

REPORT ON EXAMINATION  
OF THE  
TRI-STATE CONSUMER INSURANCE COMPANY  
AS OF  
DECEMBER 31, 1997

DATE OF REPORT

JANUARY 13, 2000

EXAMINER

MELBA BOLIC

## TABLE OF CONTENTS

<u>ITEM NO.</u>		<u>PAGE NO.</u>
1.	Scope of examination	2
2.	Description of Company	2
	A. Management	3
	B. Territory and plan of operation	4
	C. Reinsurance	5
	D. Holding company system	7
	E. Significant operating ratios	10
	F. Abandoned Property Law	11
	G. Investments	11
	H. Corporate insurance policies	11
	I. Computer back-up facilities	12
	J. Disaster Recovery Plan	12
3.	Financial statements	13
	A. Balance sheet	13
	B. Underwriting and investment exhibit	15
4.	Losses	16
5.	Loss adjustment expenses	16
6.	Market conduct activities	17
7.	Subsequent event	20
8.	Compliance with prior report on examination	22
9.	Summary of comments and recommendations	25



STATE OF NEW YORK  
INSURANCE DEPARTMENT  
25 BEAVER STREET  
NEW YORK, NEW YORK 10003

January 13, 2000

Honorable Neil D. Levin  
Superintendent of Insurance  
Albany, New York 12257

Sir:

Pursuant to the requirements of the New York Insurance Law, and in compliance with the instructions contained in Appointment Number 21252 dated April 28, 1998, and annexed hereto, I have made an examination into the condition and affairs of the Tri-State Consumer Insurance Company as of December 31, 1997 and submit the following report thereon.

Wherever the designation "Company" appears herein without qualification, it should be understood to refer to the Tri-State Consumer Insurance Company.

Wherever the designation "Parent" appears herein without qualification, it should be understood to indicate Tri-State Consumer, Inc.

**1. SCOPE OF EXAMINATION**

The previous examination was conducted as of December 31, 1992. This examination covers the five year period from January 1, 1993 through December 31, 1997 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, inter-company balances and loss and loss adjustment expense reserves. 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 was made to ascertain what action was taken by the Company with regard to comments and recommendations contained in the prior report on examination.

The examination was conducted at the Company's home office located 2 Robbins Lane, Jericho, NY 11753.

**2. DESCRIPTION OF COMPANY**

The Company was incorporated under the laws of the State of New York on November 30, 1982. It was licensed on October 28, 1985 and commenced business on March 15, 1986.

Paid up capital of \$1,001,000 consists of 700,000 shares of common stock at a par value of \$1.43 per share. All authorized shares are outstanding. Total gross paid in capital and contributed surplus as of December 31, 1997, aggregated to \$1,347,003. Additionally, the Company has outstanding a Section 1307 subordinated surplus loan in the amount of \$3,749,690.

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 nor more than twenty-one members. As of December 31, 1997, the Board of Directors was comprised of thirteen members. The board met four times during calendar years 1993, 1994, and 1997, three times during calendar year 1995, and five times during calendar year 1996. The directors as of December 31, 1997, were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Lynda Cruise Plainview, NY	Vice President and Secretary, Tri-State Consumer Insurance Company
Barbara R. Elis Syosset, NY	Vice President and Controller, Tri-State Consumer Insurance Company
Dean E. Hart Jericho, NY	Optometrist, Woodbury Optical
Penny F. Hart New York, NY	President and Treasurer, Tri-State Consumer Insurance Company
Ronald W. Hart Tamarac, Florida	Retired President, Tri-State Consumer Insurance Company
Richard F. Horvitz Deerfield Beach, Florida	Owner, Golden Cockatoo
Donna M. Hourigan Westbury, NY	Operations Manager, Tri-State Consumer Insurance Company
Murray Lemonik Valley Stream, NY	Attorney, Tri-State Consumer Insurance Company
Mindy S. Levenberg Jericho, NY	Attorney
Milo D. Pinckney Port Washington, NY	Marketing Consultant
Jeffrey M. Raff New York, NY	Investments, Morgan Keegan

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Richard R. Summer Hicksville, NY	Branch Manager, Haylor, Freyer and Coen
David Wallach Flushing, NY	Optometrist, Dubin Optical

The minutes of all meetings of the Board of Directors held during the examination period were reviewed. Meetings were well attended with the exception of Richard Horvitz who attended only two of the six board meetings held during the eighteen months ending with the first quarter of 1998.

Members of the board have a fiduciary responsibility and must evince an on-going interest in the affairs of the insurer. It is essential that board members attend meetings consistently and set forth their views on relevant matters so that appropriate policy decisions may be reached by the board. Individuals who fail to attend at least one-half of the board's regular meetings, unless appropriately excused, do not fulfill such criteria.

It is recommended that the board members who are unable or unwilling to attend meetings consistently should resign or be replaced.

As of December 31, 1997, the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
Penny F. Hart	Chairman, President and Treasurer
Lynda Cruise	Vice President and Secretary
Barbara Elis	Vice President and Controller
Dean E. Hart	Vice President

B. Territory and Plan of Operation

As of December 31, 1997, the Company was authorized to transact business only in New York State.

Direct written premiums during the period covered by this examination were as follows:

<u>Calendar year</u>	<u>Direct Premiums Written</u>
1993	\$13,372,282
1994	\$14,974,652
1995	\$16,817,875
1996	\$18,026,888
1997	\$17,546,277

As of December 31, 1997, 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>Kinds of Insurance</u>
4	Fire
5	Miscellaneous property
6	Water damage
7	Burglary and theft
12	Collision
13	Personal injury liability
14	Property damage liability
19	Motor vehicle and aircraft physical damage
20	Marine and inland marine (inland only)

Based upon 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, the Company is required to maintain a minimum surplus to policyholders in the amount of \$1,500,000.

Policies are marketed exclusively through Tri-State Consumer, Inc. (the Parent), a licensed agent of the Company. The Company's business is concentrated in the New York metropolitan area.

C. Reinsurance

i. Assumed Reinsurance

The Company had no assumed reinsurance during the five-year examination period.

ii. Ceded Reinsurance

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

As of December 31, 1997, the Company has the following general working excess of loss reinsurance program in place:

<u>Contract</u>	<u>Coverage</u>	<u>Cessions</u>
<u>Multiple line Excess of Loss</u>		
(100% authorized)	A. Property business, Inland Marine and Section I of homeowners.	\$700,000 excess of \$300,000 as respects any one risk, each loss; \$2,100,000 limit as respects all risks in any one occurrence.
	B. Casualty business, automobile liability and Section II of homeowners.	\$700,000 excess of \$300,000 as respects any one occurrence.
	C. Property and casualty business, Inland Marine, automobile liability and Sections I and II of homeowners.	As respects any one occurrence involving one or more of the classes of property business subject to coverage A and one or more of the classes of casualty business subject to coverage B, the Company shall retain and be liable for \$300,000 of ultimate net loss. The reinsurer shall then be liable for the amount by which such combined ultimate net loss exceeds the Company's retention, but the liability of the reinsurer shall not exceed \$300,000 as respects any one occurrence.

<u>Contract</u>	<u>Coverage</u>	<u>Cessions</u>
<u>Quota Share</u>  (100% authorized)	Policies classified by the Company as Personal Umbrella liability business.	95% to a maximum limit of \$1,000,000 each occurrence. The Company shall retain and be liable for 5% of its net liability. The Company shall purchase excess facultative reinsurance to limit its loss from any one policy, each risk to \$1,000,000 each occurrence.

The examiner reviewed all ceded reinsurance contracts effected during the examination period. These contracts all contained the required standard clauses including insolvency clauses meeting the requirements of Section 1308 of the New York Insurance Law.

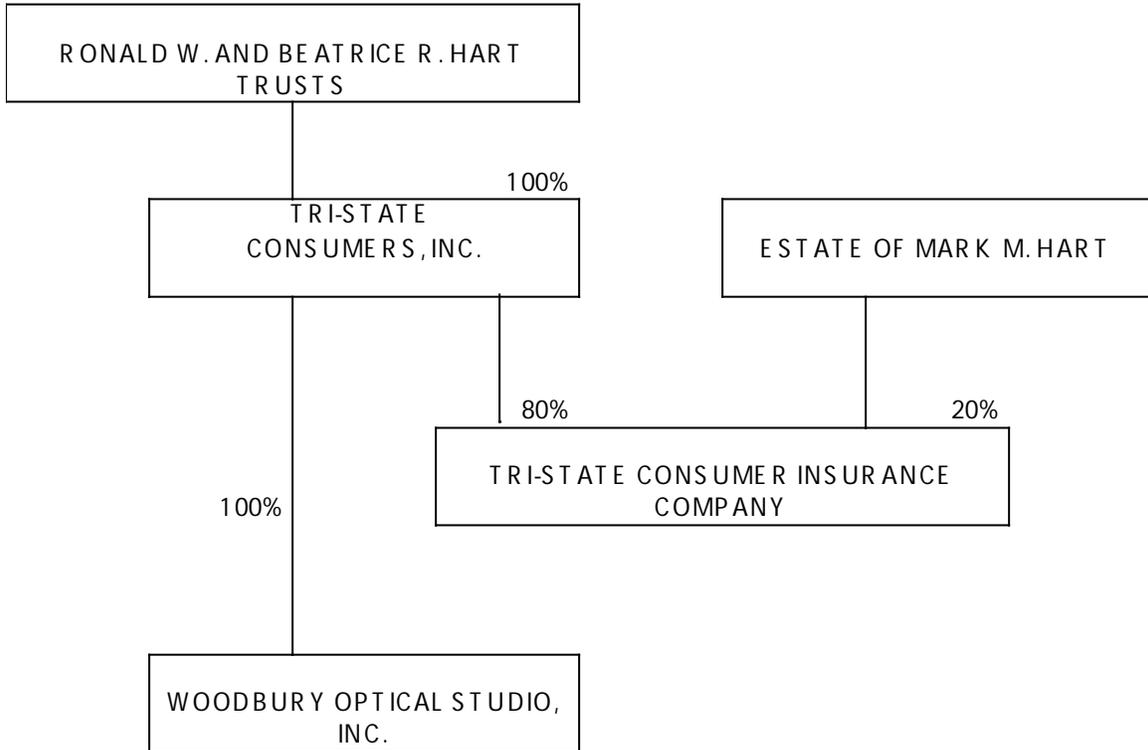
D. Holding Company System

Eighty percent of the outstanding shares of the Company are owned by Tri-State Consumers, Inc. (Parent), a licensed insurance agent of the Company domiciled in the State of New York. The Estate of Mark M. Hart owns the remaining twenty percent.

The Parent is one hundred percent owned by the Ronald W. Hart and Beatrice R. Hart Trusts. The beneficial owners of the Trusts are Penny F. Hart and Dean Evan Hart in equal shares.

The Company files registration statements pursuant to the requirements of Section 1503 of the New York Insurance Law and Department Regulations 52 and 52A.

The following chart depicts the Company's position within the Holding Company System.



The Company has the following agreements with its Parent as of December 31, 1997:

1. Agency Agreement

The Company and its Parent entered into an agency agreement effective March 5, 1986. Under this agreement the Company grants to its Parent the authority, and Parent accepts the obligations, to sell policies of insurance and collect premiums. All of the business written by the Company, with the exception of assigned risk, is generated through its Parent. The Department approved this agreement pursuant to Article 15 of the New York Insurance Law.

Under the Agency Agreement the Parent pays for the costs of the Company's advertising. Subsequent to the examination period, during July 1998, the Agency Agreement was revised to split the cost of all advertising with the Company. The advertising cost is allocated 50% to the Agency and 50% to the Company. This revision to the Agency Agreement was not formalized and submitted to the Department for approval in accordance with Section 1505(d)(3) of the New York Insurance Law.

2. Cost Sharing Agreement

The Company and its Parent share personnel, telephone, postage, general office equipment, computer hardware and software, and other miscellaneous expenses. These expenses are allocated between the Company and its Parent in accordance with a Cost Sharing Agreement entered into on August 29, 1994. The Company did not provide the examiners with documentation evidencing that the above mentioned agreement was approved by the Department in accordance with Section 1505(d)(3) of the New York Insurance Law.

3. Lease Agreement

The Company entered into a lease agreement dated December 1, 1995. Under this agreement the Company leases to the Parent 4,813 square feet of the premises located at 2 Robbins Lane, Jericho, New York. The Company did not submit to the Department the above mentioned agreement.

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

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

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

Subsequent to the period under examination, in 1998, the Company submitted the amendment to the Agency Agreement, the Cost Sharing Agreement and the Lease Agreement to the Department for approval.

It is recommended that, in the future the Company notify the Superintendent in writing at least thirty days prior to enter into transactions that fall within Section 1505(d)(3) of the New York Insurance Law.

3. Tax Allocation Agreement

Pursuant to this agreement, the Company files consolidated Federal income tax returns with the Parent. The Company’s Tax Allocation Agreement was approved by this Department on June 17, 1988.

E. Significant Operating Ratios

The following ratios have been computed as of December 31, 1997 based upon the results of this examination:

Net premiums written in 1997 to Surplus as regards policyholders	1.22 to 1
Liabilities to Liquid assets (cash and invested assets less investment in affiliates)	79.30%
Premiums in course of collection to Surplus as regards policyholders	8.97%

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 five-year period covered by this examination:

	<u>Amounts</u>	<u>Ratios</u>
Losses	\$39,464,290	51.68%
Loss adjustment expenses	12,242,029	16.03%
Other underwriting expenses	23,122,802	30.28%
Net underwriting gain	<u>1,537,006</u>	<u>2.01%</u>
Premiums earned	<u>\$76,366,127</u>	<u>100.00%</u>

F. 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.

G. Investments

The Company reported at December 31, 1997, a long-term investment in the Excelsior Investment Fund, a multi-managed hedge fund. This investment was not disclosed as a hedging transaction in the notes to the Financial Statement as required in the NAIC's Annual Statement Instructions. It is recommended that the Company comply with the NAIC's Annual Statement Instructions and properly disclose its hedging transactions.

H. Corporate Insurance Policies

The prior report on examination found the Company's fidelity bond coverage to be inadequate as of December 31, 1992. Effective July 15, 1993, the Company increased their fidelity bond to \$300,000. As of December 31, 1997, the Company was carrying \$300,000 in coverage. According to the NAIC Financial Condition Examiners Handbook, the Company's suggested minimum amount of fidelity insurance as of December 31, 1997, was \$350,000.

After being made aware of this deficiency during the examination, the Company increased their fidelity bond insurance to \$350,000 effective June 15, 1998.

I. Computer Back-up Facilities

The prior report on examination recommended that the Company enter into a formal agreement with a back-up facility in case of a shut down of the Company's operations.

The Company did not enter into a formal agreement with a back-up facility. The examiner was informed that Lynda Cruise, Vice President, Secretary and a member of the board of directors keeps the back-up files at her home. Ms. Cruise signed a promissory note to give proper care to the maintenance of the Company's back-up files.

It is again recommended that the Company enter into a formal agreement with a back-up facility in case of a shut down of the Company's operations.

J. Disaster Recovery Plan

According to the Company's response to this Department's Information Systems Internal Control Questionnaire, the Company does not have a disaster recovery plan. The purpose of a disaster recovery plan is to ensure that key personnel know their responsibility in the event of a disaster.

It is recommended that the Company develop a disaster recovery plan.

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, 1997. This statement is the same as the balance sheet filed by the Company.

<u>Assets</u>	<u>Ledger Assets</u>	<u>Non-Ledger Assets</u>	<u>Not-Admitted Assets</u>	<u>Net-Admitted Assets</u>
Bonds	\$38,724,089	\$	\$	\$38,724,089
Preferred stocks	1,010,719	58,363		1,069,082
Common stocks	119,110	118,794		237,904
Real estate	3,367,592			3,367,592
Cash on hand and on deposit	1,504,042			1,504,042
Short-term investments	994,686			994,686
Other invested assets	297,095			297,095
Premiums and agents' balances in course of collection	1,372,438		68,726	1,303,712
Premiums, agents' balances and installments booked but deferred and not yet due	3,701,873			3,701,873
Federal income tax recoverable		743,242		743,242
Electronic data processing equipment	32,782			32,782
Interest, dividends and real estate income due and accrued		717,087		717,087
Receivable from parent, subsidiaries and affiliates	10,833			10,833
Equities and deposits in pools and associations	4,407			4,407
Equipment, furniture and supplies	68,217		68,217	
Security deposit	17,500		17,500	
Miscellaneous accounts receivable	4,095			4,095
New York State franchise tax recoverable		27,773		27,773
Total assets	<u>\$51,229,478</u>	<u>\$1,665,259</u>	<u>\$154,443</u>	<u>\$52,740,294</u>

Liabilities

Losses	\$23,176,017
Loss adjustment expense	5,008,974
Contingent commissions and other similar charges	225,292
Other expenses	100,000
Unearned premiums	8,355,012
Payable for securities	519,650
Security deposits	53,552
Accounts payable	36,419
Anticipated legal fee	<u>1,148,556</u>
Total liabilities	\$38,623,472

Surplus

Section 1307 subordinated surplus loan	\$3,749,690	
Common capital stock	1,001,000	
Gross paid in and contributed surplus	1,347,003	
Unassigned funds	<u>8,019,129</u>	
Surplus as regards policyholders		<u>14,116,822</u>
Total liabilities and surplus		<u>\$52,740,294</u>

Footnotes to Balance Sheet

1. No liability appears in this balance sheet for a loan in the amount of \$3,749,690 and accrued interest thereon in the amount of \$1,328,612. This loan was granted pursuant to Section 1307 of the New York Insurance Law. As provided in Section 1307 repayment of principal and interest shall only be made out of free and divisible surplus, subject to the prior approval of the Superintendent of Insurance.
2. The Internal Revenue Service has completed its audits of the consolidated Federal income tax returns filed on behalf of the Company through tax year 1993. All material adjustments, if any, made subsequent to the date of the examination and arising from said audits, are reflected in the financial statements included in this report. The examiner is unaware of any potential exposure of the Company to any further tax assessment and no liability has been established herein relative to such contingency.

B. Underwriting and Investment Exhibit

Surplus as regards policyholders increased \$9,013,347 during the five year examination period, January 1, 1993 through December 31, 1997, and is detailed as follows:

Statement of Income

Underwriting Income

Premiums earned		\$76,366,127
Deductions:		
Losses incurred	\$39,464,290	
Loss adjustment expense incurred	12,242,029	
Other underwriting expenses incurred	<u>23,122,802</u>	
Total underwriting deductions		<u>74,829,121</u>
Net underwriting gain		\$1,537,006

Investment Income

Net investment income earned	7,915,565	
Net realized capital gains	<u>33,238</u>	
Net investment gain		7,948,803

Other Income

Net (loss) from agents' premium balances charged off	\$(161,236)	
Finance and service charges not included in premiums	560,466	
Gain settlement litigation	3,073,259	
Anticipated legal fee	(1,148,556)	
Miscellaneous income	<u>39,847</u>	
Total other income		<u>2,363,780</u>
Net income before federal and foreign income taxes incurred		\$11,849,589
Federal and foreign income taxes incurred		<u>3,952,765</u>
Net income		<u>\$7,896,824</u>

Capital and Surplus Account

Surplus as regards policyholders, per report on examination as of December 31, 1992			\$5,103,475
	<u>Increases in Surplus</u>	<u>Decreases in Surplus</u>	
Net income	\$7,896,824	\$	
Net unrealized capital gains	145,386		
Change in non-admitted assets		8,863	
Surplus paid-in Section 1307 Loan	<u>980,000</u>	_____	
Total	<u>\$9,022,210</u>	<u>\$8,863</u>	
Net increase in surplus as regards policyholders			<u>9,013,347</u>
Surplus as regards policyholders, per report on' examination as of December 31, 1997			<u>\$14,116,822</u>

**4. LOSSES**

The examination liability of \$23,176,017 is the same as the amount reported by the Company as of December 31, 1997. The examination analysis was conducted in accordance with generally accepted actuarial principles and practices and was based on statistical information contained in the Company's internal records and in its filed annual statements. This analysis concluded that no overall reserve changes were warranted.

**5. LOSS ADJUSTMENT EXPENSES**

The examination liability of \$5,008,974 is the same as the amount reported by the Company as of December 31, 1997. The examination analysis was conducted in accordance with generally accepted actuarial principles and practices and was based on statistical information contained in the Company's

internal records and in its filed annual statements. This analysis concluded that no overall reserve changes were warranted.

## 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 directed at practices of the Company in the following major areas:

1. Sales and advertising
2. Claims and complaint handling

### Sales and Advertising

The Company did not maintain complete and accurate advertising records during the period under examination January 1, 1993 through December 31, 1997. Penny Hart, President, stated that she was unable to locate all of the advertisements run by the Company for the period under examination. A review of the advertisements provided by the Company revealed that they were not maintained in a specific nor chronological order. It was noted that several advertisements that the Department had received complaints on were not provided to the examiners for review. Furthermore, several advertisements were not dated; therefore, the examiner was unable to ascertain exactly when these advertisements were run.

Since the Company did not maintain complete and accurate advertising records, the examiner was unable to conduct a comprehensive review of the advertisements published during the period January 1, 1993 through December 31, 1996.

Based on the Agency Agreement, the Parent, during the period under examination, paid for the Company's advertising (See Item 2D.) The examiner obtained from the Parent all vouchers supporting all of

the advertisements disseminated to the public during the period January 1997 through August 1998. Copies of most of the advertisements distributed to the public via newspaper, magazines, railroad and bus ads were attached to the vouchers. At the request of the examiner, the Company provided some of the advertisements it had disseminated.

Based upon the advertisements available for review, the following was noted:

1. The advertisements contained comparisons of the premiums charged by the Company with those charged by competitors, and indicated that Tri-State Consumer Insurance Company's rates were lower than the rates of the competitors named in the ads. The Company's advertisements did not specify driver's age, marital status, work or pleasure use, territory, driving records, and other rating factors. Tri-State Consumer Insurance Company did not provide the examiners with documentation supporting the rates quoted in the advertisements.

2. The advertisements stated that according to the latest New York State Auto Insurance Survey consumers could save \$500 or more by using Tri-State Consumer Insurance Company rather than other named competitors. The Company's management indicated that the survey mentioned above was the New York State Insurance Department 1997 Consumers Guide to Automobile Insurance ("Department's Guide"). The review of the Department's Guide does not support the Company's advertisement statement since it does not include all rating factors. Additionally, it appears that the Company is implying that the Department's Guide recommends Tri-State Consumer Insurance Company for automobile insurance.

3. The advertisements stated incorrectly that the Company opened its door almost twenty-five years ago. Tri-State Consumer Insurance Company was licensed on October 28, 1985, and commenced business twelve years ago on March 15, 1986.

4. The advertisements stated incorrectly that since the Company does not have outside agents their premium is lower than that of their competitors. The fact is that the Company has an agency agreement with its Parent that includes an 18.5% commission on all business written, and such commission is considered in the Company's premium rate.

New York Regulation 152, applicable to all insurers, defines the records required for examination purposes and retention period.

Regulation 152, Part 243.2(a) states:

“In addition to any other requirement contained in Insurance Law Section 325, any other section of the Insurance Law or other law, or any other provision of this Title, every insurer shall maintain its claims, rating, underwriting marketing, complaint, financial, and producer licensing records, and such other records subject to examination by the superintendent, in accordance with the provisions of this Part.”

Regulation 152, Part 243.2(b)(8) states in part:

“Except as otherwise required by law or regulation, an insurer shall maintain...Any other record for six calendar years from its creation or until after the filing of a report on examination or the conclusion of an investigation in which the record was subject to review.”

Regulation 152, Part 243.2(e) states in part:

“The records shall be readily available and easily accessible to the superintendent in accordance with Insurance Law Section 310.”

It is recommended that the Company comply with New York Regulation 152 and maintain complete, accurate and chronological advertising files.

It is recommended that the Company refrain from making incomplete comparisons of premiums which can result in misleading advertisements.

It is recommended that the Company discontinue the misleading practice of implying that the Department's Consumers Guide recommends Tri-State Consumer Insurance Company for automobile insurance.

#### Claims and Complaint Handling

The Market Conduct unit conducted an investigation of the Company's claim and complaint handling. Concurrently with this examination.

### **7. SUBSEQUENT EVENT**

In accordance with a stipulation entered into with the New York Insurance Department on November 30, 1999, the Company has agreed to comply with the following standards in all advertisements or other public announcements published, issued or distributed in this state in print, radio, television, computer or any other form of publication or transmission:

- (a) advertisements shall be truthful, accurate and not misleading in fact or implication;

- (b) advertisements which include a rate comparison shall compare rates for identical coverages, and shall indicate the source of all rates quoted, the date the rates are in effect, and the applicable rating criteria; if the source of the rate comparison is the Department's Consumer's Guide to Automobile Insurance, the advertisement shall indicate the year of publication of the Consumer's Guide and the page on which the rates appear;
- (c) advertisements which refer to another insurer shall include the full name of the individual insurer rather than its group or fleet name;
- (d) advertisements shall clearly distinguish between Respondent Tri-State Consumer Insurance Company and Respondent Tri-State Consumer Inc. and shall not imply that Respondent Tri-State Consumer Insurance Company has been in business longer than its date of licensure;
- (e) advertisements shall not state or imply that the Department's Annual Ranking of Automobile Insurance Complaints measures an insurer's overall level of service;
- (f) advertisements shall not state or imply that Respondent Tri-State Consumer Insurance Company's rates are the lowest in all cases unless, in fact, they are;
- (g) advertisements shall not state or imply that the Department's Consumer Guide on Automobile Insurers ranks insurers in order of savings to be realized by policyholders; and
- (h) advertisements which reference Department publications shall refer to the most recently published version of the publication.

**8. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION**

The prior report on examination contained thirteen comments and recommendations as follows (page numbers refer to the prior report):

<u>ITEM NO.</u>		<u>PAGE NO.</u>
1.	<u>Gross Paid-in and Contributed surplus</u>	
	It was recommended that the Company adopt the amount of \$3,316,693 as its gross paid-in and contributed surplus as of December 31, 1992 and include the same or appropriate adjustment amount in future filed statements.	3-4
	In its filed 1992 Annual Statement, the Company reported gross paid-in and contributed surplus of \$1,347,003. During the prior period under examination the Parent contributed to surplus the amount of \$1,969,690. This amount represents the cancellation of a liability owned by the Company, that was not reported properly in the 1992 annual statement. Subsequent to the prior examination, the Company requested that the Department approve a contribution to surplus in the amount of \$1,969,690 as a Section 1307 loan. On May 2, 1994, the Department granted the approval. As a result, this recommendation no longer applies.	
2.	<u>Board of Director's Meetings</u>	
	It was recommended that the Directors who were unable to attend meetings on a consistent basis should resign or be replaced.	5
	The Company has not addressed the issue of the board of directors' attendance. This comment will be reiterated herein.	
3.	<u>Stockholders' Meetings</u>	
	It was recommended that the Company institute annual stockholders' meetings to comply with the corporate procedures spelled out in the Company's Charter.	5-6
	The Company complied with this recommendation.	
4.	<u>Annual Election of Directors and Officers</u>	
	It was recommended that the annual election of both the Company's directors and officers be conducted as dictated by the Company's Charter.	5-6

The Company complied with this recommendation.

-23-

<u>ITEM NO.</u>		<u>PAGE NO.</u>
5.	<u>Conflict of Interest Questionnaires</u>	
	It was recommended that the Company institute more stringent procedures to ensure that all directors and key officers complete conflict of interest questionnaires on an annual basis.	6
	The Company complied with this recommendation.	
6.	<u>Holding Company System</u>	
a.	<u>Agency Agreement</u>	
	It was recommended that the Company file with this Department any amendments to the Agency Agreement at least thirty days prior to implementation, in accordance with Section 1505(d)(3) of the New York Insurance Law.	11-12
	The Company has not complied with this recommendation. A similar recommendation is being made in this report.	
b.	<u>Regulation 52-A</u>	
i.	It was recommended that the Company amend its Agency Agreement with its Parent to include all of the minimum provisions of Section 80-2.2(b)(4) of Regulation 52-A.	12-14
ii.	It was recommended that the Company comply with the annual reporting requirements of Section 80-2.2(c) of Regulation 52-A.	12-14
	The Company complied with this recommendation.	
c.	<u>Cost Sharing Agreement</u>	
	It was recommended that the Company redraft its Cost Sharing Agreement to encompass all shared costs between the Company and the Parent. The agreement should comply with Department Regulation 30 - Part 106 - "Allocation of Joint Expenses to Companies" and be submitted to the Department at least thirty days prior to implementation, in accordance with Section 1505(d)(3) of the New York Insurance Law.	14-16
	During the period under examination, the Company did not submit to the Department for approval its executed Cost Sharing Agreement dated August 29, 1994.	
	Subsequent to the period under examination, in 1998, the Company	

submitted the above mentioned agreement to the Department for approval.

-24-

<u>ITEM NO.</u>		<u>PAGE NO.</u>
7.	<u>Corporate Insurance Policies</u>	
	It was recommended that the Company maintain fidelity bond coverage in an amount at least equal to the N.A.I.C. formula.	17
	The Company complied with this recommendation.	
8.	<u>Custodian Agreement</u>	
	It was recommended that the Company amend its custodian agreement to include the various provisions which are deemed to be representative of good business practices for the contents of such agreements.	18
	The Company complied with this recommendation.	
9.	<u>Audited Financial Statements</u>	
	It was recommended that the Company's contract with its independent CPA be adjusted in the future to conform to the requirements of Section 307(b) of the New York Insurance Law and Department Regulation 118.	18
	The Company complied with this recommendation.	
10.	<u>Computer Back-up Facilities</u>	
	It was recommended that the Company enter into a formal agreement with a back-up facility in case of a shut down of the Company's operation.	19
	The Company failed to comply. The same recommendation is made in this report.	
11.	<u>Accounts and Records</u>	
	It was recommended that the Company amend the authorized signatories on their bank accounts to include the current management of the Company.	19
	The Company complied with this recommendation.	
12.	<u>Sales and Advertising</u>	
	It was recommended that, if the Company wishes to continue its advertising campaign claim of having lower rates than the competition, the Company perform detailed studies of	24-25

competitors' auto rates filed with the New York Insurance Department on at least an annual basis.

-25-

A similar recommendation is being made in this report.

13. Claims and Complaint Handling

It was recommended that the Company's complaint log be amended to comply with all the information requirements of Department Circular Letter 11 (1978). 26-27

The Company complied with this recommendation.

**9. SUMMARY OF COMMENTS AND RECOMMENDATIONS**

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Board of Director's Meetings</u>	
It is recommended that board members who are unable to attend meetings consistently should resign or be replaced.	4
B. <u>Holding Company System</u>	
It is recommended that the Company comply with Section 1505(d)(3) of the New York Insurance Law in all future transactions within its holding company system.	9-10
C. <u>Investments</u>	
It is recommended that the Company comply with the N.A.I.C.'s annual statement instructions and properly disclose its hedging transactions in the notes to the annual statements filed with the Department.	11
D. <u>Computer Back-Up Facilities</u>	
It is recommended that the Company enter into a formal agreement with a back-up facility in case of a shut down of the Company's operations.	12
E. <u>Disaster Recovery Plan</u>	
It is recommended that the Company develop a disaster recovery plan to ensure that key personnel know their responsibility in the event of	12

a disaster.

<u>ITEM</u>	<u>PAGE NO.</u>
F. <u>Market Conduct Activities</u>	
i. <u>Advertising</u>	
It is recommended that the Company comply with New York Regulation 152 and maintain complete, accurate and chronological advertising files.	18-22
It is recommended that the Company discontinue the misleading practice of implying that the Department's Consumer Guide recommends Tri-State Consumer Insurance Company for automobile insurance.	18-22
It is recommended that the Company refrain from making incomplete comparisons of premiums which can result in misleading advertisements.	18-22
In accordance with a stipulation entered into with the New York Insurance Department dated November 30, 1999, the Company has agreed to comply with the standards noted above, in addition to additional standards set forth in the stipulation.	20

Respectfully submitted,

\_\_\_\_\_/S/\_\_\_\_\_  
Melba Bolic,  
Associate Insurance Examiner

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

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

\_\_\_\_\_/S/\_\_\_\_\_  
Melba Bolic

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_ 1999.

Appointment No. 21252

STATE OF NEW YORK  
INSURANCE DEPARTMENT

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

**Melba Bolic**

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

**TRI-STATE CONSUMERS 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 28th day of April, 1998

NEIL D. LEVIN

*Superintendent of Insurance*



*(by) Deputy Superintendent*