

REPORT ON EXAMINATION
OF THE
FIRST AMERICAN TITLE INSURANCE COMPANY
OF NEW YORK
AS OF
DECEMBER 31, 2000

DATE OF REPORT

OCTOBER 12, 2001

EXAMINER

MARC BRUCKSTEIN

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Exhibit 1 - Holding Company Chart



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

October 12, 2001

Honorable Gregory V. Serio
Superintendent of Insurance
Albany, NY 12257

Sir:

Pursuant to instructions contained in Appointment No. 21663, dated December 27, 2000, attached hereto, I have made an examination into the condition and affairs of the First American Title Insurance Company of New York, a domestic title insurer, as of December 31, 2000, and respectfully submit the following report thereon.

The examination was conducted at the home office of the Company, located at 633 Third Avenue, New York, New York 10017.

Wherever the terms "the Company" or "FATICONY" appears herein, without qualification, they should be understood to indicate the First American Title Insurance Company of New York.

Whenever the term "the Parent" or "FATICO" appears herein, without qualification, they should be understood to indicate the First American Title Insurance Company of California.

Whenever the terms "the Ultimate Parent" or "FAC" appear herein, without qualification, they should be understood to indicate the First American Corporation of California.

Whenever the term “the Department” appears herein without qualification, it should be understood to indicate the New York Insurance Department.

1. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 1994. This examination covers the six-year period from January 1, 1995 through December 31, 2000. This examination was updated from December 31, 1999 to December 31, 2000 in order to determine the impact of certain financial transactions made by the Company in the year 2000. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

This examination was risk focused in nature, concentrating on 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 statutory premium reserve. The examination included a review of income and 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 the Company
- Management and control
- Fidelity bonds and other insurance
- Employees' welfare and pension plans
- Territory and plan of operation
- Growth of the Company
- Loss experience
- Reinsurance
- Market conduct activities
- Accounts and records
- Financial statements

A review was also made to ascertain what action was taken by the Company with regard to comments and recommendations made in the prior report on examination.

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

2. DESCRIPTION OF COMPANY

The Company was incorporated on September 14, 1967, as the Northeastern Title Guaranty Corporation, under the provisions of the former Article XIII (now Article 64) of the New York Insurance Law, and commenced business on September 11, 1968. The authorized capital was \$400,000.

In March 1970, Netgo, Ltd., a holding company, acquired 98.25% of the outstanding stock of Northeastern Title Guaranty Corporation. On October 31, 1972, First American Title Insurance Company, a California corporation, purchased 100% of the outstanding stock of Northeastern Title Guaranty Corporation. The name of the Company was then changed to First American Title Insurance Company of New York.

In 1981, the Company filed with the Superintendent of Insurance a Certificate of Amendment to its charter, in compliance with former Section 53 (now Section 1206) of the New York Insurance Law. Such certificate authorized an increase in the Company's common capital stock to \$1,000,000, by increasing the par value per share from \$10 to \$25. To implement this change in par value, the Company transferred \$600,000 from its gross paid in and contributed surplus to common capital stock.

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 seven nor more than thirteen members. As of the examination date, the board was comprised of twelve members. The Company by-laws require the board to meet at least once each calendar year and at such times fixed by the board. The directors as of December 31, 2000 were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Patrick Adamo Franklin Square, New York	Treasurer, Chief Financial Officer and Vice-President, First American Title Insurance Company of New York
Michael J. Berey Scarsdale, New York	Senior Vice-President, First American Title Insurance Company of New York
Bruce J. Clay Bellmore, New York	Senior Vice-President, First American Title Insurance Company of New York
Thomas N. Decaro Rye, New York	Senior Vice-President, First American Title Insurance Company of New York
Martin I. Demsky Princeton Junction, NJ	Senior Vice-President, First American Title Insurance Company of New York
Mindy B. Hass New York, New York	Senior Vice-President and Secretary, First American Title Insurance Company of New York
Donald P. Kennedy Santa Ana, California	Chairman of the Board, First American Financial Corp.
Parker S. Kennedy Orange, California	President, First American Financial Corp.
Andrew S. Knee South Setauket, New York	Senior First Vice-President, First American Title Insurance Company of New York
Martin H. Kornheiser Teaneck, New Jersey	Senior Vice-President, First American Title Insurance Company of New York
George Metzger Huntington, New York	Chairman of the Board, First American Title Insurance Company of New York
James M. Orphanides Princeton, New Jersey	President and Chief Executive Officer, First American Title Insurance Company of New York

A review of the minutes of the fourteen meetings held during the period covered by this examination, indicated such meetings were generally well attended, except for Donald P. Kennedy, who attended only three (21.43%) of the fourteen meetings held during the period under examination. Subsequent to the examination date, Mr. Donald P. Kennedy resigned from the board of directors.

The following were the principal officers of the Company on December 31, 2000:

<u>Name</u>	<u>Title</u>
George Metzger	Chairman of the Board
James M. Orphanides	President
Mindy B. Haas	Secretary
Patrick Adamo	Treasurer
Michael J. Berey	Vice President
Andy S. Knee	Vice President
Thomas N. Decaro	Vice President

B. Territory and Plan of Operation

At December 31, 2000, the Company was licensed to transact the business of title insurance, as defined in paragraph 18 of Section 1113(a) of the New York Insurance Law. As of the examination date, the Company was licensed in Kansas, Michigan, New Hampshire, New York, and Ohio.

During the period under examination, the Company maintained four branch offices located at White Plains, New York; Uniondale, New York; Riverhead, New York; and New York, New York. The branches provided all title services and operations.

The Company has changed their emphasis from insuring mostly residential property to concentrating on insuring commercial property.

The following is a comparison between direct premiums written in New York State and nationwide during the examination period:

Direct Premiums Written

<u>Year</u>	<u>Nationwide</u>	<u>New York State</u>	<u>Ratio</u>
1995	\$44,969,408	\$43,593,468	96.94%
1996	\$54,310,933	\$52,826,286	97.26%
1997	\$59,521,242	\$57,425,739	96.47%
1998	\$94,808,147	\$92,076,365	97.11%
1999	\$116,246,615	\$114,727,777	98.69%
2000	\$93,436,287	\$93,436,287	100.00%

C. Reinsurance

The Company had a minimal amount of assumed reinsurance. The Company has a facultative reinsurance agreement with American Land Title Association, in which the Company cedes risks in excess of its primary retention of \$25,000,000.

Under a reinsurance agreement with its ultimate parent company, First American Title Insurance Company, Santa Ana, California, (“FATICONY”) would cede risks to and/or assume risks from its parent company on a facultative basis. The agreement was submitted to the superintendent pursuant to Section 1505(d) of the New York State Insurance Law.

The Company's maximum retention on any one single risk pursuant to Section 6403 (c) of the New York Insurance Law is \$67,694,071. The Company voluntarily limits its retention on any one risk to \$25,000,000. As previously mentioned, the only unauthorized company in the State of New York that FATICONY ceded risks to, during the period under examination, was its direct parent. The Company's maximum retention and amount of unauthorized reinsurance on any one single risk was within the limits prescribed by Section 6403(c) of the New York State Insurance Law.

All reinsurance agreements contained an insolvency clause meeting the requirements of Section 1308(a)(2)(A) of the New York State Insurance Law.

D. Holding Company System

The First American Financial Corporation is the ultimate parent in the holding company system. Members of the holding company system are detailed in Exhibit 1, appended to this report.

A review was made of the filings made by the Company, as registrant, pursuant to the requirements of Article 15 of the New York Insurance Law and Department Regulation No. 52. All were found to be timely and complete, except for the following:

1. Cost Allocation Agreement

The Company is a party to a cost allocation agreement with its parent. Under the terms of the agreement the expenses are shared by the two companies. The agreement was approved by this Department. The Company reported a not admitted asset for “receivable from parent, subsidiaries, and affiliates” in the amount of \$5,855,239, in its December 31, 2000 annual statement. In accordance with Circular Letter No. 15 (1979), the Company properly report as not admitted all inter-company receivable balances with its parent that were 90 days past due.

Examination review indicated that the Company failed to adhere to the terms of its approved cost allocation agreement and has also violated Section 1505(a)(3) of the New York Insurance Law by its failure to:

- 1) remit reports in accordance with their allocation agreement, and
- 2) satisfy obligations for allocated costs or expenses pursuant to Section 1505(a)(3).

It is recommended that the Company comply with their cost allocation agreement and Section 1505(a)(3) of the New York Insurance Law.

The Company's failure to settle its balances with its parent in fact constitutes an interest free loan to its parent. It is recommended that the Company collect any and all interest due from its parent as result of this loan.

2. Real Estate

During calendar year 2000, FATICONY notified this Department of its intent to acquire real estate for his home office for a cost of \$16,729,110. On May 10, 2000, the Department disapproved the proposed transaction since it did not comply with Section 1404(a)(5)(B)(iv and v) of the New York Insurance Law. The proposed purchase price exceeded 10% of the Company's admitted assets as shown in the last filed statement prior to the proposed acquisition. After receiving the Department's letter denying the real estate acquisition, FATICONY assigned the contract of sale to FAC and FAC acquired the property. The purchase was funded by FATICONY advancing FAC the \$16,729,110 purchase price and being reimbursed \$5,000,000 by FAC on the day of closing. Over the next eight months, FATICONY advanced additional funds for building improvements. These transactions would appear to be a violation of Section 1505(c) of the New York Insurance Law, which requires the superintendent's prior approval for any loans, extensions of credit, or advances which exceed 5% of the insurer's admitted assets and are between a domestic controlled insurer and any member of its holding company system. However, Section 1404(a)(5)(B)(v) provides the following relative to the acquisition of real estate serving as an insurer's principal office:

“(v) Except with the superintendent’s approval, no domestic insurer shall: (I) acquire any real property pursuant to items (i) and (ii) of subparagraph (A) of this paragraph, if the real property being acquired is greater than one percent of the insurer’s admitted assets as shown by its last statement on file with the superintendent...”

The Company did not receive the approval required by the above-cited section of the Insurance Law.

By deed dated May 24, 2000, but witnessed on May 31, 2001 and recorded on June 22, 2001, FAC conveyed a 50% undivided interest in the property to FATICONY. It is noted that FATICONY made a \$5,000,000 dividend payment to FAC on September 27, 2000. The Company has indicated that it is a separate and distinct transaction from the advance made to FAC at the closing date. The difference between the amount advanced to FAC, FAC’s conveyance of a 50% interest in the property to the Company, and the \$5,000,000 dividend is \$3,364,555. This amount is included in the asset “Receivable from parent, subsidiaries and affiliates in the balance sheet of Company’s filed annual statement. It is recommended that the Company be reimbursed for the interest income on the funds advanced to its parent.

Examination review indicated that the Company is paying \$70,833 per month, plus all operating costs, to FAC for rent. There is no formal lease agreement between FATICONY and FAC. Pursuant to Section 1505(d) of the New York Insurance Law all transactions that involve rendering of services on a regular or systematic basis, between a domestic controlled insurer and a member of its holding company system are required to be non-disapproved by the superintendent. It is recommended that the Company formalize the lease agreement and submit such agreement to the Department pursuant to the aforementioned section of the New York Insurance Law.

3. Tax Allocation Agreement

The Company has a tax allocation agreement with its ultimate parent and its affiliates; whereas, the parent, affiliates and subsidiaries file a consolidated federal income tax return. All the participating entities are required to pay their proportionate share of taxes on a quarterly basis. According to the tax allocation agreement, any monies due to any company for any refund will be paid ninety days after the due date, including extensions, of the consolidated federal income tax return. This stipulation, in the agreement, does not meet the guidelines set forth in New York's Circular Letter 33 (1975).

According to Item 5 of Circular Letter 33, all settlements under the tax allocation agreement shall be made within thirty days of the filing of the applicable estimated or actual consolidated federal corporate income tax return with the Internal Revenue Service. Except when a refund is due to the parent, in which case it may defer payment to FATICONY within 30 days of receipt of such refund. All settlements should be in cash or securities eligible as investments for FATICO.

The Company has reported "Federal Income Tax Recoverable" in the amount of \$662,642 as an admitted asset in its December 31, 2000 annual statement. Pursuant to Circular Letter 15 (1979), "A balance due as a result of participation in a consolidated income tax return should be paid over promptly by the parent. This amount should have been not admitted. It is also noted that FAC, the company's parent, failed to settle its federal income tax balances. This is in fact an interest free loan and violates the intent of the Article 15 of the New York Insurance Law.

It is recommended that the Company comply with Circular Letter 33 (1975) and Circular Letter 15 (1979). It is also recommended that the Company's parent settle its Federal Income Tax balances due to its affiliates in a timely manner.

E. Significant Operating Ratios

The operating ratios below were calculated on an earned/incurred basis and encompass the six-year period covered by this examination:

	<u>Amounts</u>	<u>Ratios</u>
Losses and loss adjustment expenses incurred	\$ 20,993,769	3.98%
Operating expenses incurred	508,685,008	96.42
Net operating loss	<u>(2,080,784)</u>	<u>(0.40)</u>
Premiums and fees earned	<u>\$527,597,993</u>	<u>100.00%</u>

F. Accounts, Records and Internal Control

During the period under examination, the examiners noted the following deficiencies in the Company's system of accounts, records and internal control:

1. Title Insurance Premiums and Fees

During the period under examination, the examiners noted that for the State of New York, the Company booked premiums when they were received. Section 6404(b) of the New York Insurance Law states that:

"The superintendent shall allow as admitted assets premiums and fees for title examination and insurance and for abstracts and searches, not more than ninety days past due. Such premiums and fees shall be deemed to be due when the services for which such premium and fees are chargeable shall have been performed, except that with respect to abstracts and searches, not later than the closing of the transaction for which the services were rendered, and with respect to examination on a closed title basis premiums and fees shall be deemed due when title is closed."

The Company was unable to provide the examiners with documentation detailing the amount of premiums due from agents in accordance with Section 6404(b) of the New York Insurance Law. The examiners reviewed the agents' statements and noted that numerous premiums and fees were not remitted in accordance with the terms of the agency agreements. It is difficult to project the unreported premiums

not remitted by the title insurance agents, since title insurance is a cyclical line of business. As a result, the ratio of uncollected premium balances to premiums written appears to be distorted. In addition, the Company did not maintain an aged listing of uncollected premiums pursuant to Section 6404(b) of the New York Insurance Law.

It is again recommended that the Company implement the following concerning its title insurance premiums and fees, and other fees receivable, pursuant to the provision of Section 6404(b) of the New York Insurance Law:

- (i) Record premiums and fees when due.
- (ii) Maintain an aged listing of uncollected premiums.

2. Agency Agreements

Agency agreements and audit reports of agents transacting title insurance business on behalf of the Company in New York State were reviewed to determine whether the Company was following the contractual provisions of the agency agreements. The following exceptions were noted:

- (i) The audit reports revealed that some agents failed to maintain escrow accounts in accordance with the terms of the agency agreements.
- (ii) In some instances escrow deposits were commingled, which were held on behalf of the Company.
- (iii) Relative to remittances, some agents regularly disregard a clause in the agreement requiring remittances of premiums on a monthly basis.

It is again recommended that the Company implement the following concerning its agency agreements:

- (i) Adhere strictly to the standard provision of the agreements with its agents, with regards to the maintenance of escrow accounts which are separate from the agents other operating accounts, and other title insurers escrow accounts.
- (ii) Seek to obtain timely remittances of escrow deposits and premiums from its agents.

3. Policy Number Control Log

The Company maintains a policy number control log, to keep a record of the policy numbers issued to their agents. Policy numbers are distributed to the agents based upon past activity by the box (each box contains a maximum of 200 policies) unless otherwise directed, and all policy jackets are pre-numbered and issued in sequential order. Aside from two agents, there are no other instances where agents are issued 200 policies at a time. The examiner inspected the policy number control log for the period under examination and noted numerous instances where there was no indication that policy numbers assigned to agents had been used. The examiner also noted many instances where additional policy numbers were assigned to agents and there was no policy number reconciliation performed to ensure that all previously issued policy numbers had been exhausted.

This situation was brought to the Company's attention. However, no documentation was provided to indicate that the Company performed a reconciliation of the agents' issued and unused policy numbers. The Company indicated that they could determine if the agent used all the issued policy numbers during the agents' audit, and if any numbers were missing they could be detected at the time of audit. The examiner noted that during the review of the Company's agents' audit reports, there were no instances where the Company's internal auditors performed a reconciliation of the agents' issued and unused policy numbers.

It is again recommended that the Company implement the following concerning its issuance of policy numbers:

- (i) Incorporate better internal control in assigning policy numbers to their agents and their branch offices.
- (ii) Perform a reconciliation of the agents' issued and unused policy numbers prior to issuing new policy numbers, this will help minimize the internal control deficiencies in accounting for missing policy numbers.

3. FINANCIAL STATEMENTS

A. Balance Sheet

The following compares the assets, liabilities and surplus as regards policyholders as determined by this examination as of December 31, 2000. It is the same as the balance sheet filed by the Company.

	<u>EXAMINATION</u>				<u>COMPANY</u>		Surplus Increase (Decrease)
	<u>Ledger Assets</u>	<u>Non-Ledger Assets</u>	<u>Not-Admitted Assets</u>	<u>Admitted Assets</u>	<u>Assets</u>		
Bonds	\$42,036,087			\$42,036,087	\$42,036,087		
Common stocks	19,929,554	\$1,845,937	\$5,726,220	16,049,271	16,049,271		
Mortgage loans on real estate							
first liens	177,529			177,529	177,529		
Real estate	8,288,142		8,288,142		8,288,142		\$(8,288,142)
Cash	14,834,025			14,834,025	14,834,025		
Title plants	152,232			152,232	152,232		
Title insurance premiums and fees receivable	528,493		50,378	478,115	478,115		
Federal income tax recoverable	662,642		562,642	100,000	662,642		
	(562,642)						
Electronic data processing equipment	1,757,660			1,757,660	1,757,660		
Interest, dividends due and accrued Receivable from parent, subsidiaries and affiliates	5,855,239	1,434,654	5,855,239				
Other assets	2,834,239		2,834,239				
Notes on premium	77,667			77,667	77,667		
Deposits and prepaid	<u>1,420,506</u>	<u> </u>	<u>1,009,993</u>	<u> </u>	<u>410,513</u>	<u> </u>	
Total assets	<u>\$98,554,015</u>	<u>\$3,280,591</u>	<u>\$24,326,853</u>	<u>\$77,507,753</u>	<u>\$86,358,537</u>	<u>\$ </u>	<u>\$(8,850,784)</u>

<u>Liabilities</u>	<u>Examination</u>	<u>Company</u>	Surplus Increase (Decrease)
Known claims reserve	\$7,059,089	\$6,078,564	\$(980,525)
Statutory premium reserve	18,919,153	18,919,153	
Other expenses	3,858,994	3,858,994	
Taxes, licenses and fees	2,113,355	2,113,355	
Premiums and other consideration received in advance	8,223,193	8,223,193	
Payable for securities	781,526	781,526	
Recording fees and taxes payable	(2,648,386)	(2,648,386)	
Contract payable	250,010	250,010	
Accrued interest on note payable	<u>7,210</u>	<u>7,210</u>	_____
Total liabilities	<u>\$38,564,144</u>	<u>\$37,583,619</u>	<u>\$(980,525)</u>
 <u>Surplus</u>			
Common capital stock	\$1,000,000	\$1,000,000	
Gross paid in and contributed surplus	48,270,243	48,270,243	
Unassigned funds	<u>(10,326,634)</u>	<u>(495,325)</u>	<u>\$(9,831,309)</u>
Surplus as regards policyholders	<u>\$38,943,609</u>	<u>\$48,774,918</u>	<u>\$(9,831,309)</u>
Total liabilities and surplus as regards policyholders	<u>\$77,507,753</u>	<u>\$86,358,537</u>	

Note: The Internal Revenue Service has completed its audits of the Company's consolidated federal income tax returns filed on behalf of the Company through tax year 1996. All material adjustments, if any made subsequent to the date of examination and arising from said audits, are reflected in the financial statements included in this report. Audits covering tax years 1997 through 1999 are currently in progress. The audit for the year 2000 has yet to commence. Except for any impact which might result from the examination changes contained in this report, the examiner is unaware of any potential exposure of the Company to any further tax assessment and no liability has been established herein relative to such contingency.

B. Operations and Investment Exhibit

Surplus as regards policyholders increased \$7,492,481 during the six-year examination period, January 1, 1995 through December 31, 2000, detailed as follows:

Statement of Income

Operating Income

Premiums and fees earned	\$527,597,993
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Deductions:

Loss and loss adjustment expenses incurred	\$20,993,769
Operating expenses incurred	<u>508,685,008</u>

Total operating deductions	<u>529,678,777</u>
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Net operating loss	\$(2,080,784)
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Investment Income

Net investment income earned	\$19,706,509
Net realized capital gains	<u>3,583,236</u>

Net investment gain	<u>23,289,745</u>
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Net income before federal income taxes	\$21,208,961
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Federal income taxes	<u>6,762,814</u>
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Net income	<u>\$14,446,147</u>
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Capital and Surplus Account

Surplus as regards policyholders, per report on examination as of December 31, 1994			\$31,451,128
	<u>Gains</u>	<u>Losses</u>	
Net income	\$14,446,147		
Net unrealized capital losses		\$5,943,888	
Change in non-admitted assets		11,172,666	
Paid in capital	\$15,162,888		
Dividends to stockholders	<u> </u>	<u>5,000,000</u>	
Total gains and losses	<u>\$29,609,035</u>	<u>\$22,116,554</u>	
Net increase in surplus as regards policyholders			<u>\$7,492,481</u>
Surplus as regards policyholders, per report on examination as of December 31, 2000			<u>\$38,943,609</u>

4. REAL ESTATE

The admitted asset of \$8,288,142 reported by the Company in its December 31, 2001 annual statement has been classified as a not admitted asset in this report.

Section 1404(a)(5)(B)(v) provides the following relative to the acquisition of real estate serving as an insurer's principal office:

“(v) Except with the superintendent’s approval, no domestic insurer shall: (I) acquire any real property pursuant to items (i) and (ii) of subparagraph (A) of this paragraph, if the real property being acquired is greater than one percent of the insurer’s admitted assets as shown by its last statement on file with the superintendent...”

The Company did not receive the approval required by the above-cited section of the Insurance Law.

Section 1412 of the New York Insurance Law provides that:

“(a) Every domestic insurer shall forthwith dispose of any investment acquired in violation of the law in force at the date of acquisition. (b) In determining the financial condition of any such insurer, the value of any wholly ineligible investments, and the value of any investment in excess of any limitation prescribed in this chapter, shall be deducted as a non-admitted asset of such insurer.”

During calendar year 2001, the Company’s independent accountants audited FATICONY’s December 31, 2000 financial statements. In their audit report issued subsequent to the Company’s filing of its annual statement with this Department, the independent auditors disallowed credit for the Company’s real estate investment for the reasons cited above.

While the Department will not require the Company to dispose of this investment, the Company should immediately submit all documentation regarding this transaction to the Department for review.

5. FEDERAL INCOME TAX RECOVERABLE

The admitted asset of \$100,000 is \$562,642 less than the \$662,642 reported by the Company in its December 31, 2000 annual statement. Pursuant to the requirements of Circular Letter No. 15 (1975) Federal income taxes recoverable should be collected within a reasonable time in order to be considered an admitted asset. As of the completion date of this examination, \$562,642 of the recoverable had not been collected and is not admitted herein.

6. KNOWN CLAIM RESERVE

The examination liability of \$7,059,089 is \$980,525 more than the \$6,078,564 reported by the Company as of December 31, 2000. The examination analysis was conducted in accordance with generally accepted actuarial principles and practices and was based on statistical information contained in the Company's internal records and in its filed annual statement and was based on a six month development of claims reported as of the examination date.

7. MARKET CONDUCT ACTIVITIES

In the course of this examination a review was made of the manner in which the Company conducts its business practices and fulfills its contractual obligations to policyholders and claimants. The review was general in nature and is not to be construed to encompass the generally more precise scope of a market conduct investigation. The general review was directed at the Company's practices in the following major areas:

- A) Sales and advertising
- B) Underwriting
- C) Rating

The examiners reviewed the Company's advertising material, applications and policy forms, agents audit reports, and correspondence files. In addition, the examiners performed an analysis of the rates charged on title policies and reviewed the Company's claim register.

No problem areas were encountered.

6. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

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

<u>ITEM</u>	<u>PAGE NO.</u>
<p>A. Members of the board have a fiduciary responsibility and must evince an ongoing interest in the affairs of the insurer. It is essential that board members attend meetings consistently and set forth their views on relevant matters so that appropriate policy decisions may be reached by the board. Individuals who fail to attend at least one-half of the board's regular meetings, unless appropriately excused, do not fulfill such criteria. Board members who are unable or unwilling to attend meetings consistently should resign or be replaced.</p> <p>The Company did not comply with this recommendation for the period 1995-1999. They did however, comply beginning in the year 2000.</p>	5
<p>B. A review was made of the American Land Title Association Facultative Reinsurance agreement utilized by the Company during the period under examination, and the agreement was found to be in violation of the provisions of Section 1308 of the New York State Insurance Law.</p> <p>FATICO has complied with this comment since there has been an amendment to Section 1308(2)(B)(1) of the New York Insurance Law, and such amendment makes the agreement comply with the law.</p>	7
<p>C. It is recommended that the Company comply with the provisions of Section 307(a)(1) of the New York State Insurance Law, with respect to the completion of Schedule F of the filed annual statements.</p> <p>FATICO has complied with the above recommendation by completing Schedule F of their filed annual statements.</p>	8
<p>D. It is recommended that the Company comply with the provisions of</p>	10

Section 307(b) of the New York State Insurance Law and Department Regulation 118 with respect to its written engagement contracts with its CPAs.

ITEMPAGE NO.

FATICO has complied with this recommendation by having engagement letters with their independent CPA firm that comply with Section 307(b) of the New York Insurance Law and Department Regulation 118.

E. It is recommended that the Company implement the following concerning conflict of interest statements: 11

(i) That the Company establish a procedure to distribute conflict of interest statements annually to directors, officers and responsible employees.

(ii) Establish a procedure for enforcing such a policy and permit the board of directors to properly oversee and handle any conflicts disclosed.

(iii) That the board of directors maintain complete minutes of its proceedings on such matters.

FATICO has complied with this recommendation by establishing a procedure for distributing conflict of interest statements and having the Company's chief financial officer being responsible to properly oversee and handle any conflicts that are disclosed.

It is recommended that the Company implement the following concerning its title insurance premiums and fees, and other fees receivable: 12

(i) That the Company record premiums and fees when due, pursuant to the provisions of Section 6404(b) of the New York State Insurance Law.

(ii) That the Company maintain an aged listing of uncollected premiums pursuant to Section 6404(b) of the New York State Insurance Law.

The Company has not complied with this recommendation in regards to agent generated business. The Company indicated that premiums and fees are recorded when received from their agent or Company employee after the title is closed. No policy is issued unless the premiums associated with that policy is collected at closing. A review of the premiums receivable revealed that some

agents do not remit premiums in a timely manner and that the Company has not instituted adequate controls to ensure the aging of premiums and that any overdue premiums are properly recorded.

ITEMPAGE NO.

G. It is recommended that the Company implement the following concerning its agency agreements: 14

(i) That the Company adhere strictly to the standard provision of the agreements with its agents, as regards the maintenance of escrow accounts which are separate from the agents other operating accounts and other title insurers escrow.

(ii) The Company seek to ensure that the agents maintain accurate records of all escrow deposits held.

(iii) That the Company seek to obtain timely remittances of escrow deposits and premiums from its agents.

FATICO has not completely complied with this recommendation. The Company utilizes agency auditors to insure adherence to agency contracts regarding the maintenance and accuracy of escrow accounts. However, the Company makes exception for some of the requirements depending on the situation.

H. It is recommended that the Company implement the following concerning its issuance of policy numbers: 15

(i) That the Company incorporate better internal control in assigning policy numbers to their agents and their branch offices.

(ii) The Company perform a reconciliation of the agents issued and unissued policy numbers prior to issuing new policy numbers, this will help minimize the internal control deficiencies in accounting for missing policy numbers.

FATICO has not complied with this recommendation. The Company still does not perform a reconciliation of the agents' issued and unissued policy numbers prior to issuing new policy numbers. Yet, the Company does utilize a policy log to keep track of what policy numbers have been issued to each agent. Upon submission of the completed executed policy by the agent, the policy is scanned and logged into the policy system and marked as used and cross-referenced to the closed title number. No actual reconciliation is completed by the Company to determine the issued and unissued policies.

<u>ITEM</u>	<u>PAGE NO.</u>
<p>I. It is recommended that the Company transfer all securities held under custodial or safekeeping arrangements by Prudential Bache Securities to a bank or trust company licensed by the United States, if such bank or trust company is regularly examined by a United States federal or state authority pursuant to the guidelines set forth in the NAIC Examiners Handbook.</p> <p>Subsequent to the examination date, the Company transferred all securities held in custody by Prudential Bache Securities to a qualified bank.</p>	16
<p>J. It is recommended that the Company value its stocks at the lesser of its market value or book value as set forth in Section 1414(b)(1) of the New York State Insurance Law.</p> <p>FATICO has complied with this recommendation.</p>	20
<p>K. It is recommended that the Company dispose of the investment acquired in violation of Section 1407(a)(4) of the New York State Insurance Law as set forth in Section 1412(a) of the New York State Insurance Law.</p> <p>FATICO has complied with this recommendation by selling all investments that violated Section 1407(a)(4) of the New York Insurance Law as set forth in Section 1412(a) of the New York State Insurance Law.</p>	21
<p>L. It is recommended that the Company adjust its books and records to reflect the \$258,000 decrease in the preferred stocks as determined by this examination.</p> <p>FATICO has complied with this recommendation by selling the above mentioned preferred stock.</p>	21
<p>M. As a result of several events which took place subsequent to the examination date, the impairment of the Company's statutory premium reserve has been eliminated by the restoration to bonds of \$26,216,333 and to interest, dividends, real estate income due and accrued of \$329,598, which had been not admitted pursuant to the exam review of bonds.</p>	27

7. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>	<u>PAGE NO.</u>
A. It is recommended that the Company comply with their cost allocation agreement and Section 1505(a)(3) of the New York Insurance Law.	8
It should also be pointed out that the Company's failure to settle its balances with its parent in fact constitutes an interest free loan to its parent. It is recommended that the Company collect any and all interest due it form its parent as a result of this loan.	8
B. Loans made by the Company to its parent relative to the acquisition of real estate appear to be a violation of Section 1505(c) of the New York Insurance Law.	8
C. The Company did not receive the approval required by Section 1404(a)(5)(B)(v) when acquiring its home office real estate.	9
D. It is recommended that FATICONY submit a completed lease agreement for the Superintendent's approval in order to comply with Section 1505(d) of the New York Insurance Law.	9
E. It is recommended that the Company comply with Circular Letter 33 (1975) and Circular Letter 15 (1979). It is also recommended that the Company's parent settle its Federal Income Tax balances due to its affiliates in a timely manner.	10
F. It is again recommended that the Company implement the following concerning its title insurance premiums and fees, and other fees receivable, pursuant to the provisions of Section 6404(b) of the New York Insurance Law:	12
(i) Record premiums and fees when due.	
(ii) Maintain an aged listing of uncollected premiums.	
G. It is again recommended that the Company implement the following concerning its agency agreements:	13
(i) Adhere strictly to the standard provision of the agreements with its agents, with regards to the maintenance of escrow accounts which are separate from the agents other operating accounts and other title insurers escrow.	

(ii) Seek to obtain timely remittances of escrow deposits and premiums from its agents.

H. It is again recommended that the Company implement the following concerning its issuance of policy numbers: 14

(i) Incorporate better internal control in assigning policy numbers to their agents and their branch offices.

(ii) Perform a reconciliation of the agents' issued and unused policy numbers prior to issuing new policy numbers, this will help minimize the internal control deficiencies in accounting for missing policy numbers.

I. The Company should immediately submit all documentation regarding its real estate acquisition to the Department for review. 19

Appointment No. 21663

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:

Marc Bruckstein

as proper person to examine into the affairs of the

FIRST AMERICAN TITLE INSURANCE COMPANY OF NEW YORK

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

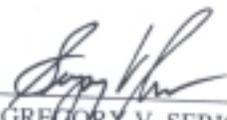
Company

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 27th day of December, 2000




GREGORY V. SERIO

First Deputy Superintendent of Insurance