

REPORT ON EXAMINATION
OF
SUMITOMO MARINE AND FIRE INSURANCE COMPANY OF AMERICA
AS OF
DECEMBER 31, 2001

DATE OF REPORT

JULY 8, 2003

EXAMINER

MARC BRUCKSTEIN, CFE

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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

July 8, 2003

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 21860 dated April 26, 2002, attached hereto, I have made an examination into the condition and affairs of the Sumitomo Marine & Fire Insurance Company of America as of December 31, 2001 and submit the following report thereon.

The examination was conducted at the Company's administrative office located at 15 Independence Blvd., Warren, New Jersey 07059, as well as the Company's statutory home office at 33 Whitehall Street, New York, New York 10004.

Wherever the designation "Company" appears in this report, it should be understood to indicate the Sumitomo Marine & Fire Insurance Company of America.

Whenever the term "Parent" appears herein it should be understood to mean Mitsui Sumitomo Insurance Company, Limited (Tokyo).

Wherever the designation “Department” appears in this report, it should be understood to mean New York Insurance Department.

1. SCOPE OF EXAMINATION

The previous examination was conducted as of December 31, 1996. This examination covered the five-year period from January 1, 1997, through December 31, 2001. Transactions occurring 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, 2001, a review of income, disbursements and company records deemed necessary to accomplish such 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
- Officers' and employees' welfare and pension plans
- Territory and plan of operation
- Growth of the Branch
- Business in force by states
- Loss experience
- Reinsurance
- Market conduct activities
- Accounts and records
- Financial statements

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

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

2. DESCRIPTION OF COMPANY

A. History

Sumitomo Marine and Fire Insurance Company of America was incorporated under the laws of the State of York on September 28, 2001. The Company was organized to provide the vehicle for the domestication, under Article 72 of the New York Insurance Law, of the United States Branch of Sumitomo Marine & Fire Insurance Co. Ltd. (“Branch”). The domestication was a reorganization of the Branch whereby the Company assumed all liabilities of the Branch.

Sumitomo Marine & Fire Insurance Co. Ltd. (“Sumitomo Japan”) was formed in 1944 under the sponsorship of Sumitomo Financial Group through the amalgamation of The Osaka Marine and Fire Insurance Company and The Sumitomo Marine and Fire Insurance Company, Limited (known prior to 1940 as Fuso Marine and Fire Insurance Company, Limited), which were founded in 1893 and 1917, respectively, under the laws of Japan. A branch office of Sumitomo Japan was maintained in the United States from 1920 until World War II. The Branch was re-established under the laws of New York on January 1, 1971 and began business on the same day.

On October 1, 2001, Sumitomo Marine & Fire Insurance Co. Ltd. and Mitsui Marine & Fire Insurance Co. Ltd. merged and became the Mitsui Sumitomo Insurance Co. Ltd., which is the Company’s ultimate parent.

As of December 31, 2001, the Company maintained statutory deposits, totaling \$6,300,000, pursuant to Section 1320 of the New York Insurance Law.

Capital paid in is \$5,000,000 consisting of 500,000 shares of common stock \$10 par value per share. Gross paid in and contributed surplus is \$25,670,665. The following adjustments to Gross paid in and contributed surplus during the examination period, were as follows:

| <u>Year</u> | <u>Description</u> | <u>Amount</u> |
|-------------|---|---------------------|
| 12/31/96 | Beginning gross paid in and contributed surplus | \$ |
| 1998 | Surplus contribution | 21,603,616 |
| 1999 | Surplus contribution | 4,719,113 |
| 2000 | Surplus contribution | 1,456,984 |
| 2001 | Transferred to Capital | (5,000,000) |
| 2001 | Surplus contribution | <u>2,890,952</u> |
| 12/31/01 | Ending gross paid in and contributed | <u>\$25,670,665</u> |

A. Management

On September 28, 2001, the Sumitomo Marine & Fire Insurance Company of America entered into a management agreement with Sumitomo Marine Management (USA), Inc., to manage the Company's investment, underwriting and claims operations. The agreement was approved by the Department.

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 (13) members nor more than twenty-one (21) members. As of the examination date, the board of directors was comprised of thirteen (13) members. Article II, Section 2.1 of the Company's by-laws require the board to hold at least one board meeting annually. The

board met at least once each year during the period of examination, except in 1998 when the board did not meet.

It is recommended that the Company comply with its charter/by-laws and holds at least one regular meeting during each calendar year.

At December 31, 2001, the board of directors was comprised of the following thirteen (13) members:

| <u>Name and Residence</u> | <u>Principal Business Affiliation</u> |
|--|--|
| Masahiko Ando Cliffside Park, New Jersey | General Manager, Mitsui Sumitomo Insurance Company, Ltd. |
| Donna L. Boyer East Brunswick, New Jersey | Vice President, Sumitomo Marine Management (U.S.A.), Inc. |
| Christine S. Carroll Morristown, New Jersey | Vice President, Sumitomo Marine Management (U.S.A.), Inc. |
| Joseph L. Farrell Hillsborough, New Jersey | Senior Vice President and Co-Treasurer, Sumitomo Marine Management (U.S.A.), Inc. |
| Kanji Ieiri Ardsley, New York | Assistant General Manager, Mitsui Sumitomo Insurance Company, Ltd. |
| Patricia A. Keating Milford, New Jersey | Vice President, Sumitomo Marine Management (U.S.A.), Inc. |
| Keiichi Kondo Hartsdale, New York | Manager, Mitsui Sumitomo Insurance Company, Ltd. |
| Robert B. Miller Basking Ridge, New Jersey | Senior Vice President, Sumitomo Marine Management (U.S.A.), Inc. |
| Lee J. Stanhope Stewartsville, New Jersey | Senior Vice President, Sumitomo Marine Management (U.S.A.), Inc. |
| Shigeaki Terada New York, New York | General Manager, Mitsui Sumitomo Insurance Company, Ltd. |

| <u>Name and Residence</u> | <u>Principal Business Affiliation</u> |
|--|---|
| William A. Vopelius Long Valley, New Jersey | Vice President, Sumitomo Marine Management (U.S.A.), Inc. |
| Yasuyuki Yamaguchi San Marino, California | General Manager, Mitsui Sumitomo Insurance Company, Ltd. |
| Koji Yoshida Tokyo, Japan | Executive Officer, Mitsui Sumitomo Insurance Company, Ltd. |

A review of the minutes of the board of directors' meetings held during the examination period indicated that the meetings were generally well attended and each board member had an acceptable record of attendance.

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

| <u>Name</u> | <u>Title</u> |
|----------------------|---|
| Shigeaki Terada | President and Chief Executive Officer |
| Joseph L. Farrell | Vice President and Co-Treasurer |
| Masahiko Ando | Senior Vice President, Secretary and Co-Treasurer |
| Robert B. Miller | Senior Vice President |
| Donna L. Boyer | Vice President |
| Christine S. Carroll | Vice President |
| Koji Hata | Vice President |
| Hideaki Horimoto | Vice President |
| Keiichi Kondo | Vice President |
| Lee J. Stanhope | Vice President |
| William A Vopelius | Vice President |

Conflict of Interest

The Company has a procedure to distribute the conflict of interest questionnaires to its board of directors, executive officers and all employees on yearly basis. A review of the Company's records was made for the period covered by this examination. The Company was unable to provide the conflict of interest statements for several directors, executive and responsible employees.

It is recommended that the Company exercise due diligence in obtaining and maintaining signed conflict of interest statements from its board of directors, officers, and responsible employees.

On September 28, 2001, the Sumitomo Marine Management, (USA) (“SMM”) entered into a management agreement with the Company to manage the Company’s claims, underwriting, producer management, collection and handling of premiums and other funds, reinsurance, accounting and financial, marketing support and product development and administration, information technology, investments, legal and government relations and facilities. Under the terms of the agreement, the Company pays SMM a service fee equal to all expenses incurred by SMM on behalf of the Company, in connection with its management of the Company’s assumed reinsurance business. The agreement does not cover federal insurance taxes.

B. Territory and Plan of Operation

At December 31, 2001, Sumitomo Marine & Fire Insurance Company of America, was licensed to write business in the District of Columbia and in all fifty states. Approximately 56.7% of the Company’s direct writings in 2001 were concentrated in California, Hawaii, Illinois and New York.

As of December 31, 2001, 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(i) | Accident and health |
| 4 | Fire |
| 5 | Miscellaneous property damage |
| 6 | Water damage |
| 7 | Burglary and theft |
| 8 | Glass |
| 9 | Boiler and machinery |

| <u>Paragraph</u> | <u>Kind of Insurance</u> |
|------------------|--|
| 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 |
| 22 | Residual value |
| 24 | Credit unemployment insurance |
| 26 | Gap insurance |
| 27 | Prize indemnification |
| 28 | Service contract reimbursement insurance |
| 29 | Legal services |
| 30 | Substantially similar kinds of insurance |

The Company is also authorized 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, 69th Congress as amended; 33 USC Section 901 et seq. as amended), and as authorized by Section 4102(c), insurance of every kind or description outside of the United States and reinsurance of every kind or description to the extent permitted by the certified copy of its charter on file with the Department.

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

The following schedule shows direct premiums written by the Company both in total and in New York for the period under examination:

Direct Premiums Written

| <u>Year</u> | <u>New York State</u> | <u>United States</u> | <u>Percentage of New York Premiums Written as Percentage of United States Premiums</u> |
|-------------|-----------------------|----------------------|--|
| 1997 | \$7,985,282 | \$63,777,638 | 12.5% |
| 1998 | 8,238,942 | 67,312,631 | 12.2 |
| 1999 | 8,765,854 | 60,570,829 | 14.5 |
| 2000 | 7,576,085 | 66,069,780 | 11.5 |
| 2001 | <u>7,828,815</u> | <u>76,853,169</u> | <u>10.2</u> |
| Totals | <u>\$40,394,978</u> | <u>\$334,584,047</u> | <u>12.1%</u> |

The Company specializes in underwriting medium to large commercial and institutional coverage for Japanese clients' U.S. interests. Most insureds are engaged in either light industrial classifications or large city real estate, such as hotels, real estate or resorts. Business is written nationwide with geographic concentration in the major business centers of California, New York, Illinois and Hawaii, and is produced through approximately 242 independent agents and brokers located throughout the United States. The Company also assumes business from other insurance companies and participates in a number of domestic insurance pools.

C. Reinsurance

Assumed

In 2001, the Company's assumed premiums represented approximately 28.24% of its total book of business. The Company's assumed business is being managed by MSI Re Management Inc., a third tier subsidiary of Mitsui Sumitomo Insurance Company, Ltd. (the Company's ultimate parent), which was incorporated in the State of New York in May 1990 to provide these services exclusively for the Company. This arrangement was approved by the Department effective September 28, 1991.

In addition to the business assumed above, the Company participates in mandated pools. Some states in which the Company does business require that the insurer participate in state pools based upon the percentage of premiums written in the prior year.

Ceded

The Schedule F data as contained in the Company's filed annual statement was found to accurately reflect its reinsurance transactions.

The examiner reviewed all ceded reinsurance contracts in effect at December 31, 2001. The contracts contained all 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 program in effect at December 31, 2001:

| <u>Type of Contract</u> | <u>Cession</u> |
|-------------------------------------|---|
| <u>Proportional</u> | |
| Facultative Obligatory Quota Share | 30% of all casualty losses limit \$30,000,000 20% of all property losses limit \$20,000,000 |
| <u>Excess of Loss</u> | |
| <u>Property Per Risk (5 Layers)</u> | |
| First Layer | \$700,000 excess of \$300,000 each risk, each occurrence. Occurrence limit: \$2,100,000 |
| Second Layer | \$4,000,000 excess of \$1,000,000 each risk, each occurrence. Occurrence limit: \$12,000,000 |
| Third Layer | \$5,000,000 excess of \$5,000,000 each risk, each occurrence. Occurrence limit: \$10,000,000 |

| | |
|---|---|
| <u>Type of Contract</u> | <u>Cession</u> |
| Fourth Layer | \$25,000,000 excess of \$10,000,000 each risk, each occurrence. |
| Fifth Layer | \$50,000,000 excess of \$35,000,000 each risk, each occurrence. Occurrence limit: \$50,000,000 |
| <u>Casualty (5 Layers)</u> | |
| First Layer | \$700,000 excess of \$300,000 each risk, each occurrence. Occurrence limit: \$2,100,000 |
| Second Layer | \$2,500,000 excess of \$1,000,000 each risk, each occurrence. |
| Third Layer | \$2,500,000 excess of \$3,500,000 each risk, each occurrence. Occurrence limit: \$2,500,000 |
| Fourth Layer | \$5,000,000 excess of \$6,000,000 each risk, each occurrence. |
| Fifth Layer | \$15,000,000 excess of \$11,000,000 each risk, each occurrence. |
| <u>All Lines</u> | |
| Catastrophe | \$39,000,000 excess of \$1,000,000 each risk, each occurrence. |
| <u>Other</u> | |
| Boiler & Machinery Equipment Breakdown Coverage | Liability shall not exceed \$75,000,000 for any one accident. |

The majority of the reinsurers are authorized companies in New York.

D. Holding Company System

The Company is owned 100% by Mitsui Sumitomo Insurance Co. Ltd, which is also the Company's ultimate parent.

A review of the holding company registration statements filed with this Department indicated that such filings were complete and were filed in a timely manner pursuant to Article 15 of the New York Insurance Law and Department Regulation 52. The following chart shows the Mitsui Sumitomo Insurance Co. Ltd. holding company structure as of December 31, 2001:

Mitsui Sumitomo Insurance Co.,
Ltd.
FIN 13-1957438

Japan Mitsui Sumitomo Kirameki Life Insurance Co., Ltd. 100%

Mitsui Direct General Insurance Co., Ltd. 24.4%

England Mitsui Sumitomo Insurance Company (Europe), Limited 100%

The Sumitomo Marine & Fire Insurance
Co., (EUROPE) Ltd. 100%

Ireland Mitsui Sumitomo Reinsurance, Limited 100%

Sumitomo Marine and Fire Insurance Company of
America 100%
A New York Corp. NAIC 20362 FIN 22-3818012

USA Sumitomo Marine Management (U.S.A.), Inc. 100%
A New York Corp. FIN 13-3429270

Mitsui Marine and Fire Insurance Company of America 100%
A New York Corp. NAIC 22551 FIN 13-3467153

Mitsui Marine Management (U.S.A.) Inc. 100%
A New York Corp. FIN 13-4145390

Brazil Mitsui Sumitomo Seguros S.A. 69.79%

Bermuda MM Reinsurance Company Limited 100%

SPAC Insurance (Bermuda) Limited 100%

Bahrain Arab Japanese Insurance Corp. 25%

Malaysia Mitsui Sumitomo Insurance (Malaysia) Bhd. 47.05%

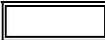
Singapore Mitsui Sumitomo Insurance (Singapore) Pte.Ltd. 100%

Indonesia P.T. Asuransi Mitsui Marine Indonesia 80.0%

| | | |
|-------------|---|-------|
| | P.T. Asuransi Sumitomo Marine and Pool | 72% |
| Thailand | Wilson Insurance Company Limited | 19% |
| | Kamol Sukosol Insurance Co.,Ltd. | 5% |
| Philippines | FEB Mitsui Marine Insurance Co., Inc. | 50% |
| | Philippine Charter Insurance Corp. | 20% |
| Hong Kong | Mitsui Sumitomo Insurance Company (Hong Kong), Limited | 100% |
| | The Sumitomo Property & Casualty Insurance Co., (H.K.) Ltd. | 100% |
| Vietnam | United Insurance Company of Vietnam | 24.5% |

 Insurance Company

 Affiliated Insurance Co.

 Non-insurer

At December 31, 2001, the Company had the following agreements in effect with one or more of its affiliated companies:

1. Service Agreement

In addition to the management agreement described in Section 2(a) herein, the Company has a service agreement with its subsidiary MSI Re Management, Inc., to act as general advisor and agent for the Company's assumed reinsurance business. This agreement was approved by the Department.

2. Claims Service Contracts

The Company has claim service contracts with several third party administrators which were entered into by Sumitomo Marine Management Services, an affiliated company. This agreement was approved by the New York Insurance Department.

In addition to the above agreements the Company maintains several service agreements with non-affiliated companies.

E. Accounts and Records

(1) SVO Valuation Certificates

MSI Re Management, Inc. (MSI) is a wholly-owned subsidiary of the Company. Sumitomo Marine and Fire Insurance Company of America has been reporting the same value of MSI's stock at \$563,840 for all years under examination (1997-2001). The Company obtained an SVO valuation certificate in 1997, 1998 and 1999, but did not file in 2000, or 2001. Additionally, the Company obtained an updated SVO valuation in 2002.

It is recommended that the Company obtain and maintain updated SVO valuation certificates for all of its securities on an annual basis.

(2) Custodial Agreements

The Company is a party to two custodial agreements for the safekeeping of its securities. Examination review indicated that these agreements were lacking certain safeguards and controls as set forth in Part 1(IV)(H) of the NAIC Financial Condition Examiners Handbook.

It is recommended that the Company amend its custodial agreements to incorporate the safeguards and controls set forth in Part 1(IV)(H) of the NAIC Financial Condition Examiners Handbook.

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.”

As of December 31, 2001, the Company did not file the required abandoned property reports for 1998 and 2001 with the New York State Comptroller’s Office as per the aforementioned section. The Company indicated that it held no reportable abandoned property.

It is again recommended that the Company comply with Section 1316 of the New York Abandoned Property Law in filing the required abandoned property reports.

G. Significant Operating Ratios

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

| | |
|--|--------|
| Net premiums written in 2001 to surplus as regards policyholders | .53:1 |
| Liabilities to liquid assets (cash and invested assets less investments in affiliates) | 59.77% |
| Premiums in course of collection to surplus as regards policyholders | 9.40% |

The above ratios fall within the benchmark ranges as 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 five year period covered by this examination:

| | <u>Amounts</u> | <u>Ratios</u> |
|-----------------------------------|----------------------|----------------|
| Losses incurred | \$128,184,585 | 50.44% |
| Loss adjustment expenses incurred | 54,382,332 | 21.40 |
| Underwriting expenses incurred | 104,379,478 | 41.07 |
| LAD program expenses | 29,692 | .01 |
| Net underwriting loss | <u>(32,841,356)</u> | <u>(12.92)</u> |
| Premiums earned | <u>\$254,134,731</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, 2001. This statement is the same as the balance sheet filed by the Company:

| <u>Assets</u> | <u>Ledger Assets</u> | <u>Not-Admitted Assets</u> | <u>Net-Admitted Assets</u> |
|---|--------------------------|--------------------------------|--------------------------------|
| Bonds | \$201,126,725 | \$ | \$201,126,725 |
| Common stocks | 1,347,933 | | 1,347,933 |
| Cash on hand and on deposit | (1,009,298) | | (1,009,298) |
| Short-term investments | 15,253,985 | | 15,253,985 |
| Premiums and agents' balances in course of collection | 14,442,603 | 2,585,284 | 11,867,319 |
| Premiums, agents' balances and installments booked but deferred and not yet due | 14,652,576 | | 14,652,576 |
| Funds held by or deposited with reinsured companies | 330,278 | | 330,278 |
| Amounts billed and receivable under high deductible policies | 254,175 | 6,833 | 247,342 |
| Reinsurance recoverable on loss and loss adjustment expense payments | 6,559,769 | | 6,559,769 |
| Electronic data processing equipment | 2,079,753 | 2,079,753 | |
| Interest, dividends, real estate income due & accrued | 4,542,669 | | 4,542,669 |
| Equities and deposits in pools and associations | <u>1,566,361</u> | <u>750,000</u> | <u>816,361</u> |
| Total assets | <u>\$261,147,529</u> | <u>\$5,421,870</u> | <u>\$255,725,659</u> |

Liabilities

| | |
|---|----------------|
| Losses | \$57,195,403 |
| Reinsurance payable on paid losses and loss adjustment expenses | 2,291,866 |
| Loss adjustment expenses | 22,218,881 |
| Contingent commissions | 540,481 |
| Other expenses | 140,591 |
| Taxes, licenses and fees | 1,275,008 |
| Federal and foreign income taxes | 429,572 |
| Unearned premiums | 27,574,149 |
| Dividends declared and unpaid to policyholders | 540,210 |
| Ceded reinsurance premiums payable (net of ceding commissions) | 8,578,143 |
| Funds held by company under reinsurance treaties | 412,708 |
| Provision for reinsurance | 2,769,587 |
| Payable to parent, subsidiaries and affiliates | 4,967,315 |
| Claims payable | <u>603,066</u> |
| Total liabilities | \$129,536,980 |

Surplus and Other Funds

| | |
|---------------------------------------|----------------------|
| Common capital stock | \$ 5,000,000 |
| Statutory Deposit | 6,360,000 |
| Gross paid in and contributed surplus | 25,670,665 |
| Unassigned funds (surplus) | <u>89,158,014</u> |
| Surplus as regards policyholders | <u>126,188,679</u> |
| Total liabilities and surplus | <u>\$255,725,659</u> |

Note: The Internal Revenue Service has completed its audits of the Company's federal income tax returns through tax year 1992. No audits took place for the years 1993 through 1998, which are now closed. Audits covering tax years 1999 through 2001 have yet to commence. 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 \$51,599,419 during the five-year examination period, January 1, 1997, through December 31, 2001 detailed as follows:

Statement of Income

Underwriting Income

| | | |
|--------------------------------------|---------------|--------------------|
| Premiums earned | | \$254,134,731 |
| Deductions: | | |
| Losses incurred | \$128,184,585 | |
| Loss adjustment expenses incurred | 54,382,332 | |
| Other underwriting expenses incurred | 104,379,478 | |
| LAD program expenses | <u>29,692</u> | |
| Total underwriting deductions | | <u>286,976,087</u> |
| Net underwriting gain or (loss) | | \$(32,841,356) |

Investment Income

| | | |
|--|------------------|------------|
| Net investment income earned | \$69,703,713 | |
| Net realized capital gains or (losses) | <u>2,777,106</u> | |
| Net investment gain or (loss) | | 72,480,819 |

Other Income

| | | |
|--|------------------|---------------------|
| Net gain or (loss) from agents' balances charged off | \$26,087 | |
| Finance and service charges not included in premiums | (21,697) | |
| Miscellaneous income | <u>(512,405)</u> | |
| Total other income | | <u>(508,015)</u> |
| Net income before dividends and before federal and foreign income taxes incurred | | \$39,131,448 |
| Dividends to policyholders | | <u>6,180,212</u> |
| Net income after dividends and before federal and foreign income taxes incurred | | \$32,951,236 |
| Federal and foreign income taxes incurred | | <u>9,369,693</u> |
| Net income | | <u>\$23,581,543</u> |

Capital and surplus account

| | | | |
|---|-----------------------------|------------------------------|----------------------|
| Surplus as regards policyholders, December 31, 1996, per report on examination | | | \$74,589,260 |
| | <u>Gains in Surplus</u> | <u>Losses in Surplus</u> | |
| Net income | \$23,581,543 | \$ | |
| Net unrealized capital gains or (losses) | 188,297 | | |
| Change in non-admitted assets | 1,896,340 | | |
| Change in provision for reinsurance | | 2,543,172 | |
| Change in excess of statutory reserves over statement reserves | 257,000 | | |
| Cumulative effect of changes in accounting principles | | 1,088,508 | |
| Capital paid in | 29,225,189 | | |
| Capital transferred from surplus | 5,000,000 | | |
| Surplus transferred to capital | | 5,000,000 | |
| Net remittances from or (to) home office | 62,010 | | |
| Change in contingency reserve for municipal obligations | <u>20,720</u> | _____ | |
| Total gains and losses | <u>\$60,231,099</u> | <u>\$8,631,680</u> | |
| Net increase to surplus as regards policyholders | | | <u>51,599,419</u> |
| Surplus as regards policyholders, December 31, 2001, per report on examination | | | <u>\$126,188,679</u> |

4. LOSSES

The examination liability of \$57,195,403 is the same as the amount reported by the Company as of December 31, 2001. The examination analysis was conducted in accordance with generally accepted actuarial principles and practices and was based on statistical information contained in the Company's internal records and in its filed annual statement.

5. LOSS ADJUSTMENT EXPENSES

The examination liability of \$22,218,881 is the same as the amount reported by the Company as of December 31, 2001. The examination analysis was conducted in accordance with generally accepted actuarial principles and practices and was based on statistical information contained in the Company's internal records and in its filed annual statement.

6. 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 more precise scope of a market conduct investigation that 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. Rating
- D. Treatment of policyholders and claimants

No problem areas were encountered.

7. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

A review was made into the actions taken by the Company with regards to the comments and recommendations contained in the prior report on examination. The item letter and page number shown below refers to that of the prior report:

| <u>ITEM</u> | <u>PAGE NO.</u> |
|--|-----------------|
| A. <u>Management</u> | |
| <ul style="list-style-type: none"> i. It is recommended that the Branch adhere to the provisions of Section 312(b) of the New York Insurance Law by obtaining and maintaining a signed statement from each director, which shall be retained in the insurer's files confirming that such member has received and read such report. <p>The Company has complied with this recommendation by obtaining and maintaining a signed statement from each director, that such member has received and read such report.</p> | 6-7 |
| <ul style="list-style-type: none"> ii. It is recommended that the Branch adhere to the provisions of Section 1411(a) of the New York Insurance Law which requires board of directors' approval of investment transactions. <p>The Company has complied with this recommendation by adhering to provisions of Section 1411(a) of the New York Insurance law by having the board of directors approve investment transactions.</p> | 6-7 |
| <ul style="list-style-type: none"> iii. It is recommended that the Branch seek to have the board of directors ratify, confirm and approve those investment transactions consummated by the Branch during the period January 1, 1992 to the present. <p>The Company has complied with this recommendation.</p> | 7 |
| <ul style="list-style-type: none"> iv. It is recommended that the Branch maintain translated copies of the board of directors' minutes as it pertains to Branch operations (e.g. investments). <p>The Company has complied with this recommendation by maintaining translated copies of the directors' minutes held during the examination period.</p> | 7 |

| <u>ITEM</u> | <u>PAGE NO.</u> |
|---|-----------------|
| B. <u>Reinsurance</u> | |
| i. It is recommended that the Branch amend its reinsurance contracts by eliminating the extra contractual obligations provision in order to comply with Section 1106(c) of the New York Insurance Law. | 15 |
| The Company has complied with this recommendation. | |
| ii. It is recommended that the Branch maintain documentation of its evaluation of transfer of risk for all ceded reinsurance contracts to support management's accounting positions related to these contracts in accordance with Chapter 22 of the NAIC Practices and Procedures Manual. | 17 |
| The Company has complied with this recommendation by maintaining documentation of its evaluation of transfer of risk for all ceded reinsurance contracts. | |
| C. <u>Service Agreements</u> | |
| i. It is recommended that SMM amend all service agreements to reflect the implementation of the Sumitomo Accommodation Quota Share Reinsurance Contract. | 20-21 |
| The Company has complied with this recommendation. | |
| ii. It is recommended that SMM amend all applicable service agreements to reflect that the agreements shall be governed and construed in accordance with the laws of the State of New York. | 20-21 |
| The Company has complied with this recommendation by amending its service agreements to reflect that the agreements shall be governed and construed in accordance with the laws of the State of New York. | |
| D. <u>Custodian Agreements</u> | |
| It is recommended that the Branch amend their custodian agreements with Citibank and Sumitomo Trust & Banking Company (U.S.A.) to meet the necessary safeguards and controls prescribed by the Department, for the custody and safekeeping of its securities. | 21 |
| The Company has not complied with this recommendation and a similar comment appears in this report on examination. | |

| <u>ITEM</u> | <u>PAGE NO.</u> |
|--|-----------------|
| E. <u>Audited Financial Statements</u> | |
| i. It is recommended that the Branch comply with the provisions of Section 307(b) of the New York Insurance Law and Department Regulation 118 with respect to its written engagement contracts with its CPA. | 22-23 |
| <p>The Company has complied with this recommendation by complying With provisions of Section 307(b) of the New York Insurance Law And Department regulation 118.</p> | |
| ii. It is recommended that the Branch exercise due care in maintaining written engagement contracts entered into with its CPAs. | 23 |
| <p>The Company has complied with this recommendation.</p> | |
| F. <u>Conflict of Interest</u> | |
| i. It is recommended that the Branch exercise due care in obtaining and maintaining signed conflict of interest statements from its board of directors, officers, and responsible employees. | 24 |
| <p>The Company has not complied with this recommendation. A similar comment is included in this report.</p> | |
| ii. It is recommended that the Branch establish a procedure for enforcing such a policy and permit the board of directors to properly oversee and handle any conflicts disclosed. | 24-25 |
| <p>The Company has complied with this recommendation and a similar agreement appears in the current Report on Examination.</p> | |
| iii. It is recommended that the board of directors maintain complete minutes of its proceedings on such matters. | 25 |
| <p>The Company has complied with this recommendation.</p> | |
| G. <u>Abandoned Property Law</u> | |
| i. It is recommended that the Branch comply with Section 1316 of the New York Abandoned Property Law in filing the required abandoned property reports. | |
| <p>The Company has not complied with this recommendation and should comply with Section 1316 of the New York Abandoned Property Law in filing the required abandoned property reports.</p> | |

| <u>ITEM</u> | <u>PAGE NO.</u> |
|---|-----------------|
| ii. It is recommended that the Branch establish formal guidelines and adequate controls in maintaining the accountability of all unclaimed checks. | 25 |
| The Company has complied with this recommendation. | |
| H. <u>Fidelity Bonds and Other Insurance</u> | |
| It is recommended that the United States Branch obtain and maintain the suggested minimum amounts of fidelity insurance as prescribed in the guidelines set forth in the Financial Conditions Examiners Handbook. | 26 |
| The Company has complied with this recommendation by maintaining above the suggested minimum amounts of the fidelity insurance as prescribed in the guidelines set forth in the National Association of Insurance Commissioner's Financial Conditions Examiners Handbook. | |
| I. <u>Accounts and Records</u> | |
| i. It is recommended that the Branch institute procedures that will enable the Branch to provide loss data in the form prescribed by the Insurance Department. | 27 |
| The Company has complied with this recommendation. | |
| ii. It is recommended that the Branch insert a footnote to the annual statement or quarterly statements, when the data reported are estimates. | 27 |
| The Company has complied with this recommendation. | |
| iii. It is recommended that the Branch formalize standard written procedures and guidelines for billing reinsurance recoverables. | 27-28 |
| The Company has complied with this recommendation. | |
| iv. It is recommended that the Branch bill reinsurance recoverables in a timely manner and in accordance with the terms of the applicable reinsurance contracts. | 28 |
| The Company has complied with this recommendation. | |
| v. It is recommended that the Branch age its reinsurance recoverables in accordance with Chapter 2--"Reinsurance" of the NAIC's Accounting Practices and Procedures Manual. | 28 |
| The Company has complied with this recommendation. | |

| <u>ITEM</u> | <u>PAGE NO.</u> |
|---|-----------------|
| vi. It is recommended that the Branch reflect bond premiums and discounts as an element of investment income in accordance with Chapter 15--“Investment Income” of the NAIC’s Accounting Practices and Procedures Manual. | 28 |
| The Company has complied with this recommendation. | |
| vii. It is recommended that the Branch formalize guidelines and procedures that will reduce the amount of late recorded premiums it books in its future annual statements filed with the Insurance Department. | 29 |
| The Company has complied with this recommendation. | |
| J. <u>Losses</u> | |
| It is recommended that the Branch amend the letters of credit obtained in conjunction with high deductible policies to comply with the provisions of Section 79.2 of Regulation 133. | 37 |
| The Company has complied with this recommendation. | |
| K. <u>Payable to Parent, Subsidiaries and Affiliates</u> | |
| It is recommended that the Branch request approval from the Department to remit such funds to Home Office or treat this payable as a remittance from Home Office. | 38-39 |
| The Company has complied with this recommendation. | |

8. SUMMARY OF COMMENTS AND RECOMMENDATIONS

| <u>ITEM</u> | <u>PAGE NO.</u> |
|--|-----------------|
| A. <u>Management</u> | |
| (i) It is recommended that the Company comply with its charter/by-laws and hold at least one regular meeting during each calendar year. | 5 |
| (ii) <u>Conflict of Interest</u> | |
| It is recommended that the Company exercise due diligence in obtaining and maintaining signed conflict of interest statements from its board of directors, officers and responsible employees. | 7 |

| <u>ITEM</u> | <u>PAGE NO.</u> |
|---|-----------------|
| B. <u>Accounts and Records</u> | |
| (i) <u>SVO Valuation Certificates</u> | |
| It is recommended that the Company obtain and maintain updated SVO valuation certificates for all of its securities required by the Department on an annual basis. | 16 |
| (ii) <u>Custodian Agreement</u> | |
| It is recommended that the Company amend its custodial agreements to incorporate the necessary safeguards and controls set forth in Part 1(IV)(H) of the NAIC's Financial Condition Examiners Handbook. | 16 |
| C. <u>Abandoned Property Law</u> | |
| It is again recommended that the Company comply with Section 1316 of the New York Abandoned Property Law in filing the required abandoned property reports. | 16 |

Respectfully submitted,

_____/S/_____
Marc Bruckstein
Senior Insurance Examiner

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

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

_____/S/_____
Marc Bruckstein.

Subscribed and sworn to before me

this _____ day of _____ 2003.

Appointment No. 21860

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:

MARC BRUCKSTEIN

as proper person to examine into the affairs of the

SUMITOMO MARINE AND FIRE INSURANCE COMPANY OF AMERICA

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

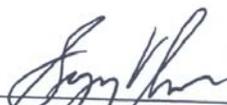
Company

with such other information as 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 26th day of April, 2002





GREGORY V. SERIO
Superintendent of Insurance