

ASSOCIATION REPORT ON EXAMINATION
OF THE
GERLING AMERICA INSURANCE COMPANY
AS OF
DECEMBER 31, 1998

<u>Zones</u> <u>Represented</u>	<u>States</u> <u>Participating</u>	<u>Examiners</u>
I	New York	Melba Bolic, CFE
II	Mississippi	James F. O'Sullivan, CFE
IV	Nevada	J. Richard Jackson, CFE, CIE, CLU, FLMI

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Chairman, Financial Condition (EX4)
Subcommittee, NAIC
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Insurance Commissioner
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Jackson, Mississippi 39201

Honorable Kerry Barnett
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Salem, Oregon 97310

Honorable Neil D. Levin
Superintendent of Insurance
State of New York
Albany, New York

Honorable Alfonso E. Mastrostefano
Secretary, Northeastern Zone
Superintendent of Insurance
State of Rhode Island
Providence, Rhode Island 02903-4233

Sirs/Madam:

In accordance with your several instructions, an Association Examination has been made, as of December 31, 1998 into the financial condition and affairs of the Gerling America Insurance Company and the following report is thereon respectfully submitted.

Where the designations "Company" or "GAIC" appear herein without qualification, they should be understood to mean Gerling America Insurance Company.

This examination has determined that the Company was insolvent in the amount of \$56,704,566,

its capital stock was impaired in the amount of \$61,704,566 and its required to be maintained surplus of \$35,000,000 was impaired in the amount of \$91,704,566.

Subsequent to the date of this examination, the master reinsurance agreement with the Company's parent Gerling Konzern Allgemeine Versicherungs-AG ("GKA"), described in item 2(c) herein, was amended to provide for an additional \$125,000,000 in coverage for loss payments made after December 31, 1997, for casualty claims incurred on or before December 31, 1998. By amending the agreement to include the additional coverage, the loss and loss adjustment expense reserve deficiencies set forth in this report's financial statements would be transferred to GKA subsequent to the date of determination. Additionally, GKA provided appropriate collateral to fund the cession. The effect of this amendment to the reinsurance agreement eliminates the insolvency as well as the capital stock and surplus impairments determined by this examination and reflected in the financial statements contained herein.

REPORT ON EXAMINATION
OF
GERLING AMERICA INSURANCE COMPANY
AS OF
DECEMBER 31, 1998

DATE OF REPORT

APRIL 10, 2001

EXAMINER

MELBA BOLIC

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STATE OF NEW YORK
INSURANCE DEPARTMENT
25 Beaver Street
New York, New York 10004

August 4, 1999

Honorable Neil D. Levin
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 21335 dated December 15, 1998, attached hereto, I have made an examination into the condition and affairs of the Gerling America Insurance Company as of December 31, 1998, and submit the following report thereon.

The examination was conducted at the Company's home office located at 717 5th Avenue, New York, New York 10022.

Where the designations "the Company" or "GAIC" appear herein without qualification, they should be understood to indicate Gerling America Insurance Company.

This examination has determined that the Company was insolvent in the amount of \$56,704,566, its capital stock was impaired in the amount of \$61,704,566 and its required to be maintained surplus of \$35,000,000 was impaired in the amount of \$91,704,566.

Subsequent to the date of this examination, the master reinsurance agreement with the Company's parent Gerling Konzern Allgemeine Versicherungs-AG ("GKA"), described in item 2(c) herein, was amended to provide for an additional \$125,000,000 in coverage for loss payments made after December 31, 1997, for casualty claims incurred on or before December 31, 1998. By amending the agreement to include the additional coverage, the loss and loss adjustment expense reserve deficiencies set forth in this report's financial statements would be transferred to GKA subsequent to the date of determination. Additionally, GKA provided appropriate collateral to fund the cession. The effect of this amendment to the reinsurance agreement eliminates the insolvency as well as the capital stock and surplus impairments determined by this examination and reflected in the financial statements contained herein.

1. SCOPE OF EXAMINATION

The previous examination was conducted as of December 31, 1994. This examination covered the four-year period from January 1, 1995, through December 31, 1998. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner. The examination was limited in its scope and only those balance sheet items considered by this Department to require analysis, verification or description were reviewed. The items reviewed were: 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 public accountants. A review or audit was also made of the following items as called for in the Examiners Handbook of the National Association of Insurance Commissioners:

- History of Company
- Management and control
- Corporate records
- Fidelity bond and other insurance
- Territory and plan of operation
- Market conduct activities
- Growth of Company
- Business in force by states
- Reinsurance
- 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 contained 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 under the laws of the State of New York on March 4, 1981 and commenced business on June 24, 1982. The paid-in capital of \$5,000,000 is comprised of one hundred authorized and outstanding common shares at \$50,000 par value per share.

Prior to December 30, 1994, ninety-nine percent (99%) of the common stock of the Company was owned by Gerling Global Reinsurance Corporation-U.S. Branch and one percent (1%) was owned by Gerling Security Corporation AG (Switzerland). On December 30, 1994, all common stock shares held by the U.S. Branch were sold to Gerling-Konzern Allgemeine Versicherungs AG ("GKA") an affiliate located in Cologne, Germany. On June 30, 1995, Gerling Security Corporation AG sold its one percent (1%) share to GKA.

In June 1995, December 1997 and December 1998, the Company received capital contributions from GKA in the amounts of \$50,000,000, \$5,000,000 and \$16,000,000 respectively. At December 31, 1998, the gross paid in and contributed surplus amounted to \$115,191,919.

A. Management

Pursuant to the Company's charter and by-laws, the management of the Company is vested in a board of directors consisting of not less than 13 nor more than 21 members. As of December 31, 1998, the board of directors was comprised of thirteen members. The directors as of December 31, 1998, were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Richard D. Barger San Marino, CA	Partner, Barger & Wolen Law Offices
Richard M. Barrow Baldwin, NY	Senior Vice President, Treasurer and Chief Financial Officer, Gerling America Insurance Company
Larry A. Crotser Westwood, NJ	Vice President, Gerling America Insurance Company
Mark G. Davidowitz Merrick, NY	Vice President and Controller, Gerling America Insurance Company
Dr. Hermann Jorissen Cologne, Germany	Member of the Executive Board, Gerling-Konzern Allgemeine Versicherungs AG
Michael P. LaRocca Paramus, NJ	Vice President, Gerling America Insurance Company
Peter Q. Noack West Harrison, NY	President and Chief Executive Officer, Gerling America Insurance Company
Dietmar Nowak Cologne, Germany	Member of the Executive Board, Gerling-Konzern Allgemeine Versicherungs AG
Joseph L. Pulvirenti Woodhaven, NY	Vice President and Corporate Secretary, Gerling America Insurance Company
Thomas E. Reineke Cologne, Germany	Chairman of the Executive Board, Gerling-Konzern Allgemeine Versicherungs AG
Uwe C. Schoberth Chicago, IL	Vice President, Gerling America Insurance Company
Daniel P. Vetter Rye, NY	Vice President, Gerling America Insurance Company
Dr. Juergen Zech Cologne, Germany	President of the Executive Board, Gerling-Konzern Versicherungs Beteiligungs AG

The minutes of all meetings of the board of directors and committees thereof held during the examination period were reviewed. The board met once during the year 1995 and twice during the years 1996 through 1998. A review of the minutes revealed that the meetings were well attended and each director had an acceptable attendance record.

At December 31, 1998, the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
Peter Q. Noack	President and Chief Executive Officer
Joseph L. Pulvirenti	Vice President and Corporate Secretary
Richard M. Barrow	Senior Vice President, Treasurer and Chief Financial Officer

The Company's procedure for disclosing conflict of interest by its directors, officers and key employees was reviewed. The Company distributes conflict of interest statements annually to each director or officer. During the examination period, no conflicts of interest were disclosed to the board of directors. However, it is noted that conflict of interest statements were not received from the following officers, directors or key employees:

<u>Director or Officer</u>	<u>Years missing:</u>
Steven M. Calascione	1996, 1997
Robert W. Wooldredge	1996, 1997

It was noted that the above-mentioned directors or officers are no longer with the Company as of December 31, 1998.

It is recommended that the Company endeavor to ensure that all directors, officers and key employees complete conflict of interest statements on a yearly basis.

B. Territory and Plan of Operation

At December 31, 1998, the Company was licensed to transact business in the District of Columbia and all states except New Hampshire.

The following schedule shows direct premiums written by the Company countrywide and in New York State for the years within the examination period:

Calendar Year	<u>Direct Premiums Written</u>		
	<u>Total United States</u>	<u>New York State</u>	Percentage of U.S. Premiums written in New <u>York State</u>
1995	\$107,122,535	\$17,692,040	16.52%
1996	\$105,879,618	\$22,108,613	20.88%
1997	\$ 96,963,337	\$19,236,954	19.84%
1998	\$ 85,231,784	\$14,889,455	17.47%

As of December 31, 1998, the Company was authorized to transact the kinds of insurance as defined in the following numbered paragraphs of Section 1113(a) of the New York Insurance Law:

<u>Paragraph</u>	<u>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
17	Credit
19	Motor vehicle and aircraft physical damage
20	Marine and inland marine
21	Marine protection and indemnity

The Company is empowered to transact such workers' compensation insurance as may be incident to coverages contemplated under paragraphs 20 and 21 of Section 1113(a), including insurance described

in the Longshoremen's and Harbor Workers' Compensation Act (Public Law No. 803, 69 Cong. as amended; 33 USC Section 901 et seq. as amended).

The Company is also licensed to write Special Risk Insurance pursuant to Article 63 of the New York Insurance Law.

On May 24, 1996, the Department authorized the Company, subject to statutory exception and charter exclusion, to reinsure risks of every kind or description, and to insure property or risks of every kind or description located or resident outside of the United States, its territories and possessions, as provided in Section 4102(c) of the New York Insurance Law.

Based on the lines of business for which the Company is licensed, and the Company's current capital structure, and pursuant to the requirements of Articles 13 and 41 of the New York Insurance Law, Gerling America Insurance Company is required to maintain a surplus to policyholders in the amount of \$35,000,000.

All of the Company's business is produced through brokers. The Company is primarily a casualty insurer, with approximately 56.23% of its gross writings in casualty, 31.57% in property and the remainder in ocean marine. The Company primarily markets commercial lines to industrial clients in the United States as well as to subsidiaries of European companies.

C. Reinsurance

The Schedule F data contained in the Company's annual statements filed for the years within the examination period were found to accurately reflect its reinsurance transactions.

i. Assumed Reinsurance

The Company assumed business from both affiliates and non-affiliates. Assumed business represented approximately 12% of the Company's gross premiums written in 1998.

During 1998, the Company assumed business on a facultative basis from its parent and other affiliates. Such facultative agreements were not submitted to the Department as required by Section 1505(d)(2) of the New York Insurance Law, which states in part:

“...(d) The following transactions between a domestic controlled insurer and any person in its holding company system may not be entered into unless the insurer has notified the superintendent in writing of its intention to enter into any such transactions at least thirty days prior thereto, or such shorter period as he may permit, and he has not disapproved it within such period;

...(2) reinsurance treaties or agreements...”

Subsequent to the date of determination, the Company notified this Department of such transactions. The Company also submitted master reinsurance contract wording that it intends to utilize with its inter-holding company reinsurance transactions. The Department has not objected to the Company's use of such wording.

ii. Ceded Reinsurance

The examiners reviewed all ceded reinsurance contracts in effect as of December 31, 1998. These contracts all contained the required standard clauses, including insolvency clauses, meeting the requirements of Section 1308 of the New York Insurance Law.

The Company had the following ceded reinsurance treaties in effect at December 31, 1998:

<u>Type of treaty</u>	<u>Coverage</u>
<u>Casualty</u>	
First Excess of Loss 100% Authorized	\$700,000 excess of \$300,000 each and every loss occurrence. Limit \$700,000 each and every occurrence.
First Clash Excess of Loss	\$9,000,000 excess of \$1,000,000.
Second Clash Excess of Loss	\$5,000,000 excess of \$10,000,000.
Umbrella Quota Share 100% Authorized	90% Quota Share of \$10,000,000 each loss, each policy.
Umbrella Excess of Loss 100% Unauthorized	\$15,000,000 excess of \$10,000,000, each loss, each policy.
<u>Property</u>	
Excess of loss First Layer 50% Authorized 50% Unauthorized	\$4,000,000 excess of \$1,000,000 per risk \$5,000,000 excess of \$2,500,000 per occurrence.
Excess of Loss Second Layer 100% Authorized	\$5,000,000 excess of \$5,000,000 each risk, each occurrence. Limit \$15,000,000 each occurrence.
Excess of loss Third Layer 84.62% Authorized 15.38% Unauthorized	\$10,000,000 excess of \$10,000,000 ultimate net loss in respect of each and every loss, each and every risk. Limit \$20,000,000 each occurrence.
Catastrophe Excess of Loss Four layers	95% of \$20,000,000 in excess of \$2,500,000 ultimate net loss in respect of each and every loss occurrence. Limit \$38,000,000 ultimate net loss in respect of all loss occurrences during the term of this agreement.

The four layers of the property catastrophe excess of loss treaty had the following percentages of authorized and unauthorized reinsurer participation:

<u>Layer</u>	<u>Authorized</u>	<u>Unauthorized</u>
1	86.72%	13.28%
2	79.47%	20.53%
3	79.66%	20.34%
4	80.34%	19.66%

In addition, the Company had the following ceded reinsurance agreements in force for business that was outside its normal underwriting guidelines:

<u>Type of Treaty</u>	<u>Coverage</u>
Property Special Surplus 100% Unauthorized	Eight times the Company's net retention up to a limit of \$5,000,000; minimum net retention of \$250,000 each risk.
<u>Ocean Marine</u>	
Quota Share 100% Unauthorized	20% quota share of the Company's net retained liability.
Excess of loss Seven layers 82.5% Authorized 17.5% Unauthorized	\$30,000,000 ultimate net loss each and every occurrence excess of \$250,000 ultimate net loss each and every occurrence.
Excess of Loss Back-Up 100% Authorized	\$750,000 excess of \$250,000 each and every occurrence. Limit not to exceed \$750,000 each and every occurrence.

The above quota share treaty was ceded to the Company's parent Gerling Konzern Allgemeine Versicherungs-AG ("GKA"). This treaty, effective July 1, 1997, was submitted to the Department for approval on February 3, 1998. In addition, it was amended effective January 1, 1998, and submitted for

approval on February 3, 1998. Furthermore, a second amendment effective April 1, 1998, was not submitted to the Department's for approval until June 17, 1998.

Section 1505(d)(2) of the New York Insurance Law states in part:

“The following transactions between a domestic controlled insurer and any person in its holding company system may not be entered into unless the insurer has notified the Superintendent in writing of its intention to enter into any such transaction at least thirty days prior thereto, or such shorter period as he may permit, and he has not disapproved it within such period:

Reinsurance treaties or agreements...”

The Company has submitted to this Department master reinsurance agreement wording which it intends to utilize with its inter-company reinsurance transactions. The Department has not objected to the Company's use of such wording.

During the period under examination, GAIC was a party to a stop loss reinsurance agreement with its parent, Gerling-Konzern Allgemeine Versicherungs AG (“GKA”), which covered all business written by the Company. Under the provisions of this agreement, GKA paid 94% of net losses incurred by the Company that exceeded 85% of the net premiums earned during any one calendar year, subject to a maximum aggregate of \$10,000,000. During 1998, 1997, 1996 and 1995, GAIC paid annual premiums of \$1,000,000, \$250,000, \$250,000 and \$150,000, respectively, for this coverage. In 1998 and 1997, the Company recorded as “Other Income” a net retroactive reinsurance gain from this agreement of \$9,000,000 and \$9,750,000, respectively. The agreement was cancelled as of December 31, 1998. Subsequently, on March 2, 1999, a similar agreement was entered into as an Addendum No.1 “Stop loss reinsurance agreement” to the master reinsurance agreement mentioned below.

During 1998, the Company entered into a master reinsurance agreement with GKA to be used for all inter-holding company reinsurance transactions. In addition to addendum No. 1 “Stop loss reinsurance agreement” mentioned above, during 1998, the Company entered into the following addenda to the master reinsurance agreement:

Addendum No.1 “Aggregate Excess of Loss Reinsurance Agreement”

This addendum, effective December 31, 1998, states that GKA will indemnify the Company up to a limit of \$100,000,000 in excess of the ultimate net loss of \$118,000,000. It covers all casualty losses paid on or after January 1, 1998 on losses occurring on or before December 31, 1998.

Addendum No. 2 “Aggregate Excess of Loss Reinsurance Agreement”

This addendum, effective December 31, 1998, covers (within the \$100,000,000 million treaty limit) any underwriting loss to the Company as a result of a dispute from any of its reinsurers, which involves casualty business subject to the treaty.

GAIC paid a premium of \$10,000,000 for the coverage afforded by both addenda.

In 1998, the Company ceded \$31,235,000 of loss reserves to this treaty and reported such cession on its balance sheet as a contra-liability, “Retroactive reinsurance reserves.” In 1998, the Company also recorded as “Other income” a net retroactive reinsurance gain from this treaty of \$21,235,000.

The master reinsurance agreement and addenda were submitted to the Department pursuant to Section 1505(d)(2) of the New York Insurance Law.

D. Holding Company System

Gerling America Insurance Company is a member of the Gerling Group of Insurance Companies. Gerling Konzern Allgemeine Versicherungs AG (“GKA”) owns 100% of the Company’s stocks. Gerling-Konzern Versicherungs Beteiligungs-Aktiengesellschaft (“GKB”) owns 89.5% of GKA. Both companies are located in Cologne, Germany. The group is comprised of a large number of related entities in Germany, as well as throughout the world. GAIC made annual filings as required by Department Regulation 52.

On March 18, 1996, the Company acquired 99.9% of Gerling de Mexico Seguros S.A. (“Gerling Mexico”) at a cost of \$5,494,500. One-tenth of one percent is owned by GKA. On December 18, 1998, the Company contributed capital to Gerling Mexico in the amount of \$1,998,000.

The following organizational chart was derived from the Company’s 1998 filed annual statement:

The NAIC Annual Statement Instructions for Property/Casualty Insurance Companies for Schedule

Y - Part 1 – Organization chart, states the following:

“Attach a chart or listing presenting the identities of an interrelationships between the parent, all affiliated insurers and other affiliates, identifying insurers as such and listing the Federal Employer’s Identification Number for each. The NAIC company code and two-letter state abbreviation of the state of domicile should be included for all domestic insurers. The relationships of the holding company group to the ultimate controlling person (if such person is outside the reported holding company) should be shown. No non-insurer (excluding the parent company) need to be shown if it does not have any activities reported in Schedule Y, Part 2 and its total assets are less than one-half of one percent of the total assets of the largest affiliated insurers.”

GAIC’s holding company charts included in its 1995-1998 annual statements were incomplete. The Company failed to include all of its worldwide affiliated companies in its holding company chart or schedule. The following insurance companies were missing from the Company’s 1998 holding company chart:

Direct Insurance Group

Gerling Canada Insurance Company, Toronto, Canada
 Gerling Australia Insurance Company Pty. Ltd., Sydney, Australia
 Gerling General Insurance of South Africa Ltd., Johannesburg, South Africa
 Gerling Polska Towarzystwo Ubezpiecze S. A., Warsaw, Poland
 Poistovna Gerling Slovensko A.S., Bratislava, Slovak Republic
 Gerling Sul America S.A. Seguros Industrials, Rio de Janeiro, Brazil
 Rex Re Insurance Ltd., Hamilton, Bermuda
 Gerling Global Life Reassurance Company (UK) Ltd., London, England
 Gerling Global Life Insurance Company, Toronto, Canada

Credit Insurance Group

Germany Nordic Kreditforsikring AS, Oslo, Norway
 Gerling Namur Assurances du Credit S.A. Jambes-Namur, Belgium
 Societe d’Assurance Credit des Entreprises, S.A. Le Mans, France
 Namur Re SA Luxembourg, Luxembourg

Reinsurance Group

Gerling Global General and Reinsurance Company Ltd., (UK) London, England
 Gerling Global Reinsurance Company Ltd., Dublin, Ireland

Gerling Global Sweden Reinsurance Company Ltd., Stockholm, Sweden
Gerling Global Reinsurance Company of South Africa Ltd., Johannesburg, South Africa
Gerling Global Reinsurance Company of Australia Pty. Ltd., Sydney, Australia
Gerling Global Life Reinsurance Company of Australia Pty. Ltd., Sydney, Australia
Gerling Global Reinsurance Company, Toronto, Canada

Subsequent to the examination period, the Company filed its annual statement as of December 31, 1999, which included a complete chart and schedule.

Management Service Agreement

The Company was a party to an agreement with Gerling Konzern American Service Corporation (“GKAS”), whereby GKAS provides management services for the Company’s insurance business. Under this agreement, GKAS was entitled to reimbursement for expenses directly allocable to the Company’s business. In 1998, 1997, 1996 and 1995, the Company was charged for such expenses \$20,006,000, \$15,766,000, \$11,644,152, \$6,818,598, respectively. On January 1, 1999, the Company discontinued receiving management services from GKAS. On that same date, GKAS’ employees were transferred to GAIC. The Company indicated that although GKAS is currently an inactive servicing company, the GKAS entity remains in existence, as previously incorporated, and the service agreement between GKAS and the Company also remains in existence.

E. Compliance with Regulation 118

The prior report on examination recommended that the Company’s contract with its independent certified public accountant be amended to comply with the provision of Part 89.2 of New York Regulation 118.

The Company provided the examiner with a copy of a letter from Deloitte & Touche, the Company’s independent certified public accountants, addressed to Mr. Richard Barrow, Chief Financial

Officer, indicating that the audit for the year 1998 will comply with Section 307(b) of the New York Insurance Law and the Department's Regulation 118. No such letter was provided for the years 1995 through 1997.

It is recommended that Company obtain a written contract from its independent certified public accountants that conforms to the requirements of Section 307(b) of the New York Insurance Law and with the provisions of Part 89.2 of the Department's Regulation 118, on an annual basis.

F. Abandoned Property Law

Section 1316 of the New York Abandoned Property Law states in part:

“Any amount (except an amount upon which an instrument has been issued which upon its face is non-negotiable by the insured) payable to a resident of this state on or because of a policy of insurance other than life insurance...shall be deemed abandoned property if unclaimed for three years by the person entitled thereto...such abandoned property shall be reported to the comptroller...on or before the first day of April in each succeeding year.”

The Company did not file abandoned property reports with the Office of the New York State Comptroller for the years under examination. Subsequent to the examination period, on July 13, 1999, GAIC filed reports with the Office of the New York State Comptroller.

It is recommended that the Company comply with Section 1316 of the New York Abandoned Property Law and file the requisite abandoned property reports with the Office of the New York State Comptroller, on an annual basis.

G. Significant Operating Ratios

The following ratios have been computed as of December 31, 1998, based upon the results of this examination:

Net premiums written in 1998 to Surplus as regards policyholders	-
Liabilities to Liquid assets (cash and invested Assets less investments in affiliates)	134.28%
Premiums in course of collection to Surplus as regards policyholders	-

The first and third ratios were not calculated due to the insolvency of the Company as determined by this examination. The second ratio exceeds the benchmark range for that ratio as set forth by the Insurance Regulatory Information System of the National Association of Insurance Commissioners, and is due to the examination increase to losses and loss adjustment expense reserves.

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

	<u>Amounts</u>	<u>Ratios</u>
Losses and loss adjustment expenses	\$359,833,472	194.18%
Other underwriting expenses	65,042,239	35.10
Net underwriting loss	<u>(239,566,626)</u>	<u>(129.28)</u>
Premiums earned	<u>\$185,309,085</u>	<u>100.00%</u>

3. FINANCIAL STATEMENTS

A. Balance Sheet

The following shows the assets, liabilities and surplus as regards policyholders as determined by this examination as of December 31, 1998 and as reported by the Company:

Assets	EXAMINATION			COMPANY		Surplus Increase (Decrease)
	Ledger Assets	Non-Ledger Assets	Assets not Admitted	Admitted Assets	Admitted Assets	
Bonds	\$205,187,697			\$205,187,697	\$205,187,697	
Preferred stocks	34,010,165	\$1,905,324		35,915,489	35,915,489	
Common stocks	7,492,500		\$7,492,500	0	6,093,052	\$(6,093,052)
Cash and short-term investments	30,102,404			30,102,404	30,102,404	
Other invested assets	942,500			942,500	942,500	
Premiums and agents' balances course of collection	6,855,291		512,422	6,342,869	6,342,869	
Premiums, agents' balances and installments booked but deferred and not yet due	2,928,972			2,928,972	2,928,972	
Funds held by or deposited with reinsurance companies	1,005,941			1,005,941	1,005,941	
Reinsurance recoverable on losses and loss adjustment expenses	10,023,040			10,023,040	10,023,040	
Federal income tax recoverable	1,728,929			1,728,929	1,728,929	
Interest, dividends and real estate income due and accrued		3,342,855		3,342,855	3,342,855	
Receivables from parent, subsidiaries and affiliates	<u>12,830,481</u>	_____	_____	<u>12,830,481</u>	<u>12,830,481</u>	_____
Total Assets	<u>\$313,107,920</u>	<u>\$5,248,179</u>	<u>\$8,004,922</u>	<u>\$310,351,177</u>	<u>\$316,444,229</u>	<u>\$(6,093,052)</u>

<u>Liabilities, surplus and other funds</u>	<u>Examination</u>	<u>Company</u>	<u>Surplus Increase (Decrease)</u>
Losses and loss adjustment expenses	\$274,400,000	\$134,809,229	\$(139,590,771)
Other expenses	489,000	489,000	
Taxes, licenses and fees	100,000	100,000	
Unearned premium	28,043,199	28,043,199	
Funds held by company under reinsurance treaties	82,188,365	82,188,365	
Provision for reinsurance	11,481,179	1,041,179	(10,440,000)
Retroactive reinsurance	<u>(29,646,000)</u>	<u>(31,235,000)</u>	<u>(1,589,000)</u>
Total liabilities	<u>\$367,055,743</u>	<u>\$215,435,972</u>	<u>\$(151,619,771)</u>
Special surplus from retroactive reinsurance account	\$19,646,000	\$21,235,000	\$(1,589,000)
Common capital stock	5,000,000	5,000,000	
Gross paid in and contributed surplus	115,191,919	115,191,919	
Unassigned funds	<u>(196,542,485)</u>	<u>(40,418,662)</u>	<u>\$(156,123,823)</u>
Surplus as regards policyholders	<u>\$(56,704,566)</u>	<u>\$101,008,257</u>	<u>\$(157,712,823)</u>
Total liabilities and surplus	<u>\$310,351,177</u>	<u>\$316,444,229</u>	

NOTE1: This examination has determined that the Company was insolvent in the amount of \$56,704,566, its capital stock was impaired in the amount of \$61,704,566 and its required to be maintained surplus of \$35,000,000 was impaired in the amount of \$91,704,566.

Subsequent to the date of this examination, the master reinsurance agreement with the Company's parent Gerling Konzern Allgemeine Versicherungs-AG ("GKA"), described in item 2(c) herein, was amended to provide for an additional \$125,000,000 in coverage for loss payments made after December 31, 1997, for casualty claims incurred on or before December 31, 1998. By amending the agreement to include the additional coverage, the loss and loss adjustment expense reserve deficiencies set forth in this report's financial statements would be transferred to GKA subsequent to the date of determination. Additionally, GKA provided appropriate collateral to fund the cession. The effect of this amendment to the reinsurance agreement eliminates the insolvency as well as the capital stock and surplus impairments determined by this examination and reflected in the financial statements contained herein.

NOTE2: The Internal Revenue Service has completed its audits of the Company's federal income tax returns through tax year 1992. All material adjustments, if any, made subsequent to the date of the examination and arising from said audits, are reflected in the financial statements included 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. Underwriting and Investment Exhibit

Surplus as regards policyholders decreased \$106,973,633 during the four year examination period from January 1, 1995 through December 31, 1998, detailed as follows:

Statement of Income

Underwriting Income

Premiums earned		\$185,309,085
Deductions:		
Losses and loss expenses incurred	\$359,833,472	
Other underwriting expenses incurred	<u>65,042,239</u>	
Total underwriting deductions		<u>424,875,711</u>
Net underwriting gain or (loss)		\$(239,566,626)

Investment income

Net investment income earned	\$47,042,905	
Net realized capital gains	<u>4,466,594</u>	
Net investment gain		51,509,499

Other income

Net gain or (loss) from agents balances charged off	\$(915,573)	
Interest paid on funds held	(8,303,592)	
Miscellaneous income (expense)	(994,982)	
Retroactive reinsurance gain	<u>38,396,000</u>	
Total other income		<u>\$28,181,853</u>
Net income before federal and foreign Income tax		\$(159,875,274)
Federal and foreign income taxes		<u>899,800</u>
Net income (Loss)		<u><u>\$(160,775,074)</u></u>

Capital and Surplus Account

Surplus as regards policyholders, per report on examination as of December 31, 1994			\$50,269,067
	<u>Increases in Surplus</u>	<u>Decreases in Surplus</u>	
Net income		\$160,775,074	
Net unrealized capital gains	\$505,876		
Change in non-admitted assets		6,309,363	
Change in liability for reinsurance		11,395,072	
Capital contribution	<u>71,000,000</u>		
Total increases and decreases	<u>\$71,505,876</u>	<u>\$178,479,509</u>	
Net decrease in surplus			<u>\$(106,973,633)</u>
Surplus as regards policyholders, per report on examination as of December 31, 1998			<u>\$(56,704,566)</u>

4. COMMON STOCKS

The Company reported an admitted asset of \$6,093,052 as of December 31, 1998. Pursuant to this examination, the admitted asset has been eliminated. As a result of the insolvency of the Company, the investment in common stock of the Gerling de Mexico Seguros S.A. is not admitted pursuant to Section 1408(b) of the New York Insurance Law, which stated in part:

“...In determining the financial condition of a domestic insurer shares of other insurance companies...in no event shall their aggregate value be allowed as an admitted asset in excess of fifty per centum of the surplus to policyholders or sixty per centum of the surplus of such insurer, which ever is greater.”

5. LOSSES AND LOSS ADJUSTMENT EXPENSES

The examination liability for losses and loss adjustment expenses of \$274,400,000 is \$139,590,771 more than the \$134,809,229 reported by the Company in its December 31, 1998 filed annual statement. 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 statements.

6. PROVISION FOR REINSURANCE

The examination liability of \$11,481,179 is \$10,440,000 more than the \$1,041,179 reported by the Company in its December 31, 1998 filed annual statement. The Company is a party to a reinsurance agreement with GKA, as described in Section 2C herein. The agreement includes a provision that GKA will reimburse the company for any amounts in dispute from any of its reinsurers. At December 31, 1998,

the Company took credit in the “Other allowed offset items” column of Schedule F - Part 5 for an amount in dispute from one of its reinsurers. The offset taken by the Company reflected the coverage provided by GKA. However, since GKA is not a licensed or accredited reinsurer in this state, in order for the Company to take credit for this cession, appropriate funding (i.e., a letter of credit, trust account, or funds held) from GKA should have been obtained in order to reduce this liability. The Company did not have the required funding as of the examination date. Therefore, this liability has been increased to reflect the cession to GKA that was not funded.

7. RETROACTIVE REINSURANCE

The examination negative liability of \$29,646,000 is \$1,589,000 less the \$31,235,000 reported by the Company in its 1998 filed annual statement. Under the terms of the “Master reinsurance agreement” described in Section 2C herein, GKA provides coverage for 100% of all payments made after December 31, 1997 for casualty claims incurred on or before December 31, 1998. Because this agreement provides an element of retrospective coverage, any cessions for accident years prior to the effect of the agreement, are required to be accounted for and reported pursuant to Department Regulation 108 – Loss portfolio transfers.

At December 31, 1998, the Company reported a negative liability for reserves transferred prior to the effective date of the agreement in the amount of \$31,235,000. However, Section 112.5(j) of the Regulation requires that “if the transferee is not an authorized or accredited reinsurer in New York, a Letter of Credit...must be furnished, or funds must be held by the transferor in a manner consistent with Regulation 114...in an amount of the remaining obligations of the transferee to the transferor under the agreement.”

This report reflects credit for the loss portfolio transfer to the extent that appropriate funding was obtained by the Company as of the filing date of its December 31, 1998 annual statement.

It is recommended that GAIC comply with the requirements set forth in Section 112.5(j) of Department's Regulation 108.

8. 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 as to encompass the more precise scope of a market conduct investigation, which is the responsibility of the Market Conduct Unit of the Property Bureau.

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

1. Sales and advertising
2. Underwriting
3. Claims

No problem areas were encountered.

9. CONCLUSION

This examination has determined that the Company was insolvent in the amount of \$56,704,566, its capital stock was impaired in the amount of \$61,704,566 and its required to be maintained surplus of \$35,000,000 was impaired in the amount of \$91,704,566.

10. SUBSEQUENT EVENTS

Subsequent to the date of this examination, the master reinsurance agreement with the Company's parent Gerling Konzern Allgemeine Versicherungs-AG ("GKA"), described in item 2(c) herein, was amended to provide for an additional \$125,000,000 in coverage for loss payments made after December 31, 1997 for casualty claims incurred on or before December 31, 1998. By amending the agreement to include the additional coverage, the loss and loss adjustment expense reserve deficiencies set forth in this report's financial statements would be transferred to GKA subsequent to the date of determination. Additionally, GKA provided appropriate collateral to fund the cession. The effect of this amendment to the reinsurance agreement eliminates the insolvency as well as the capital stock and surplus impairments determined by this examination and reflected in the financial statements contained herein.

11. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior report on examination contained three comments and recommendations, which the Company has acted upon as follows (page numbers refer to the prior report):

ITEM

PAGE NO.

A. Management

It was recommended that the Company endeavor to ensure that all directors and key employees complete conflict of interest statement on a yearly basis.

5

This recommendation is reiterated in this report.

<u>ITEM</u>		<u>PAGE NO.</u>
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B.	<u>Compliance with Regulation 118</u>	
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It was recommended that the Company's contract with its independent certified public accountant be amended to comply with the provisions of Part 89.2 of New York Regulation 118.

14

This recommendation is reiterated in this report.

C.	<u>Fidelity Bond</u>	
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It was recommended that the Company obtain adequate fidelity bond coverage.

14

The Company has complied with this recommendation.

12. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>		<u>PAGE NO.</u>
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A.	<u>Insolvency</u>	
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This examination has determined that the Company was insolvent in the amount of \$56,704,566, its capital stock was impaired in the amount of \$61,704,566 and its required to be maintained surplus of \$35,000,000 was impaired in the amount of \$91,704,566.

1

Subsequent to the date of this examination, the master reinsurance agreement with the Company's parent Gerling Konzern Allgemeine Versicherungs-AG ("GKA"), described in item 2(c) herein, was amended to provide for an additional \$125,000,000 in coverage for loss payments made after December 31, 1997, for casualty claims incurred on or before December 31, 1998. By amending the agreement to include the additional coverage, the loss and loss adjustment expense reserve deficiencies set forth in this report's financial statements would be transferred to GKA subsequent to the date of determination. Additionally, GKA provided appropriate collateral to fund the cession. The effect of this amendment to the reinsurance agreement eliminates the insolvency as well

as the capital stock and surplus impairments determined by this examination and reflected in the financial statements contained herein.

B. Management

It is recommended that the Company endeavor to ensure that all directors, officers and key employees complete conflict of interest statements on a yearly basis. 5

C. Compliance with Regulation 118

It is recommended that the Company's obtain a written contract from its independent certified public accountant that conforms to the requirements of Section 307(b) of the New York Insurance Law and with the provisions of Part 89.2 of New York Regulation 118, on an annual basis. 17

D. Abandoned Property Law

It is recommended that GAIC comply with Section 1316 of the New York Abandoned Property Law and file on a yearly basis, the requisite abandoned property reports with the Office of the New York State Comptroller, on an annual basis. 17

E. Retroactive Reinsurance

It is recommended that GAIC comply with the requirements set forth in Section 112.5(j) of Department's Regulation 108. 25

Respectfully submitted,

/S/

Melba Bolic, CFE
Associate Insurance Examiner

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

MELBA BOLIC, being duly sworn, deposes and says that the foregoing report submitted by her is true to the best of her knowledge and belief.

_____/S/_____

Melba Bolic, CFE

Subscribed and sworn to before me
this _____ day of _____ 2000.

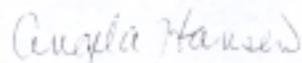
Respectfully submitted.


Richard Jackson, CFE, CIE, CLU, FLMI

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


Richard Jackson

Subscribed and sworn to before me
this 10 day of October 2001.





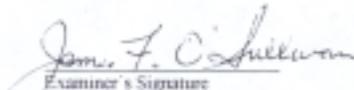
State of New Jersey
County of Bergen

EXAMINER'S AFFIDAVIT AS TO STANDARDS AND PROCEDURES
USED IN AN EXAMINATION

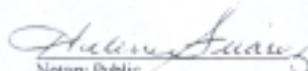
James F. O'Sullivan, BEING DULY SWORN, STATES AS FOLLOWS:

1. I have authority to represent the State of Mississippi in the examination of Gerling America Insurance Company.
2. Mississippi is accredited under the National Association of Insurance Commissioners Financial Regulation Accreditation Standards.
3. I have reviewed the examination work papers and examination report and the examination of Gerling America Insurance Company was performed in a manner consistent with the standards and procedures required by the State of Mississippi.

The affiant says nothing further.


Examiner's Signature

Subscribed and sworn before me by James F. O'Sullivan on this 2nd day of October 2001.


Notary Public

My commission expires _____ HELENA B. ARÁEZ
Notary Public, State of New Jersey
My Commission Expires Nov. 17, 2003

Appointment No 21335

STATE OF NEW YORK
INSURANCE DEPARTMENT

I, NEIL D. LEVIN, Superintendent of Insurance of the State of New York,
pursuant to the provisions of the Insurance Law, do hereby appoint:

Melba Bolic

as proper person to examine into the affairs of the

GERLING AMERICA INSURANCE COMPANY

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

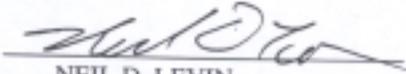
Company

with such other information as she 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 15th day of December, 1998




NEIL D. LEVIN
Superintendent of Insurance

