York Insurance Law by failing to provide a notification of denial of the payment of long-term care claims within the required 30 days of receipt of the claim. This violation appeared in the prior report on examination. (See item 6C of this report)

## 2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2005. This examination covers the period from January 1, 2006 through December 31, 2008. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2008 but prior to the date of this report (i.e., the completion date of the examination).

The examination comprised a verification of assets and liabilities as of December 31, 2008 to determine whether the Company's 2008 filed annual statement fairly presents its financial condition. The examiner reviewed the Company's income and disbursements necessary to accomplish such verification and utilized the National Association of Insurance Commissioners' Examiners Handbook or such other examination procedures, as deemed appropriate, in such review and in the review or audit of the following matters:

Company history
Management and control
Corporate records
Fidelity bond and other insurance
Territory and plan of operation
Market conduct activities
Growth of Company
Business in force by states
Mortality and loss experience
Reinsurance
Accounts and records
Financial statements

The examiner reviewed the corrective actions taken by the Company with respect to the violation and recommendations contained in the prior report on examination. The results of the examiner's review are contained in item 7 of this report.

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

## 3. DESCRIPTION OF COMPANY

### A. History

The Company was incorporated as American Accident and Health Insurance Company, a stock accident and health insurance company, under the laws of New York on April 29, 1987, was licensed on June 24, 1987 and commenced business on July 13, 1987. Initial resources of $300,000 were provided through the sale of 100 shares of common stock for $3,000 per share. Effective December 31, 1991, Arista Insurance Company ("Arista") assumed 100% of the Company's liabilities under a transfer and assumption agreement. Concurrently, the Company entered into a stock purchase agreement with Arista, whereby Arista purchased 100% of the Company's issued and outstanding stock. On December 20, 1995, American Travellers Life Insurance Company purchased all the outstanding shares of the Company from Arista. In 1995, the Company received a cash contribution to surplus in the amount of $9,953,047. In 1996, the name of the Company was changed to American Travellers Insurance Company of New York. Also in 1996, Conseco acquired the American Travellers Group. As a result of this acquisition, Conseco became the ultimate parent of the Company. On September 30, 1997 the Company became licensed to write life insurance and annuities in New York and changed its name to Conseco Life Insurance Company of New York.

In 1998, the Company increased its capital from $300,000 to $2,000,000 by increasing the par value of each of the 100 authorized and issued shares of the Company's common stock from $3,000 to $20,000 and by decreasing its paid in surplus by $1,700,000.

On December 29, 2000 and December 21, 2001 the Company received cash contributions to paid in and contributed surplus from its immediate parent, Conseco Senior Health Insurance Company ("Conseco Senior Health"), in the amounts of $3,000,000 and $5,000,000 respectively.

On December 23, 2003 and December 23, 2004 the Company received additional cash contributions to paid in and contributed surplus from Conseco Senior Health, in the amounts of $1,000,000 and $5,000,000 respectively.

On June 30, 2005, ownership of the Company was transferred from Conseco Senior Health to Conseco Life Texas via a 100% stock dividend. As a result of an authorization by the board of directors of the Company's parent, the Company received a contribution to its surplus of $6,000,000 as of September 30, 2005. In accordance with Statements of Statutory Accounting

Principles #72, the Company reported the amount receivable from parent as an admitted asset upon receiving the necessary approvals from New York and Texas on November 14, 2005.

On December 28, 2005 the Company received an additional cash contribution to surplus from Conseco Life Texas of $1,000,000.

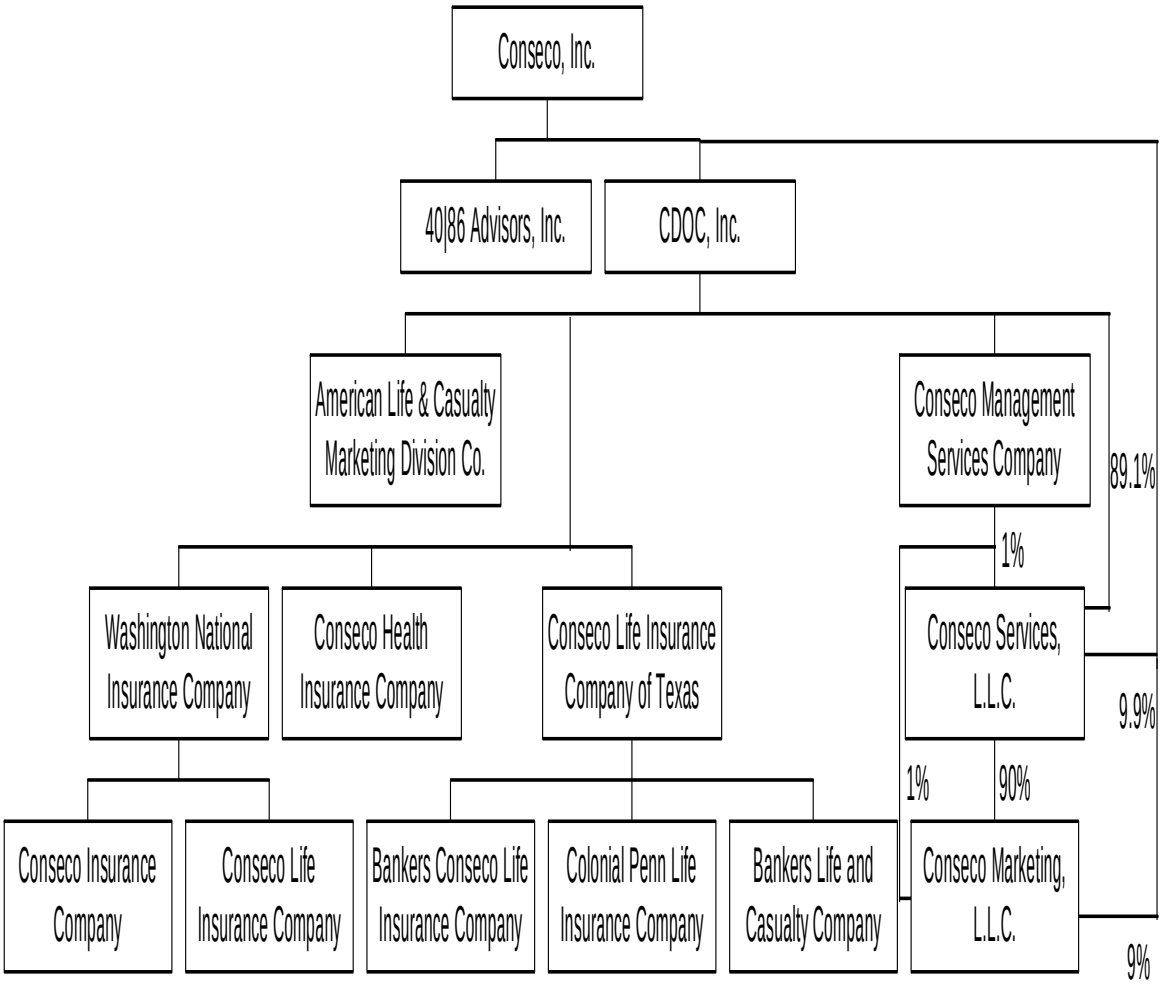
In June, 2006, the Company changed its name to Bankers Conseco Life Insurance Company.

In 2006 and 2007, the Company received surplus contributions from Conseco Life Texas in the amounts of $17,000,000 and $24,500,000 respectively. The contributions were primarily for the establishment of asset adequacy reserves on certain long-term care policies and to help the Company withstand additional operating losses from the long-term care line of business. Capital and surplus were $2,000,000 and $25,817,739, respectively, as of December 31, 2008.

B. Holding Company

The Company is a wholly owned subsidiary of Conseco Life Texas. Conseco Life Texas is in turn a wholly owned subsidiary of CDOC, Inc., a Delaware domiciled corporation. CDOC, Inc. is an intermediate holding company controlled by the ultimate parent, Conseco, a Delaware publicly held financial services holding company.

An organization chart reflecting the relationship between the Company and significant entities in its holding company system as of December 31, 2008 follows:


Conseco, Inc.
40|86 Advisors, Inc.
CDOC, Inc.
American Life & Casualty Marketing Division Co.
Conseco Management Services Company
89.1%
1%
Washington National Insurance Company
Conseco Health Insurance Company
Conseco Life Insurance Company of Texas
Conseco Services, L.L.C.
9.9%
1%
90%
Conseco Insurance Company
Conseco Life Insurance Company
Bankers Conseco Life Insurance Company
Colonial Penn Life Insurance Company
Bankers Life and Casualty Company
Conseco Marketing, L.L.C.
9%

The Company had 3 service agreements in effect with affiliates during the examination period.

| Type of Agreement and Department File Number | Effective Date | Providers of Services | Recipient of Services | Specific Services Covered | Income/ (Expense)* For Each Year of the Examination |
|---|---|---|---|---|---|
| Investment Advisory Department File No. 27006 | 1/1/2000 | 40\|86 Advisors, Inc. | The Company | Investment advisory agreement | 2008 $ (449,895)<br>2007 $ (419,899)<br>2006 $ (344,983) |
| Services Agreement Department File No. 27006 | 1/1/2000 | Conseco Services, LLC | The Company | Corporate Secretary, actuarial, strategic planning and oversight, functional support, internal audit, licensing, human resources, purchasing, real estate and facilities, compliance, data processing, corporate tax, policyholder services, underwriting, claims, sales and marketing, telemarketing, financial, legal, and supporting clerical | 2008 $(3,979,861)<br>2007 $(3,980,483)<br>2006 $(4,216,193) |
| Amendment No. 1 Department File No. 29447 | 4/1/2001 | | | Amends Policyholder Services | |
| Amendment No. 2 Department File No. 30037 | 3/1/2002 | | | Amends Policyholder Services | |
| Amendment No. 3 Department File No. 37632 | 9/1/2007 | | | Recognizes name change, reflects the change in principal office and updates various services | |

| Type of Agreement and Department File Number | Effective Date | Providers of Services | Recipient of Services | Specific Services Covered | Income/ (Expense)* For Each Year of the Examination |
|---|---|---|---|---|---|
| Services Agreement Department File No. 35906 | 5/1/2007 | Bankers Life and Casualty Company | The Company | Paymaster services to agents, managers and administrative staff; real estate and facilities services; and field support services in regard to the selling of products in New York by licensed New York non-resident agents | 2008 $ (128,387)<br>2007 $ (143,979)<br>2006 N/A |

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

C. Management

The Company's by-laws provide that the board of directors shall be comprised of not less than nine and not more than 13 directors. The minimum number of directors of the Company shall be increased to not less than 13 within one year following the end of the calendar year in which the Company's admitted assets exceed one and one half billion dollars. Directors are elected for a period of one year at the annual meeting of the stockholders held in June of each year. As of December 31, 2009, the board of directors consisted of nine members. At least one regular meeting of the board is held in addition to the annual meeting in June.

The nine board members and their principal business affiliation, as of December 31, 2008, were as follows:

| Name and Residence | Principal Business Affiliation | Year First Elected |
|---|---|---|
| Edward J. Bonach<br>Carmel, IN | Executive Vice President and Chief Financial Officer<br>Conseco, Inc. | 2007 |
| Russell M. Bostick<br>Palatine, IL | Executive Vice President, Technology and Operations<br>Bankers Conseco Life Insurance Company | 2008 |
| Steven M. DePerrior*<br>Rochester, NY | Managing Director<br>First Niagara Business Consulting | 2004 |

| Name and Residence | Principal Business Affiliation | Year First Elected |
|---|---|---|
| Richard I. Dick*<br>Ithaca, NY | Professor<br>Cornell University | 1997 |
| Christopher J. Nickele<br>Arlington Heights, IL | Executive Vice President, Product Management<br>Bankers Conseco Life Insurance Company | 2008 |
| Scott R. Perry<br>Chicago, IL | Chairman and President<br>Bankers Conseco Life Insurance Company | 2006 |
| Steven M. Stecher<br>Carmel, IN | President<br>Conseco Insurance Group | 2008 |
| Ian F. Wismann*<br>Staten Island, NY | Director<br>Next Web Media | 2001 |
| Ronald L. Wobbeking*<br>Savage, MN | Consultant<br>Self Employed Arbitrator | 2007 |

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

The examiner's review of the minutes of the meetings of the board of directors and its committees indicated that meetings were well attended and that each director attended a majority of meetings.

The following is a listing of the principal officers of the Company as of December 31, 2008:

| Name | Title |
|---|---|
| Scott R. Perry | Chairman and President |
| Todd M. Hacker | Senior Vice President and Treasurer |
| Alexis M. Berg | Secretary |
| Mark E. Billingsley | Senior Vice President and Valuation Actuary |
| Gregory R. Barstead | Executive Vice President |
| Russell M. Bostick | Executive Vice President, Technology and Operations |
| Eric R. Johnson | Executive Vice President, Investments |
| Christopher J. Nickele | Executive Vice President, Product Management |
| Mathew J. Zimpfer | Executive Vice President, General Counsel and Assistant Secretary |
| William D. Fritts, Jr | Senior Vice President, Government Relations |
| William M. Johnson | Senior Vice President, Chief Compliance Officer |
| James M. Crafton | Vice President, Financial Reporting |
| Karl W. Kindig | Vice President, Assistant Secretary |

Theresa Water, Vice President, is the designated consumer services officer per Section 216.4(c) of Department Regulation No. 64.

D. Territory and Plan of Operation

The Company is authorized to write life insurance, annuities and accident and health insurance as defined in paragraphs 1, 2 and 3 of Section 1113(a) of the New York Insurance Law. The Company is licensed to transact business in New York State only. Policies are written on a non-participating basis.

The Company offers graded benefit life and simplified issue whole life through direct marketing. Graded benefit life is a small face product with a target market of older females (ages 50 – 73) with annual income less than $25,000. Simplified issue life is also a small face product with a target market of males and females (ages 50 – 65) with annual income levels less than $40,000.

The Company has closed blocks of annuity and long-term care products that were sold through independent producers. The Company stopped selling these long term care products and annuities on January 15, 2003 and March 31, 2003, respectively. However, in 2006, the Company began selling new individual fixed annuity and individual long-term care products through career agents. Nonqualified and qualified individual annuity products are offered to all age groups up to 90 years old.

In December 2006, the Company began selling Medicare Supplement insurance. This product is offered to individuals who are eligible and enrolled in Medicare Parts A & B. The Company sells Medicare Supplement plans through career agents.

E. Reinsurance

As of December 31, 2008, the Company assumed reinsurance from one company, Intramerica Life Insurance Company. The Company assumes this business on a co-insurance basis. The total face amount of life insurance and fixed annuity assumed as of December 31, 2008 was $20,655,197. Reinsurance is provided on an indemnity basis. The Company had no ceded reinsurance in effect as of December 31, 2008.

The Company entered into an agreement effective January 1, 2006 with Cambridge Life Insurance Company (“Cambridge”) where the Company assumed 50% of Cambridge’s Medicare

Part D plans sold in the State of New York. Thereafter, the Company entered another agreement with Cambridge effective January 1, 2007 where the Company assumed 53% of Cambridge's Medicare Advantage private-fee-for service plans sold in the State of New York. Both of the agreements with Cambridge were terminated on December 31, 2007.

## 4. SIGNIFICANT OPERATING RESULTS

Indicated below is significant information concerning the operations of the Company during the period under examination as extracted from its filed annual statements. Failure of items to add to the totals shown in any table in this report is due to rounding.

The following table indicates the Company's financial growth (decline) during the period under review:

| | December 31, 2005 | December 31, 2008 | Increase (Decrease) |
|---|---|---|---|
| Admitted assets | $181,585,207 | $254,305,597 | $ 72,720,390 |
| Liabilities | $167,617,458 | $226,487,858 | $ 58,870,400 |
| Common capital stock | $ 2,000,000 | $ 2,000,000 | $ 0 |
| Gross paid in and contributed surplus | 29,253,047 | 70,753,047 | 41,500,000 |
| Unassigned funds (surplus) | (17,285,299) | (44,935,308) | $(27,650,009) |
| Total capital and surplus | $ 13,967,748 | $ 27,817,739 | $ 13,849,991 |
| Total liabilities, capital and surplus | $181,585,206 | $254,305,597 | $ 72,720,391 |

The Company's invested assets as of December 31, 2008, were mainly comprised of bonds (89%) and cash and short-term investments (8%). The majority (99%) of the Company's bond portfolio, as of December 31, 2008, was comprised of investment grade obligations. The majority of the investments were publicly traded (91%); the remaining investments were privately placed.

The Company had net losses of $16 million and $17 million, in the years 2006 and 2007, respectively. The losses were primarily due to reserve strengthening due to insufficient asset adequacy reserves for the long-term care business. In 2006, the Company had to establish additional long-term care reserves of $15 million as a result of the Department's ongoing analysis of the recent loss development trend in long-term care line of business. In 2007, the Company had to increase the asset adequacy reserves by $14 million. As a result, the Company received surplus contributions of $17 million in 2006 and $24.5 million in 2007 from its parent, Conseco Life Texas.

The following indicates, for each of the years listed below, the amount of life insurance issued and in force by type (in thousands of dollars):

| | Individual Whole Life | |
|---|---|---|
| Year | Issued | In Force |
| 2006 | $ 5,878 | $171,662 |
| 2007 | $ 9,767 | $178,026 |
| 2008 | $20,338 | $192,013 |

In 2007, the Company began to sell life insurance through its career agency force. By year end 2008, the Company had six branch sales offices and six satellite offices located in New York. The Company also had seven branch sales offices bordering New York where agents held a New York non-resident license. The agents mostly sold traditional whole life insurance with a maximum face amount of $25,000. Accordingly, sales increased from 2006 through 2008.

The following is the net gain (loss) from operations by line of business after federal income taxes but before realized capital gains (losses) reported for each of the years under examination in the Company's filed annual statements:

| | 2006 | 2007 | 2008 |
|---|---|---|---|
| Ordinary: | | | |
| Life insurance | $ 1,505,177 | $ 1,566,577 | $1,979,902 |
| Individual annuities | 135,425 | 14,455 | (54,689) |
| Supplementary contracts | 2,826 | 758 | 378 |
| Total ordinary | $ 1,643,428 | $ 1,581,790 | $1,925,591 |
| Group: | | | |
| Life | $ 12,120 | $ 8,036 | $ 8,063 |
| Total group | $ 12,120 | $ 8,036 | $ 8,063 |
| Accident and health: | | | |
| Other | $(18,440,578) | $(18,718,437) | $4,593,990 |
| Total accident and health | $(18,440,578) | $(18,718,437) | $4,593,990 |
| All other lines | $ 476,450 | $ 514,289 | $1,325,384 |
| Total | $(16,308,580) | $(16,614,322) | $7,853,028 |

The Company had significant losses in the years 2006 and 2007 primarily due to the strengthening of reserves due to insufficient asset adequacy reserves for the long-term care business. The Company decreased long-term care asset adequacy reserves by $11.1 million in 2008, compared to an increase of $14 million in 2007 and an increase of $15 million in 2006 due to improvements in investment yield rates and to increase the consistency with the approach used to establish the reserve in 2006.

The following ratios, applicable to the accident and health business of the Company, have been extracted from Schedule H for each of the indicated years:

| | 2006 | 2007 | 2008 |
|---|---|---|---|
| Premiums earned | 100.0% | 100.0% | 100.0% |
| Incurred losses | 326.4% | 348.6% | 129.2% |
| Commissions | 12.5 | 12.3 | 15.1 |
| Expenses | 7.6 | 12.8 | 16.3 |
| | 346.5% | 373.7% | 160.6% |
| Underwriting results | (246.6)% | (273.7)% | (60.6)% |

## 5. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital and surplus as of December 31, 2008, as contained in the Company's 2008 filed annual statement, a condensed summary of operations and a reconciliation of the capital and surplus account for each of the years under review. The examiner's review of a sample of transactions did not reveal any differences which materially affected the Company's financial condition as presented in its financial statements contained in the December 31, 2008 filed annual statement.

### A. ASSETS, LIABILITIES, CAPITAL AND SURPLUS AS OF DECEMBER 31, 2008

Admitted Assets

| | |
|---|---|
| Bonds | $218,394,188 |
| Preferred stocks | 4,826,042 |
| Cash, cash equivalents and short term investments | 20,097,416 |
| Contract loans | 2,418,308 |
| Investment income due and accrued | 2,845,754 |
| Premiums and considerations: | |
| Uncollected premiums and agents' balances in the course of collection | 248,661 |
| Deferred premiums, agents' balances and installments booked but deferred and not yet due | 3,080,951 |
| Other amounts receivable under reinsurance contracts | 88,807 |
| Current federal and foreign income tax recoverable and interest thereon | 1,113,119 |
| Net deferred tax asset | 1,112,528 |
| Electronic data processing equipment and software | 79,823 |
| Total admitted assets | $254,305,597 |

Liabilities, Capital and Surplus

| | |
|---|---|
| Aggregate reserve for life policies and contracts | $ 73,274,357 |
| Aggregate reserve for accident and health contracts | 145,711,395 |
| Liability for deposit-type contracts | 106,554 |
| Contract claims: | |
| Life | 1,753,469 |
| Accident and health | 170,971 |
| Premiums and annuity considerations for life and accident and health contracts received in advance | 561,679 |
| Interest maintenance reserve | 3,324,978 |
| Commissions to agents due or accrued | 23,437 |
| General expenses due or accrued | 59,522 |
| Taxes, licenses and fees due or accrued, excluding federal income taxes | (28,561) |
| Amounts withheld or retained by company as agent or trustee | (44,553) |
| Amounts held for agents' account | 88,531 |
| Remittances and items not allocated | 239,593 |
| Payable to parent, subsidiaries and affiliates | 874,871 |
| Unclaimed funds | 361,414 |
| Deferred fee revenue from distribution of Medicare Advantage Plans | 10,200 |
| Total liabilities | $226,487,857 |
| Common capital stock | $ 2,000,000 |
| Gross paid in and contributed surplus | 70,753,047 |
| Unassigned funds (surplus) | (44,935,308) |
| Surplus | $ 25,817,739 |
| Total capital and surplus | $ 27,817,739 |
| Total liabilities, capital and surplus | $254,305,596 |

## B. CONDENSED SUMMARY OF OPERATIONS

| | 2006 | 2007 | 2008 |
|---|---|---|---|
| Premiums and considerations | $ 24,847,567 | $ 25,877,599 | $29,212,123 |
| Investment income | 10,591,186 | 12,172,852 | 14,103,271 |
| Miscellaneous income | 0 | 40,908 | 190,595 |
| Total income | $ 35,438,753 | $ 38,091,359 | $43,505,989 |
| Benefit payments | $ 19,437,875 | $ 20,723,581 | $21,857,881 |
| Increase in reserves | 26,611,298 | 26,499,870 | 5,602,411 |
| Commissions | 1,327,466 | 1,451,510 | 2,410,276 |
| General expenses and taxes | 5,139,937 | 6,150,323 | 6,148,726 |
| Increase in loading on deferred and uncollected premium | 134,517 | 127,697 | 438,163 |
| Miscellaneous deductions | 0 | 33,059 | 267,561 |
| Total deductions | $ 52,651,093 | $ 54,986,040 | $36,725,018 |
| Net gain (loss) | $(17,212,340) | $(16,894,681) | $ 6,780,971 |
| Federal and foreign income taxes incurred | (903,761) | (280,357) | (1,072,058) |
| Net gain (loss) from operations before net realized capital gains | $(16,308,579) | $(16,614,324) | $ 7,853,029 |
| Net realized capital gains (losses) | 0 | (658,965) | (2,236,648) |
| Net income | $(16,308,579) | $(17,273,289) | $ 5,616,381 |

## C. CAPITAL AND SURPLUS ACCOUNT

| | 2006 | 2007 | 2008 |
|---|---|---|---|
| Capital and surplus, December 31, prior year | $ 13,967,748 | $ 14,644,314 | $21,388,837 |
| Net income | $(16,308,579) | $(17,273,289) | $ 5,616,381 |
| Change in net deferred income tax | 5,307,326 | 6,059,097 | (3,149,060) |
| Change in non-admitted assets and related items | (5,261,118) | (6,926,294) | 3,804,755 |
| Change in asset valuation reserve | (61,063) | 385,009 | 156,825 |
| Surplus adjustments: Paid in | 17,000,000 | 24,500,000 | 0 |
| Net change in capital and surplus for the year | $ 676,566 | $ 6,744,523 | $ 6,428,901 |
| Capital and surplus, December 31, current year | $ 14,644,314 | $ 21,388,837 | $27,817,738 |

## 6. MARKET CONDUCT ACTIVITIES

The examiner reviewed various elements of the Company's market conduct activities affecting policyholders, claimants, and beneficiaries to determine compliance with applicable statutes and regulations and the operating rules of the Company.

### A. Advertising and Sales Activities

The examiner reviewed a sample of the Company's advertising files and the sales activities of the agency force including trade practices, solicitation and the replacement of insurance policies.

Section 51.5 of Department Regulation 60 states, in part:

"Each agent and broker shall:
(c) Where a replacement has occurred or likely to occur . . .
(2) Notify the insurer whose policy or contract is being replaced and the insurer replacing the life insurance policy or annuity contract of the proposed replacement. Submit to the insurer whose policy or contract is being replaced a list of all life insurance policies or annuity contracts proposed to be replaced, as well as the policy or contract number for such policies or contracts, together with the proper authorization from the applicant, and request the information necessary to complete the "Disclosure Statement" with respect to the life insurance policy or annuity contract proposed to be replaced."

Section 51.6 of Department Regulation 60 states, in part:

"(a) Each insurer shall . . .
(2) Require with or as part of each application, a completed "Definition of Replacement" signed by the applicant and agent . . .
(b)Where a replacement has occurred or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall . . .
(2) Require with or as part of each application a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and proof of receipt by the applicant of the "IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts" and the completed 'Disclosure Statement;'
(3) Examine any proposal used, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the "Disclosure Statement," and ascertain that they are accurate and meet the requirements of the Insurance Law and this Part;

(4) Within ten days of receipt of the application furnish to the insurer whose coverage is being replaced a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the completed 'Disclosure Statement' . . .
(7) Where the required forms are not received with the application, or if the forms do not meet the requirements of this Part or are not accurate, within ten days from the date of receipt of the application either have any deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason therefor. In such cases, the insurer shall maintain any material used in the proposed sale, in accordance with the guidelines of Section 51.6(b)(6) herein . . .
(e) Both the insurer whose life insurance policy or annuity contract is being replaced and the insurer replacing the life insurance policy or annuity contract shall establish and implement procedures to ensure compliance with the requirements of this Part. These procedures shall include a requirement that all material be dated upon receipt. Such insurers shall also designate a principal officer specifically responsible for the monitoring and enforcement of these procedures. All insurers covered under this Part shall furnish the Superintendent of Insurance with these procedures and the name and title of the designated principal officer by the effective date of this Part. Any changes in these procedures or the designated principal officer shall be furnished to the Superintendent of Insurance within thirty days of such change."

Section 51.7 of Department Regulation No. 60 states, in part:

"(b) No insurer, agent, broker, representative, officer, or employee of an insurer or any other licensee of this Department shall fail to comply with or engage in other practices that would prevent the orderly working of this Part in accomplishing its intended purpose in the protection of policyholders and contract holders. Any person failing to comply with this Part, or engaging in other practices that would prevent the orderly working of this Part, shall be subject to penalties under the Insurance Law of the State of New York, which may include, but shall not be limited to, monetary restitution, restoration of policies or contracts, removal of directors or officers, suspension or revocation of agent's, broker's or company's licenses and monetary fines. . . ."

Section 243.2(b) of Department Regulation No. 152 states, part:

"Except as otherwise required by law or regulation, an insurer shall maintain:
(1) A policy record for each insurance contract or policy for six calendar years after the date the policy is no longer in force or until after the filing of the report on examination in which the record was subject to review, whichever is longer . . .
(8) Any other record for six calendar years from its creation or until after the filing of a report on examination or the conclusion of an investigation in which the record was subject to review."

The examiner reviewed each of the 24 life and annuity replacements which occurred during the examination period. The review revealed that 18 of 24 (75.0%) of the replacement cases contained a material error or omission which violated Department Regulation No. 60 by not providing full and clear information to prospective policy and contract holders. In some instances, the examiner found more than one error or omission within a single replacement case.

The errors and omissions discovered during the review were as follows:

1) In one instance the replacement file did not contain the Definition of Replacement, IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts ("Important Notice") or the Disclosure Statement for the replacement and in another instance the replacement file did not contain a Disclosure Statement.

The Company violated Section 51.6(a)(2) of Department Regulation No. 60 by failing to require a completed "Definition of Replacement" signed by the applicant and agent.

The Company violated Section 51.6(b)(2) of Department Regulation No. 60 by failing to require proof of receipt by the applicant of the IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts and the completed Disclosure Statement.

2) In 13 of 24 (54.0%) instances the information on the Disclosure Statement was incomplete or inaccurate as it failed to include the description of the transaction and the summary result of the comparison. Based on the missing and inaccurate information, it appears that the Company did not ensure that the Disclosure Statements were completed accurately and in accordance with the requirements of the Regulation.

The Company violated Section 51.6(b)(3) of Department Regulation No. 60 in the cases where it failed to examine the Disclosure Statements to ascertain that they were accurate and met the requirements of the Regulation. The Company also violated Section 51.6(b)(7) of Department Regulation No. 60, because in the cases where the required forms did not meet the requirements of the Regulation or were not accurate, or were left blank, the Company failed to, within ten days from the date of receipt of the application, either have the deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason for such rejection.

3) In 18 of 24 (75.0%) instances, the Company did not have any evidence that its agent submitted, to the insurer whose policy or contract is being replaced, a list of all life insurance policies or annuity contracts proposed to be replaced, as well as the policy or contract number for

such policies or contracts, together with the proper authorization from the applicant, and requested the information necessary to complete the "Disclosure Statement" with respect to the life insurance policy or annuity contract proposed to be replaced.

The Company violated Section 51.6(e) of the Department Regulation No. 60 by not implementing its established procedures that would ensure compliance with Section 51.5(c)(2) of Department Regulation No. 60 which requires an agent to submit to the insurer whose policy or contract is being replaced a proper authorization from the applicant and a request for the information necessary to complete the Disclosure Statement with respect to the life insurance policy or annuity contract proposed to be replaced.

4) In 17 of 24 (71.0%) instances, the Company did not maintain a notification letter or any other evidence to confirm that the Company furnished the insurer whose coverage was being replaced, within ten days of receipt of the application, a copy of any proposal, and a completed Disclosure Statement.

The Company violated Section 51.6(b)(4) of Department Regulation No. 60 by failing to furnish the insurer whose coverage was being replaced, within ten days of receipt of the application, a copy of any proposal, and a completed Disclosure Statement.

5) In three of 24 (13.0%) instances, the Disclosure Statement was signed by the applicant prior to the receipt of information necessary to complete the Disclosure Statement from the replaced insurer although the Company indicated the information on existing coverage was obtained from the replaced insurer. The appropriate timing of the events and the receipt of replacement documentation, which occur prior to the ultimate replacement of a policy, are crucial to the assurance that an applicant was able to make an informed decision prior to their signing an application. These instances indicate that the Company did not conform to the proper sequence of events.

The Company violated Section 51.7(b) of Department Regulation No. 60 by failing to comply with the orderly working of this Regulation in accomplishing its intended purpose in the protection of policyholders and contract holders.

6) In 11 of 24 (46.0%) instances, the replacement files did not contain an illustration for the replaced policy or contract, or any other information from the company being replaced that was used to complete the Disclosure Statement.

The Company violated Sections 243.2(b)(1) and (8) of Department Regulation No. 152 when it failed to maintain an illustration for the replaced policy or contract, or any other information from the company being replaced that was used to complete the Disclosure Statement.

B. Underwriting and Policy Forms

The examiner reviewed a sample of new underwriting files, both issued and declined, and the applicable policy forms.

Based upon the sample reviewed, no significant findings were noted.

C. Treatment of Policyholders

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

Section 3224-a of the New York Insurance Law states, in part:

> "In the processing of all health care claims submitted under contracts or agreement issued or entered into pursuant to articles thirty-two, forty-two and forty-three of this chapter and article forty-four of the public health law and all bills for health care services rendered by health care providers pursuant to such contracts or agreements, any insurer or organization or corporation licensed or certified pursuant to article forty-three of this chapter or article forty-four of the public health law shall adhere to the following standards . . .
> (b) In a case where the obligation of an insurer or an organization or corporation licensed or certified pursuant to article forty-three of this chapter or article forty-four of the public health law to pay a claim or make a payment for health care services rendered is not reasonably clear due to a good faith dispute regarding the eligibility of a person for coverage, the liability of another insurer or corporation or organization for all or part of the claim, the amount of the claim, the benefits covered under a contract or agreement, or the manner in which services were accessed or provided, an insurer or organization or corporation shall pay any undisputed portion of the claim in accordance with this subsection and notify the policyholder, covered person or health care provider in writing within thirty calendar days of the receipt of the claim:
> (1) that it is not obligated to pay the claim or make the medical payment, stating the specific reasons why it is not liable; or

(2) to request all additional information needed to determine liability to pay the claim or make the health care payment."

The Company provided an inventory that included 1,273 long term care ("LTC") denied claims from which a sample of 50 LTC denied claims was selected for review. The review revealed that in 16 of 50 (32.0%) cases the Company did not send a denial notification letter to the claimant within 30 days of receipt of the claim.

The Company violated Section 3224-a (b) of the New York Insurance Law by failing to provide a notification of denial of the payment of long-term care claims within the required 30 days of receipt of the claim. This violation appeared in the prior report on examination.

D. Multi-State Review

On May 7, 2008, Conseco announced a settlement among state insurance regulators and two of its insurance subsidiaries, Conseco Senior Health Insurance Company and Bankers Life and Casualty Company. The settlement concluded a multistate market conduct examination led by Pennsylvania, Illinois, Indiana, Texas, and Florida related to long-term care claims practices and procedures, complaint handling, and sales and marketing practices. Per the agreement, Conseco will review certain long term care claims from 2005 thru 2007 and provide up to $4 million of remediation.

For the remediation process of the New York Long Term Care denied claims, the Company identified and re-adjudicated 21 initially denied claims and identified 254 continuation claims. For the initially denied claims, the Company reviewed and found that three cases were payable, two cases were within the 90-day elimination period and one case was paid $1,283.55. For the continuation claims, the Company sent letters to all claimants offering review of the claims. The Company received 22 requests for review. The Company reviewed the 22 cases and determined that they were adjudicated correctly.

The Company has revised claims handling procedures of LTC insurance to guarantee timely and accurate processing. In addition, the Company implemented procedures for handling all complaints completely and in a timely fashion, has created a centralized complaints database and has established a countrywide contact for complaints.

The CPA's engagement team performed walkthrough and validation procedures over each error correction and new control implemented by the Company for the LTC insurance. The

CPAs did not note any exception. In addition, the examiners reviewed a sample of remediated claims; no exceptions were noted.

## 7. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violation and recommendations contained in the prior report on examination and the subsequent actions taken by the Company in response to each citation:

| Item | Description |
|---|---|
| A | The examiner recommends that the Company continue to use the LTC reserving methodology as agreed upon with the Department.<br><br>In 2006, the Department required the Company to establish additional long-term care reserves in the amount of $15 million as a result of the ongoing analysis of the recent loss development trend in the long-term care line of business. In 2007, the Department required the Company to increase the asset adequacy reserves by $14 million. |
| B | The Company violated Section 3224-a (b) of the New York Insurance Law by failing to provide the notification of denial of the payment of six claims within the required thirty days of receipt of the claim.<br><br>The Company failed to take corrective action in response to this prior report violation. (See item 6C of this report) |
| C | The examiner recommends, consistent with the multi-state review, that the Company review initially denied long term care claims and provide notices to other policyholders that may have been partially denied or subsequently denied after initial payment. The examiner also recommends that the Company revise claims handling procedures to guarantee timely and accurate processing; handle all complaints completely and in a timely fashion; create a centralized complaint database; and establish a country-wide contact for complaints.<br><br>For the remediation process of the New York Long Term Care denied claims, the Company identified and re-adjudicated 21 initial claims denials and identified 254 continuation claims. The Company implemented a new procedure to prevent similar errors from occurring. The CPA's engagement team performed walkthrough and validation procedures over each error correction and new control implementation. No exceptions were noted. (See item 6D of this report for the results) |

## 8. SUMMARY AND CONCLUSIONS

Following are the violations contained in this report:

| Item | Description | Page No(s). |
|---|---|---|
| A | The Company violated Section 51.6(a)(2) of Department Regulation No. 60 by failing to require a completed "Definition of Replacement" signed by the applicant and agent. | 23 |
| B | The Company violated Section 51.6(b)(2) of Department Regulation No. 60 by failing to require proof of receipt by the applicant of the IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts and the completed Disclosure Statement. | 23 |
| C | The Company violated Section 51.6(b)(3) of Department Regulation No. 60 in the cases where it failed to examine the Disclosure Statements to ascertain that they were accurate and met the requirements of the Regulation. The Company also violated Section 51.6(b)(7) of Department Regulation No. 60, because in the cases where the required forms did not meet the requirements of the Regulation or were not accurate, or were left blank, the Company failed to, within ten days from the date of receipt of the application, either have the deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason for such rejection. | 23 |
| D | The Company violated Section 51.6(e) of the Department Regulation No. 60 by not implementing its established procedures that would ensure compliance with Section 51.5(c)(2) of Department Regulation No. 60 which requires an agent to submit to the insurer whose policy or contract is being replaced a proper authorization from the applicant and a request for the information necessary to complete the Disclosure Statement with respect to the life insurance policy or annuity contract proposed to be replaced. | 24 |
| E | The Company violated Section 51.6(b)(4) of Department Regulation No. 60 by failing to furnish the insurer whose coverage was being replaced, within ten days of receipt of the application, a copy of any proposal, and a completed Disclosure Statement. | 24 |

| Item | Description | Page No(s). |
|---|---|---|
| F | The Company violated Section 51.7(b) of Department Regulation No. 60 by failing to comply with the orderly working of this Regulation in accomplishing its intended purpose in the protection of policyholders and contract holders. | 24 |
| G | The Company violated Sections 243.2(b)(1) and (8) of Department Regulation No. 152 when it failed to maintain an illustration for the replaced policy or contract, or any other information from the company being replaced that was used to complete the Disclosure Statement. | 25 |
| H | The Company violated Section 3224-a (b) of the New York Insurance Law by failing to provide a notification of denial of the payment of long-term care claims within the required 30 days of receipt of the claim. This violation appeared in the prior report on examination. | 26 |

Respectfully submitted,

/s/
Chong Kim
Senior Insurance Examiner

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

Chong Kim, being duly sworn, deposes and says that the foregoing report, subscribed by him, is true to the best of his knowledge and belief.

/s/
Chong Kim

Subscribed and sworn to before me

this_____ day of _____2013.

*APPOINTMENT NO. 30319*

*STATE OF NEW YORK*

# *INSURANCE DEPARTMENT*

*I, ERIC R. DINALLO, Superintendent of Insurance of the State of New York, pursuant to the provisions of the Insurance Law, do hereby appoint:*

***CHONG KIM***

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

***BANKERS CONSECO LIFE 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 name and affixed the official Seal of the Department at the City of New York*

*this 2nd day of April, 2009*

*ERIC R. DINALLO*
*Superintendent of Insurance*

*Superintendent*