

REPORT ON EXAMINATION
OF THE
EMPIRE INSURANCE COMPANY
AS OF
DECEMBER 31, 1999

DATE OF REPORT

JUNE 27, 2001

EXAMINER

BERNARD LOTT

TABLE OF CONTENTS

<u>ITEM NO.</u>		<u>PAGE NO.</u>
1.	Scope of examination	2
2.	Description of Company	3
	A. Management	3
	B. Territory and plan of operation	5
	C. Reinsurance	7
	D. Holding company system	8
	E. Significant operating ratios	15
	F. Audited financial statements	16
	G. Custodian service agreement	17
	H. Accounts and records	18
	I. Abandoned Property Law	18
	J. Lack of cooperation	19
3.	Financial statements	20
	A. Balance sheet	20
	B. Underwriting and investment exhibit	22
4.	Common stocks	23
5.	Losses and loss adjustment expenses	24
6.	Market conduct activities	24
7.	Conclusion	25
8.	Subsequent events	25
9.	Compliance with prior report on examination	26
10.	Summary of comments and recommendations	27



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

June 27, 2001

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 21585, dated September 7, 2000 attached hereto, I have made an examination into the condition and affairs of the Empire Insurance Company as of December 31, 1999, and submit the following report thereon.

The examination was conducted at the home office of the Empire Insurance Company, located at 335 Adams Street, Brooklyn, New York 11201.

Whenever the designations "the Company" or "Empire" appear herein without qualification they should be understood to refer to the Empire Insurance Company.

Whenever the designation "the Department" appears herein without qualification it should be understood to refer to the New York State Insurance Department.

This examination has determined that as of December 31, 1999, the Company's capital stock of \$11,309,200 was impaired in the amount of \$7,404,843. The impairment was the result of the examination increase of \$78,450,000 to the Company's reported liabilities for losses and loss adjustment expenses, as well as a reduction to the carrying value of the Company's investment in its subsidiary insurer.

In its March 31, 2001 quarterly statement filed with this Department, the Company reported a surplus to policyholders of \$9,795,826. This amount reflects the Company's recognition of examination reserve deficiencies totaling \$61,242,000 for accident years 1999 and prior, the period covered by this examination. Thus, the Company has not recognized \$17,208,000 of the examination loss and loss adjustment expenses reserve deficiency.

As of March 31, 2001 the Company's surplus to policyholders, adjusted by the examination reserve deficiency not yet recognized, was reduced to \$(7,412,174). Consequently, the carrying value of its investment in its subsidiary insurers of \$13,505,087 has been disallowed pursuant to the provisions of Section 1408 of the New York Insurance Law. Thus, this examination has determined that as of March 31, 2001, the Company was insolvent in the amount of \$20,917,261, its capital stock was impaired in the amount of \$32,226,461, and its required to be maintained surplus to policyholders of \$3,300,000 was impaired in the amount of \$24,217,261.

1. SCOPE OF EXAMINATION

The previous examination was conducted as of December 31, 1996. This examination covers the three year period from January 1, 1997 through December 31, 1999, and was limited in its scope to a review or audit of only those balance sheet items considered by this Department to require analysis, verification or description, including: invested assets, inter-company balances, loss and loss adjustment expense reserves and the provision for reinsurance. The examination included a review of income, disbursements and Company records deemed necessary to accomplish such analysis or verification and utilized, to the extent considered appropriate, work performed by the Company's independent 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 bonds and other insurance
- Territory and plan of operation
- Market conduct activities
- Growth of Company
- Business in force by states
- Reinsurance
- Accounts and records
- Financial statements

Where deemed appropriate, transactions subsequent to the examination period were reviewed. A review was also made to ascertain what action was taken by the Company with regard to comments and recommendations in the prior examination.

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

Empire was examined concurrently with its subsidiaries, Allcity Insurance Company (“Allcity”) and Centurion Insurance Company (“Centurion”). Separate reports have been rendered thereon.

2. DESCRIPTION OF COMPANY

The Company was incorporated under the laws of the State of New York as the Red Cab Mutual Casualty Company on February 6, 1925. It began business March 1, 1925. The name was changed to Empire Mutual Casualty Company in 1937 and to Empire Mutual Insurance Company in 1953. Under a plan of demutualization adopted on December 20, 1985, the stock company was formed on January 1, 1988 under its present name.

The Company’s common capital stock of \$11,309,200 is comprised of 113,092 outstanding common shares with a par value of \$100 per share. Authorized common shares totaled 120,000. Since October 1, 1964, Empire and its subsidiary Allcity have pooled premiums, losses and expenses under a reinsurance pooling agreement discussed herein under the caption, “Inter-company Pooling Reinsurance Agreement” (Item 2Dii).

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 or more than twenty-one members. As of December 31, 1999, the board of directors was comprised of thirteen members. The board met four times during each calendar year. The directors as of December 31, 1999 were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Martin B. Bernstein North Salem, NY	President, Ponderosa Fibres of America, Inc.
Francis M. Colalucci New York, NY	Executive Vice President, CFO Empire Insurance Group
Ian M. Cumming Jackson, WY	Chairman, Leucadia National Corporation
James E. Jordan New York, NY	Private Investor
Thomas E. Mara Franklin Lakes, NJ	Executive Vice President, Leucadia National Corporation
Joseph A. Orlando Harrison, NY	Chief Financial Officer, Leucadia National Corporation
Carmen Rivera East Hampton, NY	Senior Vice President, Empire Insurance Group
Louis V. Siracusano East Meadow, NY	Attorney, McKenna, Fehringer, Siracusano & Chianese
Joseph S. Steinberg Brooklyn, NY	President, Leucadia National Corporation
Daniel G. Stewart Short Hills, NJ	Independent Consulting Actuary
Lucius Theus Bloomfield, MI	President, The U.S. Associates
Robert V. Toppi Narragansett, RI	President and CEO, Empire Insurance Group
Harry H. Wise New York, NY	President, H.W. Associates, Inc.

The minutes of all board of directors' and committee meetings held during the examination period were reviewed. The meetings were generally well attended.

The principal officers of the Company as of December 31, 1999 were as follows:

<u>Name</u>	<u>Title</u>
Robert V. Toppi	President & CEO
Robert F. Boyle	Senior Vice President, Underwriting Commercial
Rocco Nittoli	Senior Vice President & CIO
Edward A. Hayes	Senior Vice President
Francis M. Colalucci	Executive Vice President, CFO & Treasurer
David A. Christhlf	Vice President, Chief Actuary
John R. Petrowski	Vice President, General Counsel & Secretary
Douglas Whitenack	Vice President & Controller

Subsequent to the examination date, effective September 18, 2000, Robert V. Toppi resigned as President and Chief Executive Officer and from the Company's board of directors. The board appointed Mr. H. E. Scruggs as his replacement.

B. Territory and Plan of Operation

As of December 31, 1999, the Company was licensed in Connecticut, Massachusetts, Missouri, New Hampshire, New Jersey and New York.

The following schedule shows direct premiums written in New York State and countrywide, and the percentage of the New York State writings to country-wide writings for each year under review:

<u>Calendar</u>	<u>New York State</u>	<u>Total United States</u>	<u>Percentage of New York premiums Written within the United States</u>
1997	\$90,865,606	\$102,462,129	88.7%
1998	\$75,602,652	\$83,610,280	90.4%
1999	\$43,759,125	\$51,638,597	84.7%

As of December 31, 1999, the Company was licensed to transact the kinds of insurance as specified in the following paragraphs of Section 1113(a) of the New York Insurance Law:

<u>Paragraph</u>	<u>Kind of Insurance</u>
3	Accident and health
4	Fire
5	Miscellaneous property
6	Water damage
7	Burglary and theft
8	Glass
9	Boiler and machinery
10	Elevator
12	Collision
13	Personal injury liability
14	Property damage liability
15	Workers' compensation and employers' liability
16	Fidelity and surety
19	Motor vehicle and aircraft physical damage
20	Marine and inland marine (inland only)

Based upon the lines business for which the Company is licensed, its current capital structure and pursuant to the requirements of Articles 13 and 41 of the New York Insurance Law, the Company is required to maintain a minimum surplus to policyholders in the amount of \$3,300,000.

The Company's products are marketed primarily through independent agents.

Subsequent to the examination date and effective March 1, 2001, the Company was no longer accepting new applications or binders for any insurance policies. Existing policies will be non-renewed or canceled in accordance with the provisions of New York Insurance Law.

C. Reinsurance

The Company is primarily a direct writer. The assumed reinsurance business reported by the Company during the examination period reflects its participation in an inter-company pooling agreement with Allcity, a 75% quota share agreement with Centurion, and its participation in various mandatory and voluntary pools.

The Schedule F data as reported by the Company in its Annual Statements filed for the years within the examination period were found to accurately reflect its reinsurance transactions. However, it was noted that certain of the reinsurance agreements described below failed to include signed interest and liability agreements with by the reinsurers.

Chapter 22 of the Accounting Practices and Procedures Manual issued by the National Association of Insurance Commissioners (“NAIC”) requires that reinsurance contracts not signed by the parties within nine months after the commencement of the policy period covered by the reinsurance agreement, are to be treated as retroactive reinsurance. No changes have been made to the financial statements contained herein to account for the affected agreements as retroactive reinsurance due to surplus impairment determined by this examination. However, it is recommended that the Company endeavor to obtain signed interest and liability agreements for all of its reinsurance agreements, in accordance with the NAIC Accounting Practices and Procedures Manual.

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

As of the examination date, the Company had the following general working reinsurance program in place:

Property	2 layers	\$4,700,000 x/s of \$300,000 each risk each, each occurrence.
Property Catastrophe	3 layers	95% of \$42,500,000 x/s of \$7,500,000 each and every occurrence.
Casualty (except those lines noted below)	2 layers	\$4,700,000 x/s of \$300,000 each risk each, each occurrence.
Workers' compensation and employers' liability	3 layers	\$9,700,000 x/s of \$300,000 each occurrence.
	Catastrophe	\$20,000,000 x/s of \$10,000,000 each and every occurrence.
Multiple line reinsurance Umbrella liability, excess owners and contractors protective, and excess automobile liability	2 layers	90% of the 1 st \$1,000,000 each and every occurrence and \$4,000,000 x/s of \$1,000,000.

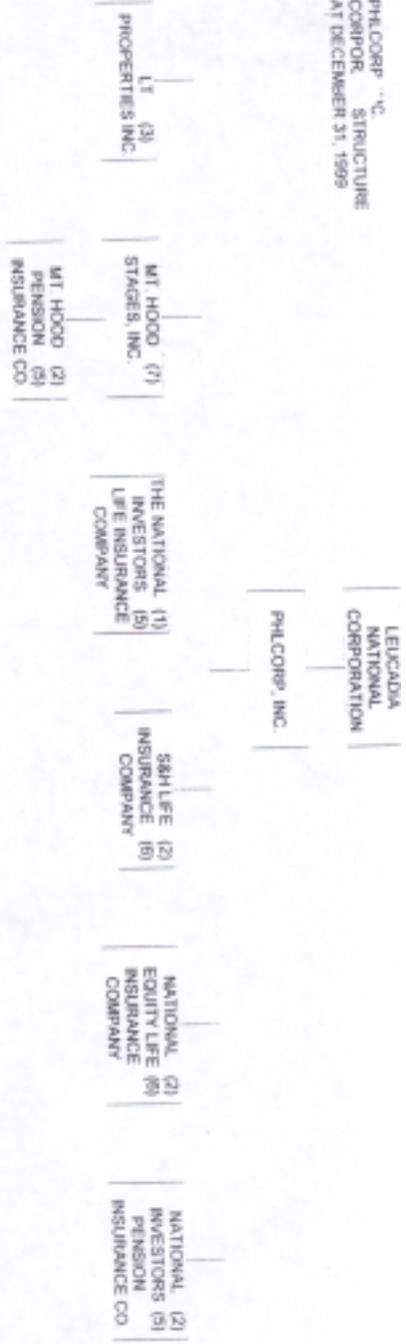
The majority of the Company's reinsurance cessions are to authorized insurers.

D. Holding Company System

Empire Insurance Company is 100% owned and controlled, through various subsidiaries, by Phlcorp Inc., a holding company primarily engaged in the businesses of insurance and incentive services. Phlcorp Inc. is a 100% owned subsidiary of Leucadia National Corporation, the Company's ultimate parent. Leucadia National Corporation, whose common shares are traded on the New York and Pacific Stock Exchanges, is a diversified financial services holding company principally engaged in commercial and personal lines of property and casualty insurance, banking and lending, manufacturing and real estate activities.

The following is an organizational chart of the holding company system as of December 31, 1999, showing the relationships of the Company with its parent and subsidiaries:

PHILCORP ...
 CORPOR. STRUCTURE
 AT DECEMBER 31, 1999



(1) FILES SEPARATE FEDERAL INCOME TAX RETURN

(2) ONE OF THE SP/DA COMPANIES WHICH MUST REMAIN AN ENTITY IN ORDER TO PRESERVE A SIGNIFICANT AMOUNT OF THE EFFECTIVE DATE NOL.

(3) ALL ASSETS OF THIS COMPANY WERE DESIGNATED ASSETS OF THE PHILCORP LIQUIDATING TRUST WHICH WERE ASSIGNED TO LEUCADIA ON 11/4/99.

(4) IN LIQUIDATION PROCEEDINGS UNDER CALIFORNIA INSURANCE LAW

(5) IN LIQUIDATION PROCEEDINGS UNDER ARKANSAS INSURANCE LAW

(6) IN LIQUIDATION PROCEEDINGS UNDER INDIANA INSURANCE LAW

(7) THE STOCK OF THIS COMPANY WAS PLEDGED TO THE PHILCORP LIQUIDATING TRUST FOR THE BENEFIT OF CERTAIN CLASSES OF CREDITORS WHICH WAS ASSIGNED TO LEUCADIA ON 11/4/99

(8) THE EMP/RE GROUP FILED ITS OWN CONSOLIDATED FEDERAL INCOME TAX RETURN THROUGH AUGUST 1998. THEREAFTER IT IS INCLUDED IN THE CONSOLIDATED FEDERAL INCOME TAX RETURN OF PHILCORP

As a member of a holding company system, the Company files registration statements pursuant to Article 15 of the New York Insurance Law and the Department's Regulation 52. All pertinent files were reviewed and no problem areas were encountered.

The Company maintains a tax allocation agreement with Phlcorp Inc., whereby a consolidated federal income tax return is filed on behalf of Empire. The agreement was reviewed and found to be in compliance with the New York Insurance Department's Circular Letter #33 (1979). An exception, however, was noted regarding the Company's method of settling balances with the parent company.

The report on examination as of December 31, 1996, noted that the Company's method of settling its tax liability with its parent did not conform to its tax allocation agreement filed with the Department. It was recommended that the Company follow the terms of the agreement or that the agreement be amended to reflect the current method of settlement. At December 31, 1999, no changes had been made to the agreement and the Company's method of settlement remained the same. Therefore, it is again recommended that the Company either settle its tax liability in accordance with the terms of the tax allocation agreement or amend the agreement to reflect the current method. Any change to the agreement would have to be filed with the Department for approval.

The Company is a party to a management agreement with Allcity and Centurion. The agreement provides for the Company, along with Allcity, to provide certain insurance functions for Centurion. Centurion is required to reimburse the Company and Allcity for its proportionate share of indirect operating expenses, based on a formula denoted in the agreement. A review of the agreement noted that the Company was referenced by its prior name, "Empire Mutual Insurance Company."

It is recommended that the management agreement be amended to reflect the Company's current name and that the amendment be submitted to the Department pursuant to Section 1505(d)(3) of the New York Insurance Law.

The Company also maintains various other service and agency agreements with several affiliates. A review of these agreements noted two agreements where the name of the affiliates had changed during the period covered by this examination. In addition, the Company entered into agency agreements with Gould Dente Agency, Inc. and Oscar Katz Agency, Inc., effective August 1, 1999 and January 1, 2000, respectively. These agreements were not filed with the Department. Section 1505(d)(3) of the New York Insurance Law requires the insurer to notify the Department in writing of its intention to enter into any transaction with any person in its holding company system, involving the rendering of services on a regular or systematic basis, at least 30 days prior thereto. This Section also requires the insurer to submit any amendments to its agreements to the Department.

It is recommended that the agency agreements with Gould Dente Agency, Inc. and Oscar Katz Agency, Inc. be submitted to the Department pursuant to Section 1505(d)(3) of the New York Insurance Law.

i. Ramius L.P.

The Company, along with Allcity, owns 100% of the limited partnership interest in Ramius L.P., a limited partnership organized under the laws of the state of Delaware. Ramius L.P.'s managing general partner is AG Ramius Partners, L.L.C., which is an equal partnership between the managing members Angelo, Gordon & Co., L.P. and Ramius Capital Group, L.L.C. Leucadia National Corporation owns thirteen percent of Ramius Capital Group L.L.C.

Empire reports its investment in Ramius L.P., \$79,042,096, as an admitted asset under the caption, "Other Invested Assets." Ramius L.P. has been classified, by the Department, as a subsidiary of Empire and, as such, should be included in the Company's organizational chart in Schedule Y - Part 1 of the annual statement, pursuant to the Annual Statement Instructions Property & Casualty published by the National Association of Insurance Commissioners. The Company should also disclose applicable transactions with Ramius L.P. involving at least one half of one percent of Empire's admitted assets, as of December 31st, in Schedule Y - Part 2 of the annual statement. The Company had not complied with these reporting requirements in its financial statements filed during the examination period.

It is recommended that the Company include Ramius L.P. in its organizational chart, Schedule Y - Part 1 of the annual statement, as a subsidiary that is 70% owned by Empire and 30% owned by Allcity. It is also recommended that transactions between Empire and Ramius L.P. be disclosed in Schedule Y - Part 2 of the annual statement, pursuant to NAIC Annual Statement Instructions Property & Casualty.

In addition, pursuant to Section 1611(b) of the New York Insurance Law, an insurer's aggregate investment in subsidiaries shall not exceed fifteen percent of its invested assets as shown on its last statement on file with the superintendent. Based upon the Company's filed 1999 annual statement, the Company's investment in Ramius L.P. exceeded the limitation imposed by Section 1611 in the amount of \$8,254,941. Subsequent to the examination date the Company divested the Ramius L.P. investment that exceeded the limitation. Therefore, no financial change will be made pursuant to this examination.

It is recommended that the Company not invest in subsidiaries in amounts that exceed the limitation imposed by Section 1611 of the New York Insurance Law.

ii. Inter-Company Pooling Reinsurance Agreement

A pooling agreement between Empire and Allcity has been in effect since October 1, 1964. The terms of the agreement are summarized as follows:

1. Empire assumes 100% of the net business written by Allcity; the Allcity business is pooled with business written by Empire; 30% of the combined business is then ceded and/or retroceded to Allcity; Empire retains 70%.
2. Empire assumes 100% of Allcity's net losses, loss adjustment expenses and underwriting expenses; the losses and expenses are pooled with losses and expenses from Empire; 30% of the combined losses, loss adjustment expenses and underwriting expenses are then ceded and/or retroceded to Allcity; Empire retains 70%.
3. Empire and Allcity share all underwriting assets and liabilities 70% and 30%, respectively.

E. Significant Operating Ratios

The following ratios have been computed as of December 31, 1999, based upon the results of this examination:

Net premiums written (1999) to Surplus as regards policyholders	19.6 to 1
Liabilities to liquid assets (cash and invested assets less investment in affiliates)	153%
Premiums in course of collection to Surplus as regards policyholders	155.3%

All of the above ratios fall outside the benchmark ranges of the Insurance Regulatory Information System of the National Association of Insurance Commissioners. The excessive values are due to examination changes to common stocks and loss and loss adjustment expense reserves.

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

	<u>Amounts</u>	<u>Ratio</u>
Losses and loss adjustment expenses incurred	\$472,911,963	106.19%
Other underwriting expenses incurred	143,076,079	32.13
Service fee income received:	(35,936,052)	(8.07)
Net underwriting loss	<u>(134,734,331)</u>	<u>(30.25)</u>

Premiums earned	<u>\$445,317,659</u>	<u>100.00%</u>
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F. Audited Financial Statements

Section 89.2 of Department Regulation 118 states as follows:

“Every insurer subject to this part shall retain an independent Certified Public Accountant (CPA) who agrees by written contract with such insurer to comply with the provisions of Section 307(b) of the New York Insurance Law, this Part and the Code of Ethics and Professional Standards adopted by the American Institute of Certified Public Accountants (AICPA). Such contract must specify that:

(a) on or before June 30th, the CPA shall provide an audited financial statement and opinion for the prior calendar year and an evaluation of the insurer’s accounting procedures and internal control system as are necessary to the furnishing of the opinion;

(b) any determination by the CPA that the insurer has materially misstated its financial condition as reported to the Superintendent or that the insurer does not meet the minimum capital and surplus requirements set forth in the Insurance Law shall be given by the CPA, in writing, to the Superintendent within fifteen (15) calendar days following such determination; and

(c) the workpapers and any communications between the CPA and the insurer relating to the audit of the insurer shall be made available for review by the Superintendent. The CPA must retain for review such workpapers and communications for a period of not less than five (5) years.”

A review of the contract between the Company and its independent accountant revealed that the above mentioned provisions were not included in the engagement contract between the Company and PricewaterhouseCoopers LLP.

It is recommended that the Company incorporate the provisions of Section 89.2 of the New York Insurance Department’s Regulation 118 into its audit engagement letter with its certified public accountant.

G. Custodian Service Agreement

At of December 31, 1999 the Company maintained a custodian agreement with Fleet Bank. A review of the agreement determined that it lacked certain necessary safeguards, controls and protective covenants required by the Department for all custodian agreements. The agreement was found to be missing the following protective covenants and provisions:

1. Access shall be during regular banking hours and specifying those persons who shall be entitled to examine at the bank's premises securities held by the bank on premises and its records regarding securities held but only upon furnishing the bank with written instructions to that effect from any specified authorized officer.
2. The bank will at all times give the securities held by it hereunder the same care you give its own property of a similar nature.
3. Maintain records sufficient to verify information the Company required to report in Schedule D of the Annual Statement blank of the Insurance Department of the State of New York.
4. Furnish the Company with the appropriate affidavits in the form as may be acceptable to the bank and the New York Insurance Department in order for the securities referred to in such affidavits to be recognized as admitted assets of the Company.
5. Written instructions hereunder shall be signed by any two of the Company's authorized officers specified in a separate list for this purpose which will be furnished to the bank from time to time by the treasurer or an assistant treasurer and certified under the corporate seal by the secretary or an assistant secretary.

It is recommended that the Company amend its custodian agreement with Fleet Bank to include the necessary safeguards and controls required by the New York Insurance Department.

H. Accounts and Records

- i. Schedule P Interrogatories

Schedule P Interrogatories; number 3, in the Company's annual statement reads as follows:

“The definition of allocated loss adjustment expenses (ALAE) and,

therefore, unallocated loss adjustment expenses (ULAE) was changed effective January 1, 1998. This change in definition applies to both paid and unpaid expenses. Are these expenses (now reported as “Defense and Cost Containment” and “Adjusting and Other”) reported in compliance with these definitions in this statement?

The Company responded affirmatively to this interrogatory.

A review the Company’s data revealed that the Company was not reporting such expenses in compliance with the new definitions in its annual statement.

It is recommended that the Company exercise proper care to accurately respond to Schedule P Interrogatories in its annual statement. It is also recommended that the Company implement the use of the new definitions for loss adjustment expenses in all future statements filed with New York State’s Superintendent of Insurance.

I. Abandoned Property Law

Section 1316 of the New York State Abandoned Property Law requires insurers to file an annual abandoned property report. Insurers are required to file the report even if it does not hold or owe abandoned property. A negative filing is made by completing the Verification and Checklist attesting to the fact that no amounts are due. Examination review indicated that the Company failed to file abandoned property reports with the New York State Comptroller’s Office, pursuant to Sections 1315 and 1316 of the New York Abandoned Property Law, for the year 1999. The Company was also unable to provide documentation of its abandoned property filing pursuant to Section 1315 for 1998.

It is recommended that the Company file annual abandoned property reports, pursuant to Sections 1315 and 1316 of the New York State Abandoned Property Law, with the State of New York and subsequently escheat any unclaimed property indicated in the report.

J. Lack of Cooperation

During the process of conducting the examination of the Company, numerous requests were made for documentation and other information to support data in the Company's annual statement. Requests were also made for documentation to determine whether the Company was operating within the laws, regulations and rules prescribed by the New York Insurance Department. While all examination requests were eventually addressed, the Company delayed its responses, in some cases, for an inordinate amount of time. These delays prolonged the length of the examination, increased the examination cost to the Company, and otherwise put a strain on Department resources.

The Company was reminded during the examination that pursuant to Section 310 of the New York Insurance Law it must provide access to its books and records and that it was the responsibility of the Company officers to facilitate the examination.

Its is recommended that the Company facilitate future examinations in a timely manner.

3. FINANCIAL STATEMENTS

A. Balance Sheet

The following shows the assets, liabilities and surplus as regards policyholders as determined by this examination as of December 31, 1999 and as reported by the Company:

Assets	<u>EXAMINATION</u>				<u>COMPANY</u>	Surplus Increase (Decrease)
	<u>Ledger Assets</u>	<u>Non-Ledger Assets</u>	<u>Not-Admitted Assets</u>	<u>Net-Admitted Assets</u>	<u>Admitted Assets</u>	
Bonds	\$266,008,588	\$	\$505,762	\$265,502,826	\$265,502,826	\$
Preferred stocks	5,570,054	(3,318,812)		2,251,242	2,251,242	
Common stocks	37,222,717	37,180,689	47,577,686	26,825,720	74,403,406	(47,577,686)
Mortgage loans on real estate	23,622			23,622	23,622	
Cash and short-term investments	5,367,332			5,367,332	5,367,332	
Other invested assets	80,457,524			80,457,524	80,457,524	
Premiums in course of collection	8,073,784		3,684,298	4,389,486	4,389,486	
Premiums booked but deferred and not yet due	7,041,542		2,661,448	4,380,094	4,380,094	
Reinsurance recoverable on loss and loss adjustment expenses	4,338,381			4,338,381	4,338,381	
Interest, dividends and real estate inc. due and accrued		4,948,456		4,948,456	4,948,456	
Receivable from parent, subsidiaries and affiliates	7,732,812		841,145	6,891,667	6,891,667	
Equities and deposits in pools and associations	1,699,180			1,699,180	1,699,180	
Other assets non-admitted	6,628,143		6,628,143			
Aggregate write-ins for other than invested assets:						
Allcity Section 1307 Loan	7,000,000			7,000,000	7,000,000	
Leasehold improvements	9,720,034		9,720,034			
Service Fee Receivables:						
NY Public Auto Pool	1,020,930			1,020,930	1,020,930	
Summary of remaining write ins	<u>3,169,422</u>		<u>1,166,852</u>	<u>2,002,570</u>	<u>2,002,570</u>	
Total assets	<u>\$451,074,065</u>	<u>\$38,810,333</u>	<u>\$72,785,368</u>	<u>\$417,099,030</u>	<u>\$464,676,716</u>	<u>\$(47,577,686)</u>

<u>Liabilities</u>	<u>Examination</u>	<u>Company</u>	<u>Surplus Increase (Decrease)</u>
Losses and loss adjustment expenses	\$343,524,073	\$265,074,073	\$(78,450,000)
Contingent commissions	539,104	539,104	
Other expenses	2,621,673	2,621,673	
Taxes, licenses and fees	884,100	884,100	
Unearned premiums	38,837,303	38,837,303	
Dividends declared and unpaid - policyholders	104,180	104,180	
Amounts withheld for account of others	(29,681)	(29,681)	
Provision for reinsurance	257,600	257,600	
Drafts outstanding	2,608,184	2,608,184	
Aggregate write-ins for liabilities:			
Other post retirement benefits	3,766,815	3,766,815	
Deferred income – Renaissance Plaza	4,719,106	4,719,106	
LAD/CLAD service fees experience reserve	1,121,490	1,121,490	
Summary of remaining write-ins	<u>14,240,724</u>	<u>14,240,724</u>	<u> </u>
Total liabilities	<u>\$413,194,671</u>	<u>\$334,744,671</u>	<u>\$(78,450,000)</u>
<u>Surplus as Regards Policyholders</u>			
Common capital stock	\$ 11,309,200	\$ 11,309,200	\$
Gross paid in and contributed surplus	49,218,577	49,218,577	
Unassigned funds (surplus)	<u>(56,623,420)</u>	<u>69,404,266</u>	<u>(126,027,686)</u>
Surplus as regards policyholders	<u>\$3,904,357</u>	<u>\$129,932,043</u>	<u>\$(126,027,686)</u>
Total liabilities and surplus	<u>\$417,099,028</u>	<u>\$464,676,714</u>	

NOTE 1: This examination has determined that the Company's capital stock of \$11,309,200 is impaired in the amount of \$7,404,843.

NOTE 2: The Internal Revenue Service is currently auditing the consolidated income tax returns of Leucadia National Corporation, which includes returns filed on behalf of the Company for the three years covered by this examination. The examiner is unaware of any potential exposure of the Company to any further tax assessment and no liability has been established herein relative to such contingency.

B. Underwriting and Investment Exhibit

Surplus as regards policyholders decreased \$109,168,467 during the examination period, January 1, 1997 through December 31, 1999 detailed as follows:

Statement of Income

Underwriting Income

Premiums earned		\$445,317,659
Deductions:		
Losses and loss adjustment expenses incurred	\$472,911,963	
Other underwriting expenses incurred	143,076,079	
Service fees received	<u>(35,936,052)</u>	
Total underwriting deductions		<u>580,051,990</u>
Net underwriting (loss)		\$(134,734,331)

Investment Income

Net investment income earned	\$89,139,355	
Net realized capital gains	<u>(6,940,805)</u>	
Net investment gain		82,198,550

Other Income

Net gain or (loss) from agents' balances charged off	\$(8,196,188)	
Finance and service charges not included in premiums	3,314,698	
Aggregate write-ins for miscellaneous income	<u>71,613</u>	
Total other income		<u>(4,809,877)</u>
Net income before dividends to policyholders and before federal and foreign income taxes		\$(57,345,658)
Dividends to policyholders		<u>(1,388,076)</u>
Net income after dividends to policyholders but before federal and foreign income taxes		\$(58,733,734)
Federal and foreign income taxes incurred		<u>(8,648,584)</u>
Net (loss)		<u>\$(50,085,150)</u>

Capital and Surplus Account

Surplus as regards policyholders, per report on examination as of December 31, 1996			\$113,072,826
	<u>Gains in Surplus</u>	<u>Losses in Surplus</u>	
Net income (loss)	\$	\$50,085,150	
Net unrealized capital (loss)		49,847,432	
Change in non-admitted assets		12,681,302	
Change in provision for reinsurance		7,433,580	
Change in excess of statutory reserves over statement reserves	5,173,700		
Capital changes (paid in)	16,400		
Surplus adjustment (paid in)	4,567,271		
Aggregate write-ins for gains and losses in surplus	<u>8,445</u>	_____	
Total gains and losses	<u>\$9,765,816</u>	<u>\$118,934,283</u>	
Net decrease in surplus as regards policyholders			<u>109,168,467</u>
Surplus as regards policyholders, per report on examination as of December 31, 1999			<u>\$3,904,359</u>

4. COMMON STOCKS

The examination admitted asset of \$26,825,720 is \$47,577,686 less than the \$74,403,406 reported by the Company as of December 31, 1999. The change is due to a reduction in the value of a subsidiary and the Company exceeding a limitation imposed by Section 1408 of the New York Insurance Law.

The concurrent examination of Allcity determined that the portion of its market valued owned by the Company should be reduced by \$28,434,575 due to examination increases to Allcity's loss and loss adjustment expense reserves. Additionally, Section 1408 imposes a limit on the amount that an insurer is allowed to invest in the common shares of another insurer. After reviewing the effect of all other examination changes on the Company's surplus, it was determined that this limitation was exceeded by

\$19,143,111. This amount along with the reduction in the Allcity market value will be “not admitted” as an asset.

5. LOSSES AND LOSS ADJUSTMENT EXPENSES

The examination liability of \$343,524,073 is \$78,450,000 more than the \$265,074,073 reported by the Company as of December 31, 1999.

The examination reserves were calculated in accordance with generally accepted actuarial principles and practices and were based upon statistical information reflected in the Company’s filed and sworn to annual statements. The majority of the increase results from deficiencies in the Company’s Commercial Multi-Peril, Private Passenger Automobile and Commercial Automobile Liability lines of business.

It is recommended that the Company report adequate reserves for losses and loss adjustment expenses in accordance with Section 1303 of the New York Insurance Law.

6. MARKET CONDUCT ACTIVITIES

In the course of this examination, a review was made of the manner in which the Company conducts its business and fulfills its contractual obligations to policyholders and claimants. The review was general in nature and is not to be construed to encompass the more precise scope of a market conduct investigation, which is the responsibility of the Market Conduct Unit of the Property Bureau of this Department.

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

- A. Sales and advertising
- B. Underwriting
- C. Rating
- D. Treatment of claimants and policyholders

No problem areas were encountered.

7. CONCLUSION

The examination has determined that as of December 31, 1999, the Company's capital stock of \$11,309,200 was impaired in the amount of \$7,404,843. The impairment was the result of the examination increase of \$78,450,000 to the Company's reported liabilities for losses and loss adjustment expenses, as well as a reduction to the carrying value of the Company's investment in its subsidiary insurer.

8. SUBSEQUENT EVENTS

In its March 31, 2001 quarterly statement filed with this Department, the Company reported a surplus to policyholders of \$9,795,826. This amount reflects the Company's recognition of examination reserve deficiencies totaling \$61,242,000 for accident years 1999 and prior, the period covered by this examination. Thus, the Company has not recognized \$17,208,000 of the examination loss and loss adjustment expenses reserve deficiency.

As of March 31, 2001 the Company's surplus to policyholders, adjusted by the examination reserve deficiency not yet recognized, was reduced to \$(7,412,174). Consequently, the carrying value of its investment in its subsidiary insurers of \$13,505,087 has been disallowed pursuant to the provisions of Section 1408 of the New York Insurance Law. Thus, this examination has determined that as of March

31, 2001, the Company was insolvent in the amount of \$20,917,261, its capital stock was impaired in the amount of \$32,226,461, and its required to be maintained surplus to policyholders of \$3,300,000 was impaired in the amount of \$24,217,261.

9. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

A review was made into the actions taken by the Company with regards to the comments and recommendations contained in the prior filed report on examination. The five comments and recommendations and the Company's responses are as follows (page numbers refer to the prior report on examination):

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Management</u>	
Board members who are unable or unwilling to attend meetings consistently should resign or be replaced.	4-5
The Company has complied with this recommendation. All board members attended the majority of board meetings during the period covered by this examination.	
B. <u>Tax Allocation Agreement</u>	
It is recommended that the Company follow the terms of the tax allocation agreement or that the agreement be amended to reflect the current method of establishing accruals and tax settlements.	12
The Company has not complied with this recommendation. A review of the tax allocation agreement as of December 31, 1999 noted that neither the agreement nor the Company's method of settlement had been changed. A similar recommendation is contained in this report.	

<u>ITEM</u>	<u>PAGE NO.</u>
C. <u>Custodial Agreement</u>	
It is recommended that the custodial agreement between the Company and the bank be amended to include all necessary safeguards and protective covenants.	12
The Company has not complied with this recommendation. A review of the custodial agreement noted that it continued to lack certain necessary safeguards and protective covenants. A similar recommendation is contained in this report.	
D. <u>Claims Files</u>	
It is recommended that the Company maintain claims files in a consistent and sequential manner in order that key documents may be located more efficiently.	13
The Company has complied with this recommendation. Claim files reviewed, in conjunction with the "POINT System" (claim system), found the documentation in an orderly manner.	
E. <u>Losses and Loss Adjustment Expenses</u>	
As a result of the actuarial analysis conducted as part of this examination, the Company's loss and loss adjustment expense reserves as reported in its 1996 filed annual statements were found to be deficient by \$58,606,100 or 16.8%.	17
The review as of December 31, 1999 determined that losses and loss adjustment expenses were found to be deficient by \$78,450,000.	

10. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Impairment of Capital Stock</u>	
The examination has determined that as of December 31, 1999, the Company's capital stock of \$11,309,200 was impaired in the amount of \$7,404,843. The impairment was the result of the examination increase of \$78,450,000 to the Company's reported liabilities for losses and loss adjustment expenses, as well as a reduction to the carrying value of the Company's investment in its subsidiary insurer.	1

<u>ITEM</u>	<u>PAGE NO.</u>
B. <u>Reinsurance</u>	
It is recommended that the Company endeavor to obtain signed interest and liability agreements for all of its reinsurance agreements, in accordance with the NAIC accounting Practices and Procedures Manual.	7
C. <u>Holding Company System</u>	
i. It is again recommended that the Company either settle its tax liability in accordance with the terms of the tax allocation agreement or amend the agreement to reflect the current method. Any change to the agreement would have to be filed with the Department for approval.	12
ii. It is recommended that the management agreement be amended to reflect the Company's current name and that the amendment be submitted to the Department pursuant to Section 1505(d)(3) of the New York Insurance Law.	13
iii. It is also recommended that the agency agreements with Gould Dente Agency, Inc. and Oscar Katz Agency, Inc. be submitted to the Department pursuant to the Section 1505(d)(3) of the New York Insurance Law.	13
iv. It is recommended that the Company include Ramius L.P. in its organizational chart, Schedule Y – Part 1 of the annual statement, as a subsidiary that is 70% owned by Empire and 30% owned by Allcity.	14
v. It is also recommended that transactions between Empire and Ramius L.P. be disclosed in Schedule Y- Part 2 of the annual statement, pursuant to the guidelines in the NAIC's Annual Statement Instructions Property & Casualty.	14
vi. It is recommended that the Company not invest in subsidiaries in amounts that exceed the limitation imposed by Section 1611 of the New York Insurance Law.	14
D. <u>Audited Financial Statements</u>	
It is recommended that the Company have the provisions of Section 89.2 of the New York Insurance Department's Regulation 118 incorporated into its audit engagement letter with its certified public accountant.	17
E. <u>Custodian Service Agreement</u>	
It is recommended that the Company amend its custodian agreement with Fleet Bank to include the necessary safeguards and controls required by the Department.	17

<u>ITEM</u>	<u>PAGE NO.</u>
F. <u>Accounts and Records</u>	
i. It is also recommended that the Company exercise proper care to accurately respond to Schedule P Interrogatories in its annual statement.	18
ii. It is also recommended that the Company implement the use of the new definitions for loss adjustment expenses in all future statements filed with the New York State's Superintendent of Insurance.	18
G. <u>Abandoned Property Law</u>	
It is recommended that the Company file annual abandoned property reports, pursuant to Sections 1315 and 1316 of the New York State Abandoned Property Law, with the State of New York and subsequently escheat any unclaimed property indicated in the report.	19
H. <u>Lack of Cooperation</u>	
It is recommended that the Company facilitate future examinations in a timely manner.	19
I. <u>Common stocks</u>	
The common stock asset was reduced, pursuant to the examination, by the amount of \$47,577,686. The reduction was due to a decrease in the market value of a subsidiary, Allcity Insurance Company, and a decrease in an investment in excess of a limitation imposed by Section 1408 of the New York Insurance Law.	23
J. <u>Losses and Loss Adjustment Expenses</u>	
As a result of the actuarial analysis conducted as part of this examination, the Company's loss and loss adjustment expense reserves as reported in its 1999 filed annual statements were found to be deficient by \$78,450,000. It is recommended that the Company report adequate reserves for losses and loss adjustment expenses in accordance with Section 1303 of the New York Insurance Law.	24

Respectfully submitted,

_____/S/_____
Bernard Lott
Senior Insurance Examiner

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

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

_____/S/_____
Bernard Lott

Subscribed and sworn to before me

this _____ day of _____ 2001.

Appointment No 21585

STATE OF NEW YORK
INSURANCE DEPARTMENT

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

Bernard Lott

as proper person to examine into the affairs of the

Empire Insurance Company

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

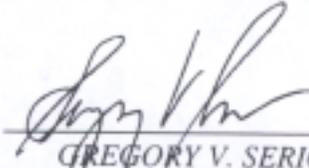
Company

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 7th day of September, 2000





GREGORY V. SERIO
First Deputy Superintendent of Insurance