

REPORT ON EXAMINATION
OF THE
NIPPONKOA INSURANCE COMPANY
OF AMERICA
AS OF
DECEMBER 31, 2001

DATE OF REPORT

MAY 24, 2002

EXAMINER

BERNARD LOTT

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

George E. Pataki
Governor

Gregory V. Serio
Superintendent

May 24, 2002

Honorable Gregory V. Serio
Superintendent of Insurance
Albany, New York 12257

Sir:

Pursuant to the requirements of the New York Insurance Law and in compliance with the instructions contained in Appointment Number 21810, dated December 6, 2001 and attached hereto, an examination has been made into the condition and affairs of NIPPONKOA Insurance Company of America as of December 31, 2001 and the following report is respectfully submitted.

The examination was conducted at the Company's administrative office located at 830 Third Avenue, Suite 810, New York, New York 10022.

Wherever the designations "the Company" or "NIPPONKOA" appear herein without qualification, they should be understood to indicate the NIPPONKOA Insurance Company of America.

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

1. SCOPE OF EXAMINATION

The previous examination was conducted as of December 31, 1997. This examination covers the four-year period from January 1, 1998 through December 31, 2001. The current examination was limited in its scope to a review or audit of only those balance sheet items considered by this Department to require analysis, verification or description, including: invested assets, inter-company balances, losses and loss adjustment expense reserves and provision for reinsurance. The examination included a review of income, disbursements and Company records deemed necessary to accomplish such analysis or verification and utilized, to the extent considered appropriate, work performed by the Company's independent certified public accountants. A review or audit was also made of the following items as called for in the Examiners Handbook of the National Association of Insurance Commissioners:

- History of the Company
- Management and control
- Corporate records
- Fidelity bonds and other insurance
- Territory and plan of operation
- Market conduct activities
- Growth of the Company
- Business in force
- Loss experience
- Reinsurance
- Accounts and records
- Financial statements

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

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

2. DESCRIPTION OF COMPANY

The KOA Fire & Marine Insurance Company, Ltd. (“Koa Japan”) was established in 1944 under the laws of Japan and operated in the United States through a U.S. Branch, which was licensed under the laws of the State of New York on September 30, 1984. On December 7, 2000, NIPPONKOA was incorporated to serve as the vehicle for the domestication of the U.S. Branch pursuant to Article 72 of the New York Insurance Law. The domestication was completed on March 31, 2001 and the Company was licensed on April 1, 2001. Upon domestication, the Company’s equity of \$39,000,538 was reclassified as paid-in capital of \$5,000,000 and paid-in and contributed surplus of \$34,000,538. The paid-in capital consists of 5,000 authorized, issued and outstanding shares of \$1,000 par value per share common stock.

On April 1, 2001 the Company’s parent, Koa Japan, merged with and into The Nippon Fire & Marine Insurance Company Ltd. (“Nippon”), with Nippon as the surviving company. The name of the merged companies and new ultimate parent was then changed to NIPPONKOA Insurance Company, Limited, Japan.

A. Management

Pursuant to the Company’s charter and by-laws, management of the Company is vested in a board of directors consisting of not less than thirteen or more than twenty-one members. As of December 31, 2001, the board of directors was comprised of thirteen members. The Company’s by-laws state that the board should meet no less than four times during each calendar year. The directors as of December 31, 2001, were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Sharon D. Carberry Rosedale, NY	Controller, NIPPONKOA Insurance Company of America
James P. Donovan Scarsdale, NY	Partner, Wilson, Elser, Moskowitz, Edelman & Dicker LLP
John P. Hilferty North Brunswick, NJ	Executive Vice President, NIPPONKOA Insurance Company of America
Tetsutaro Hiraoka Pasadena, CA	Vice President, NIPPONKOA Insurance Company of America
Harumichi Ishu Mamaroneck, NY	Vice President, NIPPONKOA Insurance Company of America
John Ivaliotis North Salem, NY	Assistant Vice President - Underwriting, NIPPONKOA Insurance Company of America
Kazuhiro Kawachimaru Harrison, NY	Vice President, NIPPONKOA Insurance Company of America
Arnold Kideckel Bronx, NY	Partner, Wilson, Elser, Moskowitz, Edelman & Dicker LLP
Philip Quaranta Cos Cob, CT	Partner, Wilson, Elser, Moskowitz, Edelman & Dicker LLP
Kozo Saito Edgewater, NJ	President, NIPPONKOA Insurance Company of America
Takaharu Sato Irvington, NY	Vice President, NIPPONKOA Insurance Company of America
Robert M. Weber South Salem, NY	Partner, Wilson, Elser, Moskowitz, Edelman & Dicker LLP
Tomoyuki Yunoue Chicago, IL	Vice President, NIPPONKOA Insurance Company of America.

The minutes of all board of directors' meetings and committees thereof held during the examination period were reviewed. The three meetings held by the domesticated company were generally well attended and each board member had an acceptable record of attendance.

The principal officers of the Company as of December 31, 2001 were as follows:

<u>Name</u>	<u>Title</u>
Kozo Saito	President
John P. Hilferty	Executive Vice President & Secretary
Harumichi Ishu	Vice President
Takaharu Sato	Vice President
Kazuhiro Kawachimaru	Vice President & Treasurer
Tomoyuki Yunoue	Vice President
Tetsutaro Hiraoka	Vice President

B. Territory and Plan of Operation

As of December 31, 2001, the Company was licensed to transact business in California, Colorado, Georgia, Hawaii, Illinois, Kentucky, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Utah, Virginia and Washington. The Company is also an accredited reinsurer in the State of Delaware and recognized by the U.S. Treasury as an admitted reinsurer (except on excess risks running to the United States) of surety companies doing business with the United States. Effective May 15, 2002, the Company became licensed in the State of Connecticut.

The Branch specializes in insurance coverage for the transportation industry. Fifty-two percent of the Company's 2001 gross written premiums was cargo insurance coverage, mostly ocean marine. The other forty-eight percent is primarily assumed facultative reinsurance for various other lines of business.

The following schedule illustrates the direct premiums written by the Company within the State of New York and the total direct premiums written during the examination period:

Direct Premiums Written

<u>Calendar Year</u>	<u>New York State</u>	<u>Total</u>	<u>Percentage Written in New York State to Total Premiums</u>
1998	\$6,524,316	\$7,313,306	89.2%
1999	\$6,066,512	\$6,841,261	88.7%
2000	\$6,537,112	\$7,527,465	86.8%
2001	\$4,409,419	\$7,068,732	62.4%

The Company is licensed 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>Line of Business</u>
3	Accident and health
4	Fire
5	Miscellaneous property
6	Water damage
7	Burglary and theft
8	Glass
9	Boiler and machinery
10	Elevator
12	Collision
13	Personal injury liability
14	Property damage liability
15	Workers' compensation and employers' liability
16	Fidelity and surety
19	Motor vehicle and aircraft physical damage
20	Marine and inland marine
21	Marine protection and indemnity

In addition, the Company is licensed to write such workers' compensation insurance as may be incidental to coverages contemplated under paragraphs 20 and 21 of Section 1113(a) of the New York Insurance Law, including insurances described in the Longshoremen's and Harbor Workers' Compensation Act (Public Law 803, 69th Congress as amended; 33 USC Section 901 et. seq. as amended) and insurance of every kind or description outside the United States and reinsurance of every kind or description as authorized by Section 4102(c) of the New York Insurance Law.

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

C. Reinsurance

The Company's assumed business accounted for approximately 52% of its total writings in calendar year 2001. Most of its 2001 assumptions (68%) were from St. Paul Fire & Marine Insurance Company ("St. Paul"), a licensed insurer in this state.

Effective January 1, 1995, the Company entered into a service and reinsurance agreement with St. Paul, whereby St. Paul issues policies to clients of the Company's ultimate parent operating in states and jurisdictions in which the Company is not licensed. The agreement provides that St. Paul, at its sole discretion, may retain from 0% to 30% pro-rata share of any one policy or risk and shall cede the remaining percentage to the Company.

The Schedule F data as reported in the Company's annual statements filed for the years within the examination period accurately reflects its reinsurance transactions.

As of the December 31, 2001, the Company was protected by the following ceded reinsurance coverage:

<u>Type of Treaty</u>	<u>Coverage</u>
Cargo - Excess of Loss 3 layers 100% unauthorized	\$39,750,000 excess of \$250,000 each and every loss.

<u>Type of Treaty</u>	<u>Coverage</u>
Property - Excess of Loss 100% unauthorized	\$2,800,000 excess of \$200,000 each and every loss.
Property -Non Ocean Marine 2 layers 5.84% authorized 94.16% unauthorized	*Yen 2,700,000,000 excess of Yen 300,000,000 (\$21,161,533 excess of \$2,351,281) each and every loss.
Property Facultative Excess of Loss 100% Unauthorized	*Yen 2,000,000,000 excess of Yen 3,000,000,000 (\$15,675,210 excess of \$23,512,814) each and every loss.
Casualty Excess of Loss 32.26% authorized 67.74% unauthorized	\$7,750,000 excess of \$250,000

*The Yen was converted to dollars at the exchange rate as of December 31, 2001 of Yen 127.59 equals U.S. \$1.00.

A review of the Company's ceded reinsurance contracts in effect at December 31, 2001 indicated the following:

i. Insolvency Clause

The property non-ocean marine agreements did not contain an insolvency clause. It is recommended that the property non-ocean marine reinsurance agreements be amended to include an insolvency clause complying with the provisions of Section 1308 of the New York Insurance Law.

Additionally, the insolvency clause contained in the property facultative excess of loss agreement included the following wording:

“In the event of the insolvency of the Company, reinsurance proceeds will be paid to the Company or the liquidator on the basis of the amount of the claim allowed in the insolvency proceeding without diminution by reason of the inability of the Company to pay all or part of the claim.” Emphasis added.

The underscored wording represents an unacceptable modification of the conditions required in a ceded reinsurance contract as outlined in New York Department Circular Letter 1988-5 “Reinsurance Agreement Provisions which are in Conflict with the Required Conditions Set Forth in Insurance Law Section 1308.” Additionally, Section 1308(a)(2)(B) of the New York Insurance Law states, in pertinent part, that:

“...no such credit shall be allowed any ceding insurer for reinsurance ceded, renewed, or otherwise unless the reinsurance agreement provides that payment by the assuming insurer shall be made directly to the ceding insurer or its liquidator, receiver or statutory successor, except where:

- (i) the agreement specifies another payee of such reinsurance in the event of the insolvency of the ceding insurer, or
- (ii) the assuming insurer with the consent of the direct insureds has assumed such policy obligations of the ceding insurer as its direct obligations to the payees under such policies, in substitution for the obligations of the ceding insurer to such payees.”

The underscored wording is not included in the insolvency clause contained in the property facultative excess of loss agreement. It is recommended that the Company amend the insolvency clause in its property facultative excess of loss agreement to include all language required by Section 1308 of the New York Insurance Law and to exclude all prohibited language.

However, reinsurance credit was not disallowed herein due to the immateriality of the amounts involved.

ii. Offset Clause

The property non-ocean marine reinsurance agreement contains a provision allowing for broad offset rights, as follows: “the reinsurers shall always have the right to deduct from any such payment the full amount of any sum or sums due by the Company to the reinsurers in connection with this or any other reinsurance agreement between both parties.” In reinsurance agreements containing such broad rights to offset, this Department requires that the following language be included:

“In the event of the insolvency of either party to this agreement then offsets shall only be allowed to the extent permitted by the provisions of Section 7427 of the New York Insurance Law.”

It is recommended that the offset provision of the property non-marine reinsurance agreement be amended to include the required language in compliance with Section 7427 of the New York Insurance Law.

iii. Intermediary Clause

A review of the Company’s property non-marine reinsurance agreements indicated that various reinsurers assumed business under this agreement via Marsh Ltd., an intermediary, but it did not contain an intermediary clause.

Paragraph (a) of Part 125.6 of Department Regulation 20 states, in part, the following:

“...where a ceding insurer obtains reinsurance through a “reinsurance intermediary,” as defined in Section 2101(f) of the New York Insurance Law, from an assuming insurer which is neither licensed in this state nor has placed funds with the ceding insurer pursuant to Section 1301(a)(14) of the New York Insurance Law, the ceding insurer shall not be allowed credit unless:

- (1) the reinsurance agreement includes a provision whereby the reinsurer assumes all credit risks of the intermediary related to payments to the intermediary; and
- (2) in the case of a reinsurance intermediary acting outside this state, the ceding insurer obtains a written agreement from the reinsurance intermediary that he will comply with all the provisions of Regulation 98 and the intermediary agrees to be subject to examination by the superintendent as often as he may deem it expedient...”

Additionally, paragraph (e) of Part 32.1 of Department Regulation 98 provides as follows:

“No reinsurance intermediary shall procure a reinsurance contract with one or more unauthorized reinsurers, unless there is a provision in such agreement for the appointment by the reinsurer or reinsurers of an attorney in this state, as the true and lawful attorney of each such reinsurer, upon whom all lawful process may be served in any action, suit or proceeding instituted in this state by or on behalf of a licensed ceding insurer, arising out of the contract of reinsurance.”

It is recommended that the Company amend its property non-marine reinsurance agreements to include an intermediary clause in compliance with the provisions of Department Regulations 20 and 98.

iv. Arbitration Clause

A review of the Company's ceded reinsurance contracts indicated that the arbitration clauses in several of the agreements did not specify where the arbitration would take place. In addition, the property non-marine agreement stated that “[t]he Court of Arbitration shall take place in Japan and Japanese Law shall be the proper Law of this Agreement.”

This Department requires that in the event of a dispute between an insurer and its reinsurer, arbitration must take place in the domiciliary state of the direct insurer. It is recommended that the arbitration clauses in all reinsurance agreements be amended to state that any arbitration should take place within New York State.

D. Holding Company System

NIPPONKOA is 100% owned and controlled by NIPPONKOA Insurance Company, Limited, Japan, a holding company primarily engaged in the business of property and casualty insurance, offering a full range of products and services in Japan. Pursuant to the requirements of Section 1503 of the New York Insurance Law, the Company has registered with the New York Insurance Department as a controlled insurer and has filed an annual report in accordance with the requirements of Section 1504 of the New York Insurance Law and Department Regulation 52.

i. Service Agreements

At December 31, 2001, the Company was a party to three claim service agreements with affiliated companies. Pursuant to these agreements, NIPPONKOA provides claim services with respect to the

investigation, adjustment and payment of ocean marine cargo insurance claims made against the affiliated companies for notice of claims rendered inside the United States. Subsequent to the examination date, the Company entered into a similar claims service agreement with its Canadian affiliate. This agreement provides claims services for the Canadian affiliate for notice of claims rendered anywhere in the world.

In addition, the Company is also a party to a claims services agreement with its parent. This agreement provides claims services for the Company with respect to notice of claims rendered outside the United States.

These agreements were filed with the New York Insurance Department, in accordance with Section 1505(d)(3) of the Insurance Law.

ii. Schedule Y

The following organizational chart was derived from the Company's 2001 filed Annual Statement:

	<u>Federal Employer #</u>	<u>NAIC Group Code</u>	<u>NAIC Co. Code</u>	<u>State of Domicile</u>
NIPPONKOA Insurance Company Ltd., Japan	N/A	N/A	AA-1580060	OA
NIPPONKOA Ins. Co. of America.	13-4151621	2558	12190	NY
NIPPONKOA Ins. Co. Ltd. (U.S. Branch)	98-0032627	2558	27073	OA
NIPPON Insurance Company (Europe) Ltd.	N/A	N/A	N/A	OA
KOA Insurance Company (Europe) Ltd.	N/A	N/A	N/A	OA
NIPPONKOA Insurance Co. (Asia) Ltd.	N/A	N/A	N/A	OA
NIPPONKOA Life Insurance Co. Ltd.	N/A	N/A	N/A	OA

Note: NIPPONKOA Insurance Company of America is 100% owned by NIPPONKOA Insurance Limited, Japan.

The NAIC Annual Statement Instructions for Property and Casualty Insurance Companies for Schedule Y - Part 1 - Organization Chart provides as follows:

“Attach a chart or listing presenting the identities of and 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 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 insurer.”

The Company’s holding company charts included in its 1997-2001 Annual Statements were incomplete. As of December 31, 2001, the Company did not present the interrelationships between the parent and all affiliated insurers and other affiliates as required in the above passage from the NAIC’s Annual Statement Instructions.

It is recommended that in future statement filings with the Department, the holding company chart be amended to include a clear indication of the interrelationships between the parent and all affiliated insurers and other affiliates as required by NAIC Annual Statement Instructions.

E. Significant Operating Ratios

The following ratios have been computed as December 31, 2001, based upon the results of this examination:

Net premiums written in 2001 to surplus as regards policyholders	.32:1
Liabilities to Liquid assets (cash and invested assets less investments in affiliates)	38.03%
Premiums in course of collection to surplus as regards policyholders	3.3%

All of the above ratios fall within the benchmark ranges set forth in 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 four-year period covered by this examination:

	<u>Amounts</u>	<u>Ratios</u>
Losses and loss adjustment expenses incurred	\$29,051,251	60.8%
Other underwriting expenses incurred	14,967,314	31.3
Net underwriting gain (loss)	<u>3,778,205</u>	<u>7.9</u>
Premiums earned	<u>\$47,796,770</u>	<u>100.0%</u>

F. Abandoned Property Law

The Company did not report any abandoned property for the period covered by this examination. In addition, with the exception of the year 1999, the Company did not file any abandoned property reports with the State of New York, pursuant to Section 1316 of the New York Abandoned Property Law.

Regardless of whether or not an insurance company holds or owes abandoned property, it is required to submit an abandoned property report. It is recommended that the Company file annual abandoned property reports with the State of New York, in accordance with Section 1316 of the New York Abandoned Property Law.

3. FINANCIAL STATEMENTS

A. Balance Sheet

The following shows the assets, liabilities and surplus as regards policyholders as determined by this examination. This statement is the same as the balance sheet filed by the Company in its 2001 annual statement:

	<u>Assets</u>	Not-Admitted <u>Assets</u>	Admitted <u>Assets</u>
Bonds	\$46,752,341		\$46,752,341
Cash and short-term investments	12,745,989		12,745,989
Premiums and agents' balances in course of collection	1,298,428		1,298,428
Premiums and agents' balances booked but deferred and not yet due	1,528,925	\$369,914	1,159,011
Funds held by or deposited with reinsurance companies	30,000		30,000
Reinsurance recoverable on losses and loss adjustment	212,834		212,834
Federal and foreign income tax recoverable	367,469		367,469
Interest, dividends and real estate income due and accrued	423,815		423,815
Receivable from parent, subsidiaries and affiliates	22,162		22,162
Other assets non-admitted	87,666	87,666	
Other assets	<u>2,330</u>	<u> </u>	<u>2,330</u>
Total assets	<u>\$63,471,959</u>	<u>\$457,580</u>	<u>\$63,014,379</u>

Liabilities

Losses	\$16,579,122
Loss adjustment expenses	3,365,000
Reinsurance payable on paid losses and loss adjustment expenses	681,593
Other expenses	141,739
Unearned premiums	2,075,230
Ceded reinsurance premiums payable	<u>229,839</u>
Total liabilities	\$23,072,523

Surplus as Regards Policyholders

Common capital stock	\$ 5,000,000
Gross paid in and contributed surplus	34,000,538
Unassigned funds	<u>941,318</u>
Surplus as regards policyholders	<u>39,941,856</u>
Total liabilities and surplus	<u>\$63,014,379</u>

Note: The Company indicated that the Internal Revenue Service has not performed, nor notified the Company that it planned to perform, an audit of the Company's Federal income tax returns for any year covered by this examination. With the exception of any impact that might be caused from any examination changes contained in this report, the examiner is unaware of any potential exposure of the Company to any further tax assessments and no liability has been established herein relative to such contingency.

B. Underwriting and Investment Exhibit

Surplus as regards policyholders increased \$5,538,930 during the four-year examination period, January 1, 1998 through December 31, 2001 detailed as follows:

Statement of Income

Underwriting Income

Premiums earned		\$47,796,770
Deductions:		
Losses and loss adjustment expenses incurred	\$29,051,251	
Other underwriting expenses incurred	<u>14,967,314</u>	
Total underwriting deductions		<u>44,018,565</u>
Net underwriting gain		\$3,778,205

Investment Income

Net investment income earned	\$12,612,097	
Net investment gain		<u>12,612,097</u>
Net income before federal and foreign income taxes		\$16,390,303
Federal and foreign income taxes incurred		<u>5,664,943</u>
Net income		<u>\$10,725,359</u>

Capital and Surplus Account

Surplus as regards policyholders, per report on examination as of December 31, 1997			\$34,402,927
	<u>Gains in</u>	<u>Losses in</u>	
	<u>Surplus</u>	<u>Surplus</u>	
Net income	\$10,725,359	\$	
Change in not-admitted assets		438,922	
Change in provision for reinsurance	107,000		
Capital changes – paid in	1,058,498		
Net remittances to/from home office	<u> </u>	<u>5,913,005</u>	
Total gains and losses	<u>\$11,890,857</u>	<u>\$6,351,927</u>	
Net increase in surplus			<u>5,538,930</u>
Surplus as regards policyholders, per report on examination as of December 31, 2001			<u>\$39,941,856</u>

4. LOSSES AND LOSS ADJUSTMENT EXPENSES

The examination liabilities for losses and loss adjustment expenses of \$16,579,122 and \$3,365,000, respectively, are the same as the amounts reported by the Company as of the examination date. The examination analysis was conducted in accordance with generally accepted actuarial principles and practices and was based upon 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 the responsibility of the Market Conduct Unit of the Property Bureau of this Department.

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

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

No problem areas were encountered.

6. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior report on examination contained eleven recommendations. (The page numbers refer to the prior report):

<u>ITEM</u>	<u>PAGE NO.</u>
<p>A. <u>Business Corporation Law</u></p> <p>It is recommended that KMSI hold an annual meeting of its board of directors, in accordance with Section 708 of the New York Business Corporation Law and Article II, Section 4 of its by-laws. Also, it is recommended that KMSI record written minutes of all business transacted at its annual meeting of directors.</p> <p>As of April 1, 2001 NIPPONKOA became a self-managed domestic insurer, eliminating the need for its U.S. manager, KMSI. KMSI was dissolved in December of 2001, making the prior examination's recommendation no longer applicable.</p>	<p>4-5</p>
<p>B. <u>Certificates of Authority</u></p> <p>It was recommended that the Company amend its New Jersey and California certificates of authority to delete certain lines of business that it was not authorized to write pursuant to its New York certificate of authority.</p> <p>The Company has complied with this recommendation.</p>	<p>7-8</p>
<p>C. <u>Reinsurance</u></p> <p>i. It was recommended that the Branch amend its property facultative excess of loss reinsurance contracts to comply with Section 1308(a)(2)(A) of the Insurance Law.</p> <p>The Company has not complied with this recommendation. A similar recommendation is contained herein.</p> <p>ii. It is recommended that the Branch amend the insolvency clause in the casualty excess of loss - 2nd layer to remove the phrase, "as finally determined in the liquidation or receivership proceeding."</p> <p>The Company has complied with this recommendation.</p>	<p>10</p> <p>10-11</p>

<u>ITEM</u>	<u>PAGE NO.</u>
iii. It is recommended that the Branch endeavor to have all of its reinsurance agreements reduced to written form and signed within nine months of the effective date.	11
The Company has complied with this recommendation.	
iv. It is recommended that the funding sections of all the Branch's ceded reinsurance contracts be amended to comply with all the provisions of Section 79.5(a)(2) of Department Regulation 133.	12
The Company has complied with this recommendation.	
v. It is recommended that the Branch amend its facultative ceded reinsurance contracts to include the recommended offset clause.	13
The Company has complied with this recommendation.	
vi. It is recommended that the first, second and third layers of the Branch's property facultative excess of loss reinsurance agreements be amended to comply with Department Regulations 20 and 98.	14
The Company has not complied with this recommendation. A similar recommendation is contained herein.	
D. <u>Holding Company System</u>	
It is recommended that in future annual statement filings with the Insurance Department, the holding company chart or schedule include all of the Branch's and its Home Office's affiliated insurers and other affiliates, as required by the NAIC Annual Statement Instructions.	16
The Company has not complied with this recommendation. A similar recommendation is contained herein.	
E. <u>Custodian Agreement</u>	
It is again recommended that the Branch's custodian agreement contain all of the provisions which are deemed to be representative of good business practices.	18
The Company has complied with this recommendation.	
F. <u>Fidelity Bond Insurance</u>	
It is again recommended that the Branch procure fidelity bond insurance in the amount suggested in the NAIC Financial Condition Examiners Handbook.	19

ITEMPAGE NO.

The Company has complied with this recommendation.

G. Section 1411(a) of the New York Insurance Law

It is recommended that the board of directors of KMSI approve all of the Branch's investments, in accordance with Section 1411(a) of the Insurance Law. 19

The Company has complied with this recommendation.

H. New York Regulation 118

It is recommended that the Branch's contract with its independent certified public accountant be amended to comply with the provisions of Part 89.2 of Department Regulation 118 and Section 307 of the New York Insurance Law. 20

The Company has complied with this recommendation.

I. Abandoned Property Law

It is again recommended that the Branch annually submit abandoned property reports to the State of New York, in accordance with Section 1316 of the Abandoned Property Law. 20-21

The Company has not fully complied with this recommendation. A similar recommendation is contained in this report.

J. Accounts and Records

It is again recommended that the Branch comply with Section 1301(a)(11) of the New York Insurance Law and the Department's rules for the determination of overdue premiums when calculating their admitted asset for premiums receivable. 21

The Company has complied with this recommendation.

K. Trusted Surplus Statement

Since this report represents the third consecutive examination in which the Branch has been criticized for completing the trusted surplus statement incorrectly, it is recommended that the Branch in the future file with the Department all supporting schedules utilized in the calculation of deductions from liabilities on the trusted surplus statement, i.e. schedule of reinsurance recoverable on paid losses and loss adjustment expenses for authorized and unauthorized companies; schedule of agents' balances or uncollected premiums and the corresponding unearned premiums; and schedule of unpaid reinsurance premiums receivable and corresponding 27-28

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losses and loss adjustment expenses due to the reinsured.

During the period covered by this examination the Branch has become a domestic insurer and is no longer required to complete a Trusteed Surplus Statement. This recommendation is no longer applicable.

7. SUMMARY OF COMMENTS AND RECOMMENDATIONS

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A. Reinsurance

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| i. | It is recommended that the property non-ocean marine reinsurance agreements be amended to include an insolvency clause complying with the provisions of Section 1308 of the New York Insurance Law. | 8 |
| ii. | It is recommended that the Company amend the insolvency clause in its property facultative excess of loss agreement to include all language required by Section 1308 of the New York Insurance Law and to exclude all prohibited language. | 9 |
| iii. | It is recommended that the offset provision of the property non-marine reinsurance agreement be amended to include the required language in compliance with Section 7427 of the New York Insurance Law. | 10 |
| iv. | It is recommended that the Company amend its property non-marine reinsurance agreements to include an intermediary clause in compliance with the provisions of Department Regulations 20 and 98. | 11 |
| v. | It is recommended that the arbitration clauses in all reinsurance agreements be amended to state that any arbitration should take place within New York State. | 11 |

B. Holding Company System

It is recommended that in future statement filings with the Department, the holding company chart be amended to include a clear indication of the interrelationships between the parent and all affiliated insurers and other affiliates as required by NAIC Annual Statement Instructions.	13
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C. Abandoned Property Law

It is again recommended that the Company file annual abandoned property reports with the State of New York, in accordance with Section 1316 of the New York Abandoned Property Law.	14
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Respectfully submitted,

_____/S/_____
Bernard Lott
Senior Insurance Examiner

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

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

_____/S/_____
Bernard Lott

Subscribed and sworn to before me

this _____ day of _____ 2002.

Appointment No. 21810

STATE OF NEW YORK
INSURANCE DEPARTMENT

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

Bernard Lott

as proper person to examine into the affairs of the

NIPPONKOA INSURANCE COMPANY OF AMERICA

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 6th day of December, 2001.





GREGORY V. SERIO
Superintendent of Insurance