

REPORT ON EXAMINATION  
OF  
THE AGGREGATE TRUST FUND  
AS OF  
DECEMBER 31, 2003

DATE OF REPORT

FEBRUARY 18, 2005

EXAMINER

JAMES MURPHY

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

February 18, 2005

Honorable Howard Mills  
Acting Superintendent of Insurance  
Albany, New York 12257

Sir:

Pursuant to instructions contained in Appointment Number 22213, dated April 23, 2004, attached hereto, and in accordance with the New York Insurance Law, I have made an examination into the financial condition and affairs of the Aggregate Trust Fund, as of December 31, 2003 and respectfully submit the following report thereon.

The examination was conducted at the offices of the State Insurance Fund, the administrator of the Aggregate Trust Fund, located at 199 Church Street, New York, New York 10007.

Wherever the designation "Fund" appears in this report without qualification, it should be understood to indicate the Aggregate Trust Fund.

Whenever the term "Department" appears in this report without qualification, it should be understood to refer to the New York Insurance Department.

## **1. SCOPE OF EXAMINATION**

The prior examination was conducted as of December 31, 1995. This examination covered the eight year period from January 1, 1996 through December 31, 2003 and was limited in its scope to a review or audit of only those balance sheet items considered by this Department to require analysis, verification or description, including: invested assets, contingent receivable from New York State, unpaid awards and unpaid administrative fees. The examination included a review of income, disbursements and Fund records deemed necessary to accomplish such analysis or verification and utilized, to the extent considered appropriate, work performed by the Fund's independent certified public accountants.

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

## **2. DESCRIPTION OF FUND**

The Aggregate Trust Fund was created pursuant to the provisions of Section 27 of the New York Workers' Compensation Law ("Section 27"). The present Fund is the third formed since the passage of the enabling legislation. The current Fund was established in 1920, following the dissolution of the predecessor Fund.

The purpose of the Fund is to assure and oversee the regular payment of benefits on adjudicated death cases and certain permanent disability cases. The Fund derives its income from insurance carriers and self-insured employers who, since 1935, have been required by Section 27 to deposit into the Funds, the present value equivalent of all such adjudicated cases. The Fund, in accordance with the awards of the Workers' Compensation Board, pays the bi-weekly installments of compensation benefits to claimants and/or their spouses and dependent children. Benefit payments to dependent children continue until they reach maturity; payments to spouses also continue until remarriage or death.

Should the deposited award be modified upward, the amount of increase must be borne by the employer or insurance carrier. Conversely, should the deposited award be modified downward, the amount of the decrease will be refunded by the Fund.

Deposits paid into the Fund represent the actuarially computed present value of awards made by the Workers' Compensation Board. The assumption rates are provided for in Section 27 of the New York Workers' Compensation Law as amended in 1983. Upon receipt of a deposit, the Fund assumes responsibility for future benefit payments.

A total of 5,275 cases were outstanding at December 31, 2003, with an aggregate value of \$148,973,000.

The following table summarizes the financial status of the Fund from 1996 to 2003:

<u>Year</u>	<u>Assets</u>	<u>Liabilities</u>	<u>Surplus</u>
1996	\$408,831,950	\$174,436,867	\$234,395,083
1997	\$407,033,548	\$173,187,453	\$233,846,095
1998	\$402,983,263	\$174,237,740	\$228,745,523
1999	\$399,762,693	\$172,897,069	\$226,865,624
2000	\$409,983,263	\$188,989,213	\$220,794,394
2001	\$384,630,000	\$166,686,000	\$217,944,000
2002	\$379,955,000	\$155,666,000	\$224,289,000
2003	\$374,812,000	\$153,603,000	\$221,209,000

In accordance with the provisions of Section 27(5) of the New York Workers' Compensation Law, all computations by the Workers' Compensation Board, with respect to awards, shall be on the basis of the Survivorship Annuitants' Table of Mortality and the Remarriage Tables of the Dutch Royal Insurance Institution. It is noted that the Aggregate Trust Fund is not required to file an annual statement with the Department.

A. Management

In accordance with the provisions of Section 27 of the Workers Compensation Law, the State Insurance Fund is the custodian of the Aggregate Trust Fund and also serves as its administrator. Thus,

the management of the two Funds is the same, although a separate operating unit has been established to administer the daily activities of the Aggregate Trust Fund.

The Aggregate Trust Fund pays the State Insurance Fund an amount equal to three percent of annual awards paid to cover administrative costs.

B. Abandoned Property Law

Section 1316 of the New York State Abandoned Property Law provides that amounts payable to a resident of this state from a policy of insurance, if unclaimed for three years, shall be deemed to be abandoned property. Such abandoned property shall be reported to the comptroller on or before the first day of April each year. Such filing is required of all insurers regardless of whether or not they have any abandoned property to report. The Fund did not file the abandoned property reports on a timely basis during the examination period.

It is recommended that the Fund comply with the provisions of Section 1316 of the New York Abandoned Property Law and file the abandoned property reports on a timely basis.

C. Custodial Agreement

The Fund established a custodial agreement with Manufacturers Hanover Trust ("MHT") company dated March 8, 2003. Since that time, MHT has merged with several financial institutions and is now known as JPMorganChase. The custodial agreement has not been amended to reflect the custodian's current name. It is recommended that the Fund update its custodial agreement to reflect current identity of its custodian.

Examination review indicated that the Fund's agreement with its custodial bank lacked the following protective covenants and provisions:

a. Written instructions hereunder 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.

b. There should be a provision in the agreement that would give the insurer 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.

This was noted in the previous report on examination. It is again recommended that the Fund amend its custodial agreement to include the protective covenants and provisions as set forth in Part 1-General, Section IV.H-Custodial or Safekeeping Agreements of the NAIC Financial Condition Examiners Handbook.

D. Significant Operating Ratios

The following ratios have been computed as of December 31, 2003, based on the results of this examination:

Total surplus to loss reserves	148%
Net earnings on investments	2.86%
Liabilities to liquid assets	109%

### **3. FINANCIAL STATEMENTS**

#### A. Balance Sheet

The following shows the assets, liabilities and surplus funds as determined by this examination as of December 31, 2003. This statement is the same as the balance sheet filed by the Aggregate Trust Fund:

<u>Assets</u>	<u>Ledger Assets</u>	<u>Non-ledger Assets</u>	<u>Not-admitted Assets</u>	<u>Net Admitted Assets</u>
Bonds	\$127,671,000	\$	\$	\$127,671,000
Preferred stocks	999,000			999,000
Cash and Short-term investments	11,020,000			11,020,000
Accrued investment income	1,419,000			1,419,000
Award Payments Rec. from the Supplemental Benefits Fund	13,703,000			13,703,000
Contingent Receivable from NYS	<u>220,000,000</u>	_____	_____	<u>220,000,000</u>
<b>Total assets</b>	<b><u>\$374,812,000</u></b>	<b><u>\$ 0</u></b>	<b><u>\$ 0</u></b>	<b><u>\$374,812,000</u></b>
 <u>Liabilities</u>				
Unpaid Awards				\$148,973,000
Unpaid Administrative fees				4,469,000
Due to Workers' Compensation Fund				130,000
Other Liabilities				<u>31,000</u>
<b>Total liabilities</b>				<b>\$153,603,000</b>
 <u>Surplus and Other Funds</u>				
Security fluctuation reserve			\$ 10,000,000	
Unassigned funds			<u>211,209,000</u>	
Surplus				<u>221,209,000</u>
<b>Total liabilities, surplus and funds</b>				<b><u>\$374,812,000</u></b>

NOTE: The Fund is exempt from federal and state income taxes.



B. Summary of Operations

The Aggregate Trust Fund's surplus funds decreased \$13,380,000 during the eight-year examination period, January 1, 1996 through December 31, 2003, detailed as follows:

Surplus fund as of December 31, 1995		\$234,589,000
<u>Increase to Surplus</u>		
Awards received	\$40,268,000	
Supplemental awards from the Supplemental Benefits Fund	\$160,701,000	
Net Investment Income	84,786,000	
Decrease in liability for unpaid awards and administrative fees	19,755,000	
Net unrealized capital gains	<u>3,000</u>	
Total increase to surplus		\$305,513,000
<u>Decrease to Surplus</u>		
Awards Paid	\$156,291,000	
Supplemental Awards Paid	158,178,000	
Increase in liability for unpaid awards and administrative awards	<u>4,424,000</u>	
Total decrease to surplus		<u>318,893,000</u>
Net decrease to surplus		\$ 13,380,000
Surplus funds, December 31, 2003		<u>\$221,209,000</u>

**4. CONTINGENT RECEIVABLE FROM NEW YORK STATE**

The Fund reported an admitted asset of \$220,000,000 for the captioned item as of December 31, 2003 which represents amounts that it was required to transfer to the State of New York in order to help balance the State's budgets pursuant to the following statutes:

Chapter 55 of the Laws of 1982	\$50,000,000
Chapter 7 of the Laws of 1989	110,000,000
Chapter 62 of the Laws of 1990	<u>60,000,000</u>
Total funds transferred	<u>\$220,000,000</u>

The contingent receivable is non-interest bearing and has no scheduled repayment, however, the statutes require that New York State appropriate \$220,000,000 in its annual budget for the potential repayment of any amount of the \$220,000,000 necessary to maintain the solvency of the Fund. The statutes specifically direct that the contingent receivable be considered an admitted asset of the Fund.

### **5. UNPAID LOSSES**

The liability for unpaid losses of \$148,973,000, as determined by this examination is the same as reported by the Fund as of December 31, 2003.

The liability for unpaid awards represents the present value of individual case estimates at year-end, with mortality and remarriage rates based upon the Survivorship Annuitants' Table of Mortality and the Remarriage Tables of the Dutch Royal Insurance Institution, respectively, as required by the New York State Workers' Compensation Law. The Fund uses an assumed interest rate of six percent to estimate the present value for unpaid awards.

### **6. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION**

This prior report on examination contained two comments and recommendation, which are summarized below with findings of the Fund's subsequent actions thereon. (The page numbers shown below refer to the prior report).

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Custodian Agreement</u>	
It is recommended that the Fund amend its custodial agreements to include the required protective covenants and provisions.	5-6
The Fund has not complied with this recommendation, and it is repeated in this report.	

<u>ITEM</u>	<u>PAGE NO.</u>
B. <u>Loss payments Recoverable from NYS (Supplemental Benefits)</u>	
It is recommended that the Fund continue to review the rejected items and supply any additional information necessary to support its claim for reimbursement from the WCB. It is further recommended that an aging of this account be established for use by management in order to ensure payment in a timely manner and to help determine any amount that are uncollectible and should be not admitted or written off.	9-10
The Fund has complied with this recommendation.	

## **7. SUMMARY OF COMMENTS AND RECOMMENDATIONS**

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Abandoned Property Law</u>	
It is recommended that the Fund comply with the provisions of Section 1316 of the New York Abandoned Property Law and file the abandoned property reports on a timely basis.	4
B. <u>Custodial Agreement</u>	
It is recommended that the Fund update its custodial agreement to reflect the correct name of its current custodian.	4
It is recommended that the Fund amend its custodial agreement to include the required protective covenants and provisions.	5



*Appointment No. 22213*

*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:*

**James Murphy**

*as proper person to examine into the affairs of the*

**AGGREGATE TRUST FUND**

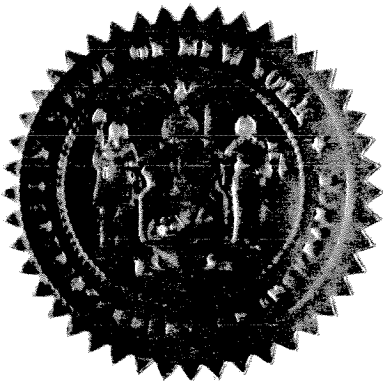
*and to make a report to me in writing of the condition of the said*


**Fund**

*with such other information as he shall deem requisite.*

*In Witness Whereof, I have hereunto subscribed by the  
name and affixed the official Seal of this Department, at  
the City of New York,*

*this 23rd day of April, 2004*



  
GREGORY V. SERIO  
*Superintendent of Insurance*