

REPORT ON EXAMINATION  
OF THE  
GOTHAM INSURANCE COMPANY  
AS OF  
DECEMBER 31, 2000

DATE OF REPORT

NOVEMBER 30, 2001

EXAMINER

MELBA BOLIC, CFE

## 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. Abandoned Property Law	12
	F. Accounts and records	12
	G. Significant operating ratios	13
3.	Financial statements	15
	A. Balance sheet	15
	B. Underwriting and investment exhibit	17
4.	Losses and loss adjustment expenses	19
5.	Market conduct activities	19
6.	Compliance with prior recommendations	19
7.	Summary of comments and recommendations	20



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

November 30, 2001

Honorable Gregory 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 21721, dated April 9, 2001, attached hereto, I have made an examination into the financial condition and affairs of the Gotham Insurance Company as of December 31, 2000, and respectfully submit the following report thereon.

The examination was conducted at the Company's home office located at 330 Madison Avenue, New York, New York 10017. A concurrent examination was made of the Company's parent, New York Marine and General Insurance Company.

Where the designation "Company" appears herein without qualification, it should be understood to indicate the Gotham Insurance Company.

Where the designation "the Department" appears without qualification, it should be understood to indicate the New York Insurance Department.

## 1. SCOPE OF EXAMINATION

The previous examination of the Company was conducted as of December 31, 1995. This examination covers the five-year period from January 1, 1996 through December 31, 2000. Transactions subsequent to this period were reviewed where deemed appropriate by the examiner.

The examination comprised a complete verification of assets and liabilities as of December 31, 2000, a review of income and disbursements deemed necessary to accomplish 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

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 October 17, 1986 under the laws of the State of New York and commenced operations on February 26, 1987. Paid-in capital of \$5,000,000 consists of 50,000 shares of common stock with a par value of \$100 per share. All authorized shares are issued and outstanding.

On December 27, 1989, the Company's charter was amended to authorize an additional 25,000 shares of common stock. The new stock was purchased equally by New York Marine and General Insurance Company and NYMAGIC, Inc., an insurance holding company, for \$5,000,000, respectively. Ownership of the capital stock is now distributed 75% with New York Marine and General Insurance Company and 25% with NYMAGIC, Inc.

### A. Management

The Company entered into a service agreement with its affiliate, Mutual Marine Office, Inc. ("MMO"), under which MMO supplies all services and facilities necessary for the conduct of the Company's business. This agreement is more fully described in Item 2D herein "Holding Company System."

Pursuant to the Company's charter and by-laws, corporate powers are to be exercised by a board of directors consisting of not less than thirteen but not more than nineteen members. As of December 31, 2000, the board of directors was comprised of the following thirteen members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
John R. Anderson Wyckoff, NJ	President & Owner, Cedarhill Consultants Inc.
Robert W. Bailey Darien, CT	Chairman & Chief Executive Officer, NYMAGIC, Inc. and Subsidiaries
Jonathan S. Bannett Madison, NJ	Senior Vice President, Delaware Valley Underwriting Agency of New Jersey, Inc.
John N. Blackman, Jr. Darien, CT	Retired
Mark W. Blackman Darien, CT	Retired
Jean H. Goulding Mamaroneck, NY	Retired
John Kean, Jr. Cold Spring Harbor, NY	Retired
Costa N. Kesington New Brunswick, NJ	Managing Member, Kesington & Ressler, LLC
Charles A. Mitchell Manhasset, NY	Vice President, Mutual Marine Office, Inc. & Affiliates
William R. Scarbrough Bourne, MA	Retired
William A. Thorne Darien, CT	Chairman, Hydrocarbon Products Company
Edward J. Waite, III Morristown, NJ	President, Waite & Associates, LLC
Glenn R. Yanoff Old Brookville, NY	President & Chief Executive Officer, Crackerjack Systems, Inc.

The board met four times during each calendar year under examination. The minutes of all meetings of the board of directors and its subcommittees held during the examination period were

reviewed. The meetings were generally well attended and each of the directors had a satisfactory attendance record.

The principal officers of the Company as of December 31, 2000 were as follows:

<u>Name</u>	<u>Title</u>
Robert W. Bailey	Chairman & Chief Executive Officer
Paula-Jane Seidman	Vice President & Secretary
Thomas J. Iacopelli	Chief Financial Officer & Treasurer
George F. Berg	Vice President
Lawrence S. Davis	Vice President
Charles A. Mitchell	Vice President

The Company's procedure for disclosing conflicts of interest by its directors, and officers was reviewed. The Company distributes conflict of interest statements annually to each director and officer. During the examination period, no conflicts of interest were disclosed to the board of directors. However, it was noted that conflict of interest statements were not received from Mr. John N. Blackman for years 1998 through 2000.

It is recommended that the Company ensure that all directors and officers complete conflict of interest statements yearly.

B. Territory and Plan of Operation

The Company is licensed only in the State of New York. It also operates on surplus lines in all states except Arkansas, Massachusetts, New Hampshire, New Jersey, Nevada, New York, and Vermont.

The following schedule shows direct premiums written in New York State compared to direct business written in the United States for the five years covered by this examination:

DIRECT PREMIUMS WRITTEN

<u>Calendar Year</u>	<u>New York State</u>	<u>Total United States</u>	<u>Percentage of Premiums Written in New York State</u>
1996	\$76,385	\$5,868,935	1.30%
1997	\$54,987	\$6,942,412	.79%
1998		\$4,535,443	
1999		\$2,986,007	
2000	\$82,959	\$2,594,935	3.20%

During the period under examination, the Company wrote business in several alien jurisdictions. The NAIC instructions to the annual statements for Schedule T, requires that the Company list separately each alien jurisdiction for which there is no pre-printed line on Schedule T. During the period under examination the Company did not comply with this instruction.

It is recommended that the Company comply with the NAIC instructions to the annual statements and list in Schedule T each alien jurisdiction where business is written and located.

As of December 31, 2000, 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
11	Animal
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

<u>Paragraph</u>	<u>Kind of Insurance</u>
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 insurances 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.

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, Gotham Insurance Company is required to maintain a surplus to policyholders in the amount of \$4,200,000. Surplus to policyholders as of December 31, 2000 was \$61,374,163.

C. Reinsurance

Intercompany Reinsurance Agreement

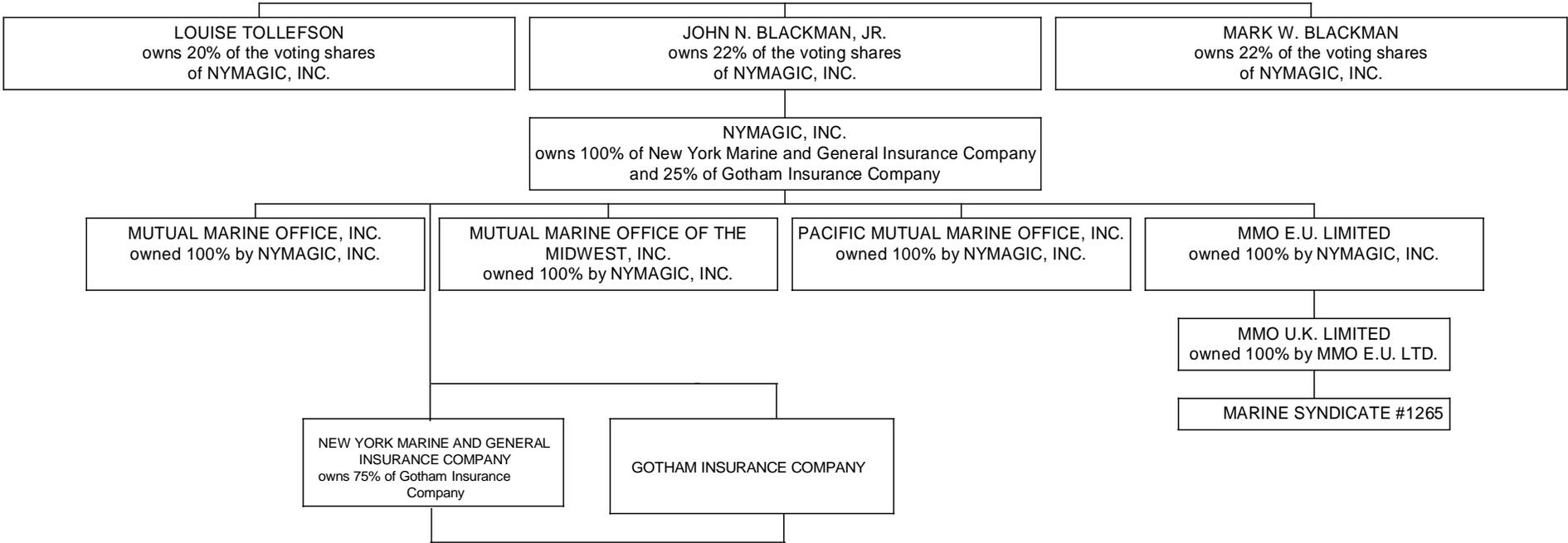
The Company entered into a reinsurance agreement, effective January 1, 1987, with New York Marine and General Insurance Company ("NYMAGIC"), which owns 75% of the Company's common stock. Under the agreement the Company cedes 100% of its writings to NYMAGIC and assumes 15% of NYMAGIC retained business and related expenses except for federal and foreign income taxes and investment expenses.

This agreement was submitted and not objected to by the Department pursuant to Section 1505(d)(3) of the New York Insurance Law.

D. Holding Company System

The Company is controlled by NYMAGIC, Inc., a holding company domiciled in the State of New York. John N. Blackman, Jr., Mark W. Blackman and Louise Tollefson own 22%, 22% and 20%, respectively, of the voting shares of NYMAGIC, Inc. NYMAGIC, Inc. owns 25% of the common stock of the Company and New York Marine and General Insurance Company owns the remaining 75%. In addition, NYMAGIC, Inc. owns 100% of the common stock of the following companies: Pacific Mutual Marine Office, Inc., Mutual Marine Office of the Midwest and Mutual Marine Office, Inc.

The following is an organizational chart of the holding company system as of December 31, 2000:



As a controlled insurer, the Company is required to file registration statements and amendments with the Department, pursuant to Section 1504 of the New York Insurance Law and Department Regulation 52. Part 80-1.2 of Regulation 52 requires that the amendments will be filed annually by April 30. The Company did not file amendments to Form HC-1 for the years 1999 and 2000 until June 25, 2001.

It is recommended that in the future, the Company comply with Part 80-1.2 of Regulation 52 and file the amendments annually by April 30.

In addition to the Intercompany Reinsurance Agreement entered into with New York Marine and General Insurance Company mentioned in Item 2D "Reinsurance", the Company has the following agreement in effect as of December 31, 2000, with members of its holding company system:

1. Service Agreement

The Company entered into a service agreement with its affiliate, Mutual Marine Office, Inc. ("MMO"), effective January 1, 1987. Under this agreement MMO supplies all services and facilities necessary for the conduct of the Company's business. The Company pays MMO a management fee of 1% of assumed gross premiums written and 2% of gross direct premiums written. However, commissions payable to MMO are reduced to the extent commissions have been paid MMO on the same business pursuant to MMO's agreement with New York Marine and General Insurance Company.

The agreement provides that compensation to MMO shall be in an amount not to exceed the costs and expenses incurred by MMO in fulfilling its obligations under the agreement.

The Company did not provide the examiners with documentation evidencing that the service agreement was submitted to the Department.

Section 1505(d)(3) of the New York Insurance Law states:

“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 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:

...rendering of services on a regular or systematic basis.”

It is recommended that the Company comply with Section 1505(d)(3) of the New York Insurance Law and submit to the Department the service agreement entered into with Mutual Marine Office, Inc.

#### 4. Tax Allocation Agreement

On December 30, 1987, the Company entered into a tax allocation agreement with New York Marine and General Insurance Company. Under this agreement, effective with the tax year of 1987, the Company and New York Marine and General Insurance Company file consolidated federal income tax returns. The agreement was submitted to, and not disapproved, by the Department.

It was noted that during the period under examination, the Company filed a consolidated federal income tax return with NYMAGIC, Inc. and its affiliates Mutual Marine Office, Inc., Pacific Mutual Marine Office, Inc., and Mutual Marine Office of the Midwest, Inc. An amendment to the tax allocation agreement to include NYMAGIC, Inc. and affiliates was not submitted to the Department pursuant to Section 1505(d)(3) of the New York Insurance Law.

Subsequent to the examination period, on May 29, 2001, the tax allocation agreement was amended and restated to include NYMAGIC, Inc., and affiliates Mutual Marine Office, Inc., Pacific Mutual Marine Office, Inc., and Mutual Marine Office of the Midwest, Inc.

In addition, on May 29, 2001, the Company entered into tax reimbursement agreements with NYMAGIC, Inc. and affiliates including MMO EU, Ltd., and MMO UK, Ltd.

The tax allocation and tax reimbursement agreements were submitted to the Department on June 6, 2001, pursuant to Section 1505(d)(3) of the New York Insurance Law. The Department is reviewing these agreements.

E. Abandoned Property Law

Section 1316 of the captioned law requires that certain unclaimed insurance proceeds be reported to the State of New York by April 1, of each year. The Company is complying with this law.

F. Accounts and records

Bankers Trust Company and Northern Trust Company are the custodians of the Company's securities. The custodian agreements do not contain the following provisions which are deemed to be representative of good business practices:

1. The Bank shall have in force, for its own protection, the Bankers Blanket Bond Insurance of the broadest form available for commercial banks and will continue to maintain such insurance. The Bank will give the Company 60 days written notice of any material change in the form or amount of such insurance or the termination of coverage.
2. The custodian shall maintain records sufficient to verify information required to be reported in Schedule D of the annual statement blank of the Insurance Department of New York.

3. Custodian shall furnish the Company with the appropriate affidavits in the form as may be acceptable to the custodian and to the New York Insurance Department in order for the securities referred to in such affidavits to be recognized as admitted assets of the Company.
4. Access shall be during regular banking hours and specifying those persons who shall be entitled to examine on the custodian's premises and records regarding securities held but only upon furnishing custodian with written instructions to that effect from any specified authorized officer.
5. In connection with any situation involving registration of securities in the name of a nominee or a bank custodian, the custodian agreement shall empower the bank to take such action.
6. Written instructions shall be signed by any two of its authorized officers specified in a separate list for this purpose which will be furnished to you from time to time signed by the treasurer or an assistant treasurer and certified under the corporate seal by the secretary or an assistant secretary.
7. There should be a provision in the agreement that would give the Company the opportunity to secure the most recent report on the review of the custodian's system of internal controls, pertaining to custodian record keeping issued by internal or independent auditors.

It is recommended that the Company amend its custodial agreement with Bankers Trust Company and Northern Trust Company to include, at the minimum, the above provisions.

G. Significant Operating Ratios

The following ratios have been computed as of December 31, 2000, based upon the results of this examination:

Net premiums written in 2000 to surplus as regards policyholders	.15 to 1
Liabilities to liquid assets (cash and invested assets less investments in affiliates)	32.09%
Premiums in course of collection to surplus as regards policyholders	0

The above ratios fall within the benchmark ranges set forth by the Insurance Regulatory Information System of the National Association of Insurance Commissioners.

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

	<u>Amounts</u>	<u>Ratios</u>
Losses incurred	\$22,582,369	46.14%
Loss adjustment expenses incurred	5,249,192	10.72
Other underwriting expenses incurred	13,984,415	28.57
Net underwriting gain	<u>7,130,301</u>	<u>14.57</u>
Premiums earned	<u>\$48,946,277</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, 2000. This statement is the same as the balance sheet filed by the Company:

<u>Assets</u>	Ledger <u>Assets</u>	Non-Ledger <u>Assets</u>	Not- Admitted <u>Assets</u>	Net- Admitted <u>Assets</u>
Bonds	\$63,076,745			\$63,076,745
Common stocks	10,541,669	\$6,978,169		17,519,838
Cash and short-term investments	10,102,168			10,102,168
Premiums and agents' balances in course of collection	(716,989)		\$221,819	(938,808)
Interest, dividends and real estate income due and accrued	_____	<u>1,062,950</u>	_____	<u>1,062,950</u>
Total assets	<u>\$83,003,593</u>	<u>\$8,041,119</u>	<u>\$221,819</u>	<u>\$90,822,893</u>

Liabilities

Losses		\$17,398,139
Reinsurance payable on paid loss and loss adjustment expenses		218,697
Loss adjustment expenses		3,598,110
Contingent commissions and other similar charges		193,358
Other expenses		91,779
Taxes, licenses and fees		39,000
Federal and foreign income taxes		1,777,157
Unearned premiums		5,132,490
Dividends declared and unpaid: Stockholders		<u>1,000,000</u>
Total liabilities		\$29,448,730

Surplus

Common capital stock	\$5,000,000	
Gross paid in and contributed surplus	17,500,000	
Unassigned funds	<u>38,874,163</u>	
Surplus as regards policyholders		<u>61,374,163</u>
Total liabilities and surplus		<u>\$90,822,893</u>

Note: The Internal Revenue Service has not performed any audits of the consolidated federal income tax returns filed on behalf of the Company. 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 increased \$18,777,195 during the five year examination period, January 1, 1996 through December 31, 2000, and is detailed as follows:

Statement of Income

Underwriting Income

Premiums earned		\$48,946,277
<u>Deductions:</u>		
Losses incurred	\$22,582,369	
Loss adjustment expenses incurred	5,249,192	
Other underwriting expenses incurred	<u>13,984,415</u>	
Total underwriting deductions		<u>41,815,976</u>
Net underwriting gain (loss)		\$7,130,301

Investment Income

Net investment income earned	\$23,210,933	
Net realized capital gains	<u>7,692,705</u>	
Net investment gain		30,903,638

Other Income

Net loss from agents' balances charged off	\$(203,007)	
Bad debt write off	<u>(185,413)</u>	
Total other income		<u>(388,420)</u>
Net income before federal and foreign income taxes		\$37,645,519
Federal and foreign income taxes incurred		<u>8,156,483</u>
Net income		<u>\$29,489,036</u>

Capital and Surplus Account

Surplus as regards policyholders, per  
report on \$42,596,968  
Examination as of December 31, 1995

	Increases in <u>Surplus</u>	Decreases in <u>Surplus</u>	
Net income	\$29,489,036	\$	
Net unrealized capital gains	4,851,867		
Change in non-admitted assets	231,931		
Dividends to stockholders		15,400,000	
Cumulative effect of change in amortization of bonds	<u>                    </u>	<u>395,639</u>	
Totals	<u>\$34,572,834</u>	<u>\$15,795,639</u>	
Net increase in surplus as regards policyholders			<u>18,777,195</u>
Surplus as regards policyholders, per report on <span style="float: right;">\$61,374,163</span> Examination as of December 31, 2000.			

4. **LOSSES AND LOSS ADJUSTMENT EXPENSES**

The examination liabilities of \$17,398,139 and \$3,598,110 are the same amounts reported by the Company in its 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 its filed annual statements.

5. **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, which is performed by Market Conduct Section of the Property Bureau of this Department.

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

- A. Sales and advertising
- B. Underwriting
- C. Claims

No problem areas were encountered.

6. **COMPLIANCE WITH PRIOR RECOMMENDATIONS**

There were no recommendations in the prior report on examination.

## 7. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>	<u>PAGE NO.</u>
<p>A.     <u>Management</u></p> <p>It is recommended that the Company ensure that all directors and officers complete conflict of interest statements yearly.</p>	<p>5</p>
<p>B.     <u>Territory and Plan of Operations</u></p> <p>It is recommended that the Company comply with the NAIC instructions to the annual statements and list in Schedule T each alien jurisdiction where business is written and located.</p>	<p>6</p>
<p>C.     <u>Holding Company System</u></p> <p>1.   <u>Regulation 52</u></p> <p>It is recommended that in the future, the Company comply with Part 80-1.2 of Regulation 52 and file the amendments to form HC-1 annually by April 30.</p> <p>2.   <u>Service Agreement</u></p> <p>It is recommended that the Company comply with Section 1505(d)(3) of the New York Insurance Law and submit to the Department the service agreement entered into with its affiliate.</p>	<p>10</p> <p>11</p>
<p>D.     <u>Accounts and records</u></p> <p>      <u>Custodian Agreements</u></p> <p>It is recommended that the Company amend its custodial agreements with Bankers Trust Company and Northern Trust Company to include, at the minimum, the provisions recommended.</p>	<p>13</p>

Respectfully submitted,

\_\_\_\_\_  
Melba Bolic  
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.

\_\_\_\_\_  
Melba Bolic

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_ 2001.

Appointment No. 21721

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:

**Melba Bolic**

as proper person to examine into the affairs of the

**GOTHAM 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 9th day of April, 2001



  
\_\_\_\_\_  
GREGORY V. SERIO  
First Deputy Superintendent of Insurance