



STATE OF NEW YORK INSURANCE DEPARTMENT  
REPORT ON EXAMINATION  
OF  
THE MANHATTAN LIFE INSURANCE COMPANY

CONDITION:

DECEMBER 31, 2009

DATE OF REPORT:

JUNE 28, 2011

STATE OF NEW YORK INSURANCE DEPARTMENT

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EXAMINER:

DOUGLAS BARTLETT

## TABLE OF CONTENTS

<u>ITEM</u>	<u>PAGE NO.</u>
1. Executive Summary	2
2. Scope of examination	3
3. Description of Company	5
A. History	5
B. Holding company	6
C. Organizational chart	7
D. Service agreements	8
E. Management	8
4. Territory and plan of operations	11
A. Statutory and special deposits	11
B. Direct operations	11
C. Reinsurance	12
5. Significant operating results	13
6. Financial statements	15
A. Independent accountants	15
B. Net admitted assets	16
C. Liabilities, capital and surplus	17
D. Condensed summary of operations	18
E. Capital and surplus account	19
7. Market conduct activities	20
A. Advertising and sales activities	20
B. Treatment of policyholders	21
C. Complaints	24
8. Data files	26
9. Prior report summary and conclusions	27
10. Summary and conclusions	30



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

Andrew M. Cuomo  
Governor

James J. Wrynn  
Superintendent

May 9, 2011

Honorable James J. Wrynn  
Superintendent of Insurance  
Albany, New York 12257

Sir:

In accordance with instructions contained in Appointment No. 30572, dated August 3, 2010 and annexed hereto, an examination has been made into the condition and affairs of The Manhattan Life Insurance Company, hereinafter referred to as "the Company", at its home office located at 225 Community Drive, Suite 11, Great Neck, New York 11021.

Wherever "Department" appears in this report, it refers to the State of New York Insurance Department.

## 1. EXECUTIVE SUMMARY

The material findings, violations and recommendations contained in this report are summarized below.

- The Company violated Section 4228(f)(1)(A) of the New York Insurance Law by paying agent compensation during the examination period according to schedules that were never filed with the Department. (See item 7(A) of this report)
- The Company violated Section 3206(d)(1) of the New York Insurance Law when it failed to provide documentation showing that the policyholder was notified of the initial rate of interest on the variable interest rate cash loans. A similar violation appeared in the prior report on examination. (See item 7(B) of this report)
- The Company violated Section 53-3.6(c) of Department Regulation No. 74 when it failed to furnish in-force illustrations with the current variable loan interest rate. (See item 7(B) of this report)
- The Company violated Section 3214(c) of the New York Insurance Law when it failed to pay interest on a death claim and improperly computed the interest paid on two other death claims. (See item 7(B) of this report)
- The examiner recommends that the Company recalculate the interest paid on all death claims incurred during the examination period and pay any interest due to policyholders. (See item 7(B) of this report)
- The Company violated Section 86.4(a) of Department Regulation No. 95 by using claim forms that did not contain the required fraud statement. (See item 7(B) of this report)
- The examiner recommends that the Company comply with the recommendation contained in the prior report on examination which requires the Company to prepare a clearly worded death claim settlement option form for New York beneficiaries which would offer them the option of having a lump sum paid directly to them. (See item 7(B) of this report)

## 2. SCOPE OF EXAMINATION

The examination of the Company was a full scope examination as defined in the *NAIC Financial Condition Examiners Handbook, 2009 Edition* (the “Handbook”). The examination covers the four-year period from January 1, 2006 to December 31, 2009. The examination was conducted observing the guidelines and procedures in the Handbook and, where deemed appropriate by the examiner, transactions occurring subsequent to December 31, 2009 but prior to the date of this report (i.e., the completion date of the examination) were also reviewed.

In the course of the examination, a review was also made of the manner in which the Company conducts its business and fulfills its contractual obligations to policyholders and claimants. The results of this review are contained in item 7 of this report.

The examination was conducted on a risk focused basis in accordance with the provisions of the Handbook published by the National Association of Insurance Commissioners (“NAIC”). The Handbook guidance provides for the establishment of an examination plan based on the examiner’s assessment of risk in the insurer’s operations and utilizing that evaluation in formulating the nature and extent of the examination. The examiner planned and performed the examination to evaluate the current financial condition as well as identify prospective risks that may threaten the future solvency of the insurer. The examiner identified key processes, assessed the risks within those processes and evaluated the internal control systems and procedures used to mitigate those risks. The examination also included assessing the principles used and significant estimates made by management, evaluating the overall financial statement presentation, and determining management’s compliance with New York statutes and Department guidelines, Statutory Accounting Principles as adopted by the Department and annual statement instructions.

Information about the Company’s organizational structure, business approach and control environment were utilized to develop the examination approach. The Company’s risks and management activities were evaluated incorporating the NAIC’s nine branded risk categories. These categories are as follows:

- Pricing/Underwriting
- Reserving
- Operational
- Strategic

- Credit
- Market
- Liquidity
- Legal
- Reputational

The Company was audited annually, for the years 2006 through 2009, by the accounting firm of Deloitte & Touche, LLP. The Company received an unqualified opinion in all years under examination. Certain audit workpapers of the accounting firm were reviewed and relied upon in conjunction with this examination.

The examiner reviewed the corrective actions taken by the Company with respect to the violations, recommendations and comment contained in the prior report on examination. The results of the examiner's review are contained in item 9 of this report.

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

### 3. DESCRIPTION OF COMPANY

#### A. History

The Company was incorporated on May 29, 1850 and commenced business on August 1, 1850 under Chapter 308 of the laws of 1849 as an entity with a guarantee capital of \$100,000. It was authorized to write participating life insurance policies.

On March 8, 1974, a Delaware corporation known as the Manhattan Life Corporation (“Manhattan Corp.”) acquired control of the Company. In 1977, Manhattan Corp. eliminated minority interests in the Company pursuant to Section 7118 of the New York Insurance Law. The Company then became a privately held corporation. In 1982, Manhattan Corp. changed its name to Manhattan National Corporation (“Manhattan National”).

On March 31, 1987, Union Central Life Insurance Company (“Union Central”) acquired a majority interest in Manhattan National. On December 31, 1991, Manhattan National was liquidated and all outstanding shares of the Company were distributed to Manhattan National shareholders. As a result of the liquidation, the Company again became a publicly held corporation with 72.9% of the stock owned by Union Central. Effective January 28, 1997, the Company’s shareholders approved a 1-for-303,784 reverse stock split that resulted in Union Central becoming the sole shareholder of the Company. Union Central thus returned the Company to private ownership and de-listed it from the NASDAQ National Market.

On February 4, 2000, Union Central completed the sale of all of the guarantee capital shares of the Company to Connecticut Reassurance Corporation, which subsequently changed its name to Manhattan Insurance Group, Inc. (“MIG”). MIG was principally owned by Central United Life Insurance Company (“CUL”) (51%) and Northington/Connecticut Insurance Reinvestment, LLC, (“Northington”) (47%).

In November 2001, the Company filed a plan to retire the guarantee capital shares and convert the Company to a stock insurer. The plan became effective April 16, 2002. At that time, the Company became a stock insurer with eight shares of stock with a par value of \$835,406 per share for a total capital of \$6,683,248.

On December 29, 2006, the Company purchased Family Life Insurance Company (“FLIC”), a Texas domiciled insurance company. The Company paid \$28 million in cash and acquired 100% of the outstanding shares. At the acquisition date, FLIC had \$17.9 million of

statutory capital and surplus. The Company accounted for the acquisition as a statutory purchase and the cost, which was in excess of the book value of FLIC, was recorded as goodwill.

During 2009, CUL purchased the 49% of the issued and outstanding capital stock of MIG that was owned by Northington (47%) and three individuals (2%). MIG changed its state of incorporation from Connecticut to Texas on October 1, 2009.

Changes in the capital and surplus of the Company since incorporation resulted in capital, surplus notes and paid in and contributed surplus of \$6,683,248, \$10,000,000 and \$13,422,338, respectively, as of December 31, 2009.

#### B. Holding Company

The Company is a wholly owned subsidiary of MIG, a Texas stock insurance holding company. MIG is, in turn, a wholly owned subsidiary of CUL, which, in turn, is a wholly owned subsidiary of Harris Insurance Holdings, Inc. (“Harris”). Harris is ultimately owned by four individuals, David Harris (93.2%), Dan George (5.1%), Kent Lamb (0.8%), and John McGettigan (0.8%).

C. Organizational Chart

An organization chart reflecting the relationship between the Company and significant entities in its holding company system as of December 31, 2009 follows:

#### D. Service Agreements

The Company had one service agreement in effect with affiliates during the examination period.

Type of Agreement	Effective Date	Provider(s) of Service(s)	Recipient(s) of Service(s)	Specific Service(s) Covered	Income/ (Expense)* For Each Year of the Examination	
					2006	2007
Management Service Agreement Department File #26946	2/4/2000	CUL	The Company	Administrative, accounting, financial management, IT and legal services.	2006	\$(1,409,326)
					2007	\$ (886,042)
					2008	\$ (191,904)
					2009	\$ (178,882)

\* Amount of income earned or (expense) incurred by the Company.

The Company is subject to taxation as a life company and files a separate tax return from its parent, MIG. The Company files a consolidated federal tax return with its subsidiary, FLIC.

#### E. Management

The Company's by-laws provide that the board of directors shall be comprised of not less than nine and not more than 15 directors. The number of directors shall be increased to not less than 13 within one year following the end of the calendar year in which the corporation exceeds one and one-half billion dollars in admitted assets. Directors are elected for a period of one year at the annual meeting of the stockholders held in May of each year. As of December 31, 2009, the board of directors consisted of nine members. Meetings of the board are held quarterly.

On January 26, 2010, the Department approved changes to the Company's amended and restated by-laws and the amended and restated charter. The by-laws and charter were revised in accordance with the recent changes in Section 1201 of the Insurance Law which permit a reduction in the minimum size of the board of directors of domestic insurance corporations from 13 (or nine for smaller companies) to seven and a reduction in the New York State residency requirements of the boards of domestic insurers from two to one.

The 9 board members and their principal business affiliation, as of December 31, 2009, were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
James M. Foster* Houston, TX	Owner Mitch Foster, DDS	2007
Daniel J. George Houston, TX	President and Treasurer The Manhattan Life Insurance Company	2000
Daniel A. Hargraves* Irvington, NY	President, Attorney Hargraves, McConnell & Costigan	2004
David W. Harris Houston, TX	Chairman of the Board and Chief Executive Officer The Manhattan Life Insurance Company President and Chief Executive Officer Harris Insurance Holdings, Inc.	2000
Kent W. Lamb Cyprus, TX	Chief Financial Officer The Manhattan Life Insurance Company	2007
Phillip A. Martin* Houston, TX	Owner Phillip Martin Architect	2006
John E. McGettigan Houston, TX	General Counsel and Chief Legal Officer The Manhattan Life Insurance Company	2009
Dale R. Oldham* Kansas City, MO	Independent Contractor Eisenach Reinsurance Services	2000
Mary Lou Rainey Houston, TX	Secretary and Vice President The Manhattan Life Insurance Company	2000

\* Not affiliated with the Company or any other company in the holding company system.

The examiner's review of the minutes of the meetings of the board of directors and its committees indicated that meetings were well attended and that each director attended a majority of meetings.

The following is a listing of the principal officers of the Company as of December 31, 2009:

<u>Name</u>	<u>Title</u>
David W. Harris	Chairman of the Board and Chief Executive Officer
Daniel J. George	President and Treasurer
John E. McGettigan	General Counsel and Chief Legal Officer
Kent W. Lamb	Chief Financial Officer
Mary Lou Rainey*	Secretary and Vice President
David L. Parsons	Vice President of Information Technology
Lee Ann Blakey	Vice President Operations
John A. Vala	Vice President Marketing
Deborah A. Eaton-Tatro	Vice President Marketing

\* Designated consumer services officer per Section 216.4(c) of Department Regulation No. 64

The prior report on examination contained a recommendation requiring the Company to establish and maintain an independent, adequately resourced, and competently staffed internal audit function to provide management and the audit committee with ongoing assessments of the Company's risk management processes and the accompanying system of internal controls.

Although the Company did establish an internal audit/compliance function during the examination period, the internal auditor reported directly to the President of the Company when, in order to be independent, the internal auditor should report directly to the audit committee.

The examiner recommends that the Company fully comply with all aspects of the recommendation contained in the prior report on examination in that the audit function be fully independent of management.

#### 4. TERRITORY AND PLAN OF OPERATIONS

The Company is authorized to write life insurance, annuities and accident and health insurance as defined in paragraphs 1, 2 and 3 of Section 1113(a) of the New York Insurance Law.

The Company is licensed to transact business in all 50 states and the District of Columbia. In 2009, 45.2% of life premiums were received from New York (18.1%), California (12.1%), Florida (6.6%), Pennsylvania (4.9%) and Texas (3.5%).

##### A. Statutory and Special Deposits

As of December 31, 2009, the Company had \$5,000,000 (par value) of United States Treasury Bonds on deposit with the State of New York, its domiciliary state, for the benefit of all policyholders, claimants and creditors of the Company. In addition, \$743,887 was being held by the states of Arkansas, Georgia, New Mexico, North Carolina and Oklahoma.

##### B. Direct Operations

The majority of the Company's business is in run-off. The Company ceased writing participating business in March 1998. All policies written prior to that date were participating.

The Company is now positioned in the United States primarily as a worksite carrier with a full portfolio of supplemental health and life products. The active product portfolio includes a simplified issue universal life product available on both an individual and worksite basis and a voluntary group term product. The Company's agency operations are conducted on a general agency basis.

The Company's international segment, started in 2003, consists of universal life and term products marketed primarily to upper-middle income individuals in Latin America. A separate marketing organization has helped grow the Latin American business in recent years. All of the international business is denominated in U.S. dollars, thereby eliminating currency risk. The Company began introducing these coverages in Taiwan in 2010. During 2009, over 50% of the Company's new business was generated in the international segment.

### C. Reinsurance

As of December 31, 2009, the Company had reinsurance treaties in effect with 21 companies, of which 14 were authorized or accredited. The Company's life business is reinsured on a coinsurance and yearly renewable term basis. Reinsurance is provided on an automatic and facultative basis.

The maximum retention limit for individual life contracts is \$400,000. The total face amount of life insurance ceded as of December 31, 2009, was \$1,034,687,722, which represents 55.4% of the total face amount of life insurance in force as follows:

	<u>In Force Ceded</u>	<u>Percent</u>
Central United Life Insurance Company	\$ 536,052,742	28.7%
Non-affiliates	<u>498,634,980</u>	<u>26.7%</u>
Total Ceded	<u>\$1,034,687,722</u>	<u>55.4%</u>

The amounts ceded to CUL are from a 2007 intercompany reinsurance agreement, under which all of the Latin American and other direct foreign business written by the Company are ceded 100% to CUL. CUL purchases reinsurance from non-affiliated reinsurers and retrocedes 50% of the remaining net back to the Company. The Company received approval from the Department for these agreements on December 29, 2006. During 2009, the Company assumed \$105,020,681 in force under this agreement.

On December 31, 2006, the Company entered into an indemnity reinsurance agreement with London Life Insurance Company, whereby the Company agreed to cede reserves of \$5.0 million, on policies written before the effective date of the reinsurance agreement.

As of December 31, 2009, reserve credit taken for reinsurance ceded to unauthorized companies, totaling \$3,958,121, was supported by letters of credit and trust agreements.

The total face amount of life insurance assumed as of December 31, 2009, was \$195,832,844.

## 5. SIGNIFICANT OPERATING RESULTS

Indicated below is significant information concerning the operations of the Company during the period under examination as extracted from its filed annual statements. Failure of items to add to the totals shown in any table in this report is due to rounding.

The following table indicates the Company's financial growth (decline) during the period under review:

	<u>December 31,</u> <u>2005</u>	<u>December 31,</u> <u>2009</u>	<u>Increase</u> <u>(Decrease)</u>
Admitted assets	<u>\$400,457,058</u>	<u>\$345,165,846</u>	<u>\$(55,291,212)</u>
Liabilities	<u>\$356,810,010</u>	<u>\$310,939,984</u>	<u>\$(45,870,026)</u>
Common capital stock	\$ 6,683,248	\$ 6,683,248	\$ 0
Surplus notes	10,000,000	10,000,000	0
Gross paid in and contributed surplus	13,422,338	13,422,338	0
Unassigned funds (surplus)	<u>13,541,462</u>	<u>4,120,276</u>	<u>(9,421,186)</u>
Total capital and surplus	<u>\$ 43,647,048</u>	<u>\$ 34,225,862</u>	<u>\$(9,421,186)</u>
Total liabilities, capital and surplus	<u>\$400,457,058</u>	<u>\$345,165,846</u>	<u>\$(55,291,212)</u>

The decrease in assets and liabilities is primarily due to the run off of existing blocks of business. The decrease in surplus is attributed to a change in the reserving for annuities to comply with New York reserve requirements. Effective December 31, 2007, the Department disallowed the Company's request to aggregate results across lines of business for cash flow testing purposes. Due to this determination, the Company agreed to increase annuity reserves by \$1.25 million per quarter, beginning in the fourth quarter of 2007 for a total estimated increase of \$6 million by December 31, 2008. As of December 31, 2009, the Company has recorded an additional \$9.85 million in annuity reserves.

The Company's invested assets as of December 31, 2009 were mainly comprised of bonds (60.5%), cash and short term investments (12.4%), policy loans (10.2%), stocks (8.4%) and mortgage loans (8.2%). The Company's bond portfolio, as of December 31, 2009, was comprised of 99.2% investment grade obligations.

The following is the net gain (loss) from operations by line of business after federal income taxes but before realized capital gains (losses) reported for each of the years under examination in the Company's filed annual statements:

	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Ordinary:				
Life insurance	\$ 164,468	\$1,096,896	\$ 25,901	\$2,250,478
Individual annuities	(819,609)	(1,082,363)	551,865	140,070
Supplementary contracts	<u>117,967</u>	<u>73,633</u>	<u>(1,843)</u>	<u>7,897</u>
Total ordinary	\$ <u>(537,174)</u>	\$ <u>88,166</u>	\$ <u>575,923</u>	\$ <u>2,398,445</u>
Group:				
Life	\$ 2,713	\$ 38,424	\$ (98,628)	\$ 0
Annuities	<u>161,386</u>	<u>280,379</u>	<u>121,608</u>	<u>85,128</u>
Total group	\$ <u>164,099</u>	\$ <u>318,803</u>	\$ <u>22,980</u>	\$ <u>85,128</u>
Accident and health:				
Group	\$ <u>52,340</u>	\$ <u>(3,257)</u>	\$ <u>421</u>	\$ <u>0</u>
Total accident and health	\$ <u>52,340</u>	\$ <u>(3,257)</u>	\$ <u>421</u>	\$ <u>0</u>
Total	\$ <u>(320,735)</u>	\$ <u>403,712</u>	\$ <u>599,324</u>	\$ <u>2,483,573</u>

The increased gain in the ordinary life insurance line of business during 2009 is attributable to the Company's increase in writings in the international segment.

## 6. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital and surplus as of December 31, 2009, as contained in the Company's 2009 filed annual statement, a condensed summary of operations and a reconciliation of the capital and surplus account for each of the years under review. The examiner's review of a sample of transactions did not reveal any differences which materially affected the Company's financial condition as presented in its financial statements contained in the December 31, 2009 filed annual statement.

### A. Independent Accountants

The firm of Deloitte and Touche, LLP was retained by the Company to audit the Company's combined statutory basis statements of financial position of the Company as of December 31<sup>st</sup> of each year in the examination period, and the related statutory-basis statements of operations, capital and surplus, and cash flows for the year then ended.

Deloitte and Touche, LLP concluded that the statutory financial statements presented fairly, in all material respects, the financial position of the Company at the respective audit dates. Balances reported in these audited financial statements were reconciled to the corresponding years' annual statements with no discrepancies noted.

B. Net Admitted Assets

Bonds	\$200,902,867
Stocks:	
Preferred stocks	30,400
Common stocks	27,830,583
Mortgage loans on real estate:	
First liens	27,379,804
Cash, cash equivalents and short term investments	41,247,864
Contract loans	33,820,351
Receivable for securities	824,033
Investment income due and accrued	3,574,762
Premiums and considerations:	
Uncollected premiums and agents' balances in the course of collection	735,102
Deferred premiums, agents' balances and installments booked but deferred and not yet due	2,032,906
Reinsurance:	
Amounts recoverable from reinsurers	104,074
Other amounts receivable under reinsurance contracts	2,986
Current federal and foreign income tax recoverable and interest thereon	1,458,545
Net deferred tax asset	4,211,104
Guaranty funds receivable or on deposit	46,865
Goodwill on acquired blocks of business	<u>963,600</u>
Total admitted assets	<u>\$345,165,846</u>

C. Liabilities, Capital and Surplus

Aggregate reserve for life policies and contracts	\$267,509,364
Aggregate reserve for accident and health contracts	30,624,396
Contract claims:	
Life	3,726,180
Provision for policyholders' dividends and coupons payable in following calendar year – estimated amounts:	
Dividends apportioned for payment	263,513
Dividends not yet apportioned	565,571
Premiums and annuity considerations for life and accident and health contracts received in advance	27,982
Contract liabilities not included elsewhere:	
Interest maintenance reserve	5,715,625
Commissions and expense allowances payable on reinsurance assumed	2,106
General expenses due or accrued	47,903
Taxes, licenses and fees due or accrued, excluding federal income taxes	(67,970)
Unearned investment income	119,152
Amounts withheld or retained by company as agent or trustee	(2,629)
Remittances and items not allocated	(3,951)
Miscellaneous liabilities:	
Asset valuation reserve	416,041
Reinsurance in unauthorized companies	166,738
Payable to parent, subsidiaries and affiliates	284,886
Deferred income	<u>1,545,077</u>
 Total liabilities	 <u>\$310,939,984</u>
 Common capital stock	 \$ 6,683,248
 Surplus notes	 10,000,000
Gross paid in and contributed surplus	13,422,338
Unassigned funds (surplus)	<u>4,120,276</u>
Surplus	\$ <u>27,542,614</u>
Total capital and surplus	\$ <u>34,225,862</u>
 Total liabilities, capital and surplus	 <u>\$345,165,846</u>

D. Condensed Summary of Operations

	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Premiums and considerations	\$16,323,182	\$16,805,904	\$14,971,754	\$14,162,318
Investment income	20,045,893	18,970,860	19,120,854	15,983,583
Commissions and reserve adjustments on reinsurance ceded	315,289	723,333	590,225	951,524
Miscellaneous income	<u>0</u>	<u>21,600</u>	<u>23,200</u>	<u>24,941</u>
Total income	<u>\$36,684,364</u>	<u>\$36,521,697</u>	<u>\$34,706,033</u>	<u>\$31,122,366</u>
Benefit payments	\$48,961,844	\$47,585,712	\$42,704,965	\$39,451,079
Increase in reserves	(19,053,597)	(17,212,354)	(16,406,009)	(16,705,834)
Commissions	692,278	1,809,546	1,990,609	3,051,218
General expenses and taxes	5,373,145	4,272,097	5,175,900	3,498,440
Increase in loading on deferred and uncollected premiums	<u>(10,055)</u>	<u>69,290</u>	<u>(75,491)</u>	<u>64,843</u>
Total deductions	<u>\$35,963,615</u>	<u>\$36,524,291</u>	<u>\$33,389,974</u>	<u>\$29,359,746</u>
Net gain (loss)	\$ 720,749	\$ (2,594)	\$ 1,316,059	\$ 1,762,620
Dividends	1,060,071	1,388,575	1,058,416	469,131
Federal and foreign income taxes incurred	<u>(18,588)</u>	<u>(1,794,881)</u>	<u>(341,681)</u>	<u>(1,190,083)</u>
Net gain (loss) from operations before net realized capital gains	\$ (320,734)	\$ 403,712	\$ 599,324	\$ 2,483,572
Net realized capital gains (losses)	<u>335,806</u>	<u>74,066</u>	<u>(1,628,178)</u>	<u>0</u>
Net income (loss)	<u>\$ 15,072</u>	<u>\$ 477,778</u>	<u>\$ (1,028,854)</u>	<u>\$ 2,483,572</u>

E. Capital and Surplus Account

	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Capital and surplus, December 31, prior year	\$ <u>43,647,048</u>	\$ <u>34,765,536</u>	\$ <u>35,742,269</u>	\$ <u>32,016,893</u>
Net income (loss)	\$ 15,072	\$ 477,778	\$ (1,028,854)	\$ 2,483,572
Change in net unrealized capital gains (losses)	0	3,595,217	1,810,416	(430,893)
Change in net deferred income tax	4,208,673	(4,920,971)	2,576,889	813,859
Change in non-admitted assets and related items	(14,500,721)	2,973,250	(1,269,646)	4,392,149
Change in liability for reinsurance in unauthorized companies	(246)	711	(211)	(164,186)
Change in reserve on account of change in valuation basis	0	(1,729,106)	(5,000,000)	(3,600,000)
Change in asset valuation reserve	(439,237)	894,672	316,603	(70,746)
Dividends to stockholders	(1,348,018)	0	0	0
Change in surplus as a result of reinsurance	5,000,000	0	(1,130,573)	(1,214,786)
Aggregate write ins for gains and losses in surplus	<u>(1,817,035)</u>	<u>(314,818)</u>	<u>0</u>	<u>0</u>
Net change in capital and surplus for the year	\$ <u>(8,881,512)</u>	\$ <u>976,733</u>	\$ <u>(3,725,376)</u>	\$ <u>2,208,969</u>
Capital and surplus, December 31, current year	\$ <u>34,765,536</u>	\$ <u>35,742,269</u>	\$ <u>32,016,893</u>	\$ <u>34,225,862</u>

## 7. MARKET CONDUCT ACTIVITIES

The examiner reviewed various elements of the Company's market conduct activities affecting policyholders, claimants, and beneficiaries to determine compliance with applicable statutes and regulations and the operating rules of the Company.

### A. Advertising and Sales Activities

The examiner reviewed the sales activities of the agency force including the licensing and appointment of producers.

Section 4228(f)(1) of the New York Insurance Law states, in part:

“Filing requirements for agent and broker compensation plans are as follows:

(A) A company shall make annual information filings with respect to any newly-introduced plans or changes under which the company makes payments to agents or brokers if such plans are commission plans for which the commission percentages are, in all policy or contract years, no greater than the commission percentages set forth in paragraphs one, two, three and four of subsection (d) of this section . . . These filings shall be made not later than the last day of February next following the year in which such plans were placed in use or changed . . .”

A review of the Company's commission payments made during the examination period revealed that the agent compensation paid on the two individual life products whose policy forms were filed with the Department in January, 2009 was not in accordance with any schedule of agent compensation filed by the Company in accordance with Section 4228 of the New York Insurance Law. The Section 4228(f)(1)(A) filing for the compensation paid on each product was due by the end of February following the calendar year when the first compensation payment was made.

The Company violated Section 4228(f)(1)(A) of the New York Insurance Law by paying agent compensation during the examination period according to schedules that were never filed with the Department.

Section 2112(a) of the New York Insurance Law states, in part:

“Every insurer . . . doing business in this state shall file a certificate of appointment in such form as the superintendent may prescribe in order to appoint insurance agents to represent such insurer . . .”

Section 2114(a) of the New York Insurance Law states, in part:

“(1) No insurer . . . doing business in this state shall pay any commission or other compensation to any person, firm or corporation, for any services in obtaining in this state any new contract of life insurance or any new annuity contract, except to a licensed life insurance agent of such insurer . . .”

During the examiner’s review of producer licensing it was discovered that four licensed agents out of a sample of five had been soliciting business for the Company without having a valid certificate of appointment. These four agents wrote 16 policies during the examination period and were paid commissions on those policies.

The Company violated Section 2112(a) of the New York Insurance Law when it failed to file a certificate of appointment in order to appoint insurance agents to represent the Company and Section 2114(a)(1) of the New York Insurance Law when it paid commissions to agents who were not appointed by the Company. A similar violation appeared in the prior report on examination.

The examiner recommends that the Company establish a control over the commission payment process to ensure that any agents receiving commissions from the Company are licensed and appointed by the Company.

#### **B. Treatment of Policyholders**

The examiner reviewed a sample of various types of claims, surrenders, loans, reinstatements, and lapses. The examiner also reviewed the various controls involved in processing these transactions.

##### **1. Section 3206(d) of the New York Insurance Law states, in part:**

“The insurer shall for any such policy:

(1) notify the policyholder at the time a cash loan is made of the initial rate of interest on the loan . . .”

During the review of policy loans the examiner identified six policies out of a sample of ten with variable interest rate cash loans. The Company was unable to provide documentation showing that the policyholders were notified of the initial rate of interest on these cash loans as required by Section 3206(d)(1) of the New York Insurance Law.

The Company violated Section 3206(d)(1) of the New York Insurance Law when it failed to provide documentation showing that the policyholder was notified of the initial rate of interest on the variable interest rate cash loans. A similar violation appeared in the prior report on examination.

2. Section 53-3.6 of Department Regulation No. 74 states, in part:

“(c) Upon request of the policyowner, the insurer shall furnish an in-force illustration of current and future benefits and values based on the insurer’s present illustrated scale . . .”

During the review of policy loans the examiner noted that policy illustrations requested by the policyholder did not illustrate the policy loans using the current variable loan interest rate. The Company explained that the interest rate disclosed in the illustrations (6.62%) had been “hardcoded” into the in-force illustration software system and all in-force illustrations prepared for policies with variable interest rate loans disclosed the incorrect interest rate. The actual variable loan interest rate during the examination period was less than the 6.62% that appeared in the illustrations. The review revealed that policyholders were charged the actual current rate, not the 6.62% disclosed on the illustrations.

The Company violated Section 53-3.6(c) of Department Regulation No. 74 when it failed to furnish in-force illustrations with the current variable loan interest rate.

3. Section 3214(c) of the New York Insurance Law states, in part:

“. . . interest upon the principal sum paid to the beneficiary . . . shall be computed daily at the rate of interest currently paid by the insurer on proceeds left under the interest settlement option, from the date of the death of an insured or annuitant in connection with a death claim on such a policy of life insurance or contract of annuity . . . to the date of payment and shall be added to and be a part of the total sum paid.”

The review of death claims revealed that in three of the 11 claims reviewed (27%), the Company failed to pay interest on death claims in accordance with Section 3214(c) of the New

York Insurance Law. One of the death claims was not paid any interest and two of the claims were paid interest at an incorrect rate (2% instead of 3.5%).

The Company violated Section 3214(c) of the New York Insurance Law when it failed to pay interest on a death claim and improperly computed the interest paid on two other death claims.

The examiner recommends that the Company recalculate the interest paid on all death claims incurred during the examination period and pay any interest due to policyholders.

The examiner also recommends that Company establish a control ensuring that the correct amount of interest is paid on New York death claim benefits.

4. Section 216.11 of Department Regulation No. 64 states, in part:

“ . . .To enable department personnel to reconstruct an insurer’s activities, all insurers subject to the provisions of this Part must maintain within each claim file all communications, transactions, notes and work papers relating to the claim. All communications and transactions, whether written or oral, emanating from or received by the insurer shall be dated by the insurer . . .”

The review of life surrender and annuity surrender and withdrawal files revealed that four of the 10 files reviewed (40%) did not include all communications, notes and work papers relating to the claim, as follows..

The Company violated Section 216.11 of Department Regulation No. 64 when it failed to maintain, within each surrender file, all communications, transactions, notes and work papers relating to the transaction, whether written or oral.

5. Section 86.4(a) of Department Regulation No. 95 states, in part:

“ . . . all claim forms for insurance . . . shall contain the following statement:  
 ‘Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or a statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.’”

During the review of death claims the examiner noted that in ten of the 11 files reviewed (91%), the claim form did not contain the required fraud statement.

The Company violated Section 86.4(a) of Department Regulation No. 95 by using claim forms that did not contain the required fraud statement.

6. The prior report on examination contained a recommendation requiring the Company to institute a clearly worded death claim settlement option form for New York beneficiaries which would offer them the option of having a lump sum paid directly to them. A review of eight death claim payments in excess of \$5,000 revealed that the Company did not institute a lump sum payment settlement option and continues to deposit all New York claim proceeds into a retained asset account, unless a lump sum is specifically requested by the beneficiary. Within the correspondence provided to beneficiaries concerning death claim proceeds, the Company states that “if the proceeds are \$5,000 or more, they will be placed in our Capital Account. A checkbook will be issued once the claim is finalized.” The Company failed to address this recommendation.

The examiner recommends that the Company comply with the recommendation contained in the prior report on examination which requires the Company to prepare a clearly worded death claim settlement option form for New York beneficiaries which would offer them the option of having a lump sum paid directly to them.

### C. Complaints

The examiner reviewed the Company’s complaint register to ensure completeness and compliance with Company policies and procedures and Department regulatory requirements. The examiner also reviewed a sample of complaint files to ensure that adequate steps were taken by the Company to properly address consumers’ complaints.

1. Section 216.4(e) of Department Regulation No. 64 states:

“As part of its complaint handling function, an insurer’s consumer services department shall maintain an ongoing central log to register and monitor all complaint activity.”

The Company’s complaint log did not include four of the consumer complaints received during the examination period. Two of these complaints were received through the Department and two were received directly by the Company from consumers.

The Company violated Section 216.4(e) of Department Regulation No. 64 when it failed to include all complaints received by the Company in the Company's complaint log.

2. Department Circular Letter No. 11 (1978) advises that:

“ . . . As part of its complaint handling function, the company's consumer services department will maintain an ongoing central log to register and monitor all complaint activity. The log should be kept in a columnar form and list the following . . .

2. The name of the complainant and the policy or claim file number.
3. The New York State Insurance Department file number . . .
5. The person in the company with whom the complainant has been dealing.
6. The person within the company to whom the matter has been referred for review . . .
8. Bearing in mind the appropriate regulation mandating timely substantive replies, the dates of correspondence to the Insurance Department's Consumer Services Bureau . . .
- B. The date of any substantive response.
- C. The chronology of further contacts with this Department . . .
10. The results of the complaint investigation and the action taken. . . .”

The Company's complaint log did not include the following information:

- The name of the complainant.
- The New York State Insurance Department file number.
- The person in the company with whom the complainant has been dealing.
- The person in the company to whom the matter has been referred for review and the date of such referral.
- The dates of substantive responses and chronology of further contacts with the Department.
- The results of the complaint investigation and the action taken.

The examiner recommends that the Company maintain its complaint log in the format outlined in Department Circular Letter No. 11 (1978).

3. Section 216.11 of Department Regulation No. 64 states, in part:

“ . . . To enable department personnel to reconstruct an insurer's activities, all insurers subject to the provisions of this Part must maintain within each claim file all communications, transactions, notes and work papers relating to the claim. All communications and transactions, whether written or oral, emanating from or received by the insurer shall be dated by the insurer . . .”

The examiner reviewed the documentation files for all 15 consumer complaints received by the Company from New York policyholders. The review revealed the following:

- Five (33%) did not include evidence of a timely acknowledgement to the complainant or Department.
- Three (20%) did not include all documentation received from or sent to the complainant.
- Two (13%) did not include notes documenting calls that took place with the Department.

The Company violated Section 216.11 of Department Regulation No. 64 when it failed to maintain, within each complaint file, all communications, transactions, notes and work papers relating to the complaint, whether written or oral.

#### 8. DATA FILES

On multiple and recurring occasions, the data files provided by the Company were not accurate or included discrepancies and unsupported adjustments which resulted in the examiner being unable to reconcile the data files to the Exhibit of Life Insurance or Exhibit 8 in the Company's filed annual statement.

The examiner recommends that the Company implement procedures to maintain data files that reconcile to the amounts reported in the Exhibit of Life Insurance and Exhibit 8 in its filed annual statement.

## 9. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violations, recommendations and comment contained in the prior report on examination and the subsequent actions taken by the Company in response to each citation:

<u>Item</u>	<u>Description</u>
A	<p>The Company violated Section 325(a) of the New York Insurance Law by failing to keep and maintain its books of account at its principal office in this state.</p> <p>The Company maintained its books of account at its principal office in New York.</p>
B	<p>The Company violated Section 1505(d)(3) of the New York Insurance Law and its filed service agreement by not maintaining electronic access to its books of account at its principal office in New York.</p> <p>The Company maintained electronic access to its books of account at its principal office in New York.</p>
C	<p>The examiner recommended that the Company establish and maintain an independent, adequately resourced, and competently staffed internal audit function to provide management and the audit committee with ongoing assessments of the Company's risk management processes and the accompanying system of internal controls.</p> <p>The Company failed to adequately address this recommendation. The Company hired an internal auditor who reports directly to the president of the Company. To be independent, internal audit should report directly to the audit committee. In addition, there is no internal charter or formal policies and procedures governing the internal audit function. (See item 3E of this report).</p>
D	<p>The Company did not have its officers, directors and responsible employees fill out conflict of interest statements for the years 2003, 2004 and 2005. The examiner recommends that conflict of interest statements should be filled out by all required employees and directors annually.</p> <p>The Company had its officers and directors complete conflict of interest statements for 2008 and 2009.</p>

<u>Item</u>	<u>Description</u>
E	<p>The examiner recommends that the Company continue to use the reserving methodology as agreed upon with the Department.</p> <p>The Company used the reserving methodology agreed upon with the Department during the examination period.</p>
F	<p>The Department has not certified, as to accuracy or adequacy, the Company's reserves for the year ending December 31, 2005.</p> <p>The Company's December 31, 2005 were certified by the Department on May 5, 2008.</p>
G	<p>The Company violated Section 2112(a) of the New York Insurance Law when it failed to appoint agents who sold insurance for the Company and Section 2114(a)(1) of the New York Insurance Law when it paid commissions to agents who were not appointed with the Company.</p> <p>The Company again violated Section 2112(a) when it failed to file a certificate of appointment in order to appoint insurance agents to represent the Company and Section 2114(a)(1) of the New York Insurance Law when it paid commissions to agents who were not appointed by the Company. A similar violation appeared in the prior report on examination. (See item 7A of this report)</p>
H	<p>The Company violated Section 3206(d) of the New York Insurance Law when it failed to provide documentation showing that the policyholder was notified of the initial rate of interest on a loan and that reasonable advance notice of increases in the interest rate was given to the policyholder.</p> <p>Although the Company did provide reasonable advance notice of increases in the interest rate to the policyholder, the Company again violated Section 3206 (d)(1) of the New York Insurance Law when it failed to provide documentation showing that the policyholder was notified of the initial rate of interest on variable interest rate loans. (See item 7B of this report)</p>
I	<p>The examiner recommends that the Company follow the instructions of beneficiaries and pay a lump sum when so requested.</p> <p>The examiners did not note any instances where the Company did not follow the instructions of beneficiaries.</p>

<u>Item</u>	<u>Description</u>
J	<p>The examiner recommends that the Company prepare a clearly worded option form for New York policyholders, and present that form to the beneficiaries, in order to avail them of the choice of having a lump sum paid directly to them.</p> <p>The Company has not implemented this recommendation. (See item 7B of this report)</p>

## 10. SUMMARY AND CONCLUSIONS

Following are the violations and recommendations contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The examiner recommends that the Company fully comply with all aspects of the recommendation contained in the prior report on examination in that the audit function be fully independent of management.	10
B	The Company violated Section 4228(f)(1)(A) of the New York Insurance Law by paying agent compensation during the examination period according to schedules that were never filed with the Department.	20
C	The Company violated Section 2112(a) of the New York Insurance Law when it failed to file a certificate of appointment in order to appoint insurance agents to represent the Company and Section 2114(a)(1) of the New York Insurance Law when it paid commissions to agents who were not appointed by the Company. A similar violation appeared in the prior report on examination.	21
D	The examiner recommends that the Company establish a control over the commission payment process to ensure that any agents receiving commissions from the Company are licensed and appointed by the Company.	21
E	The Company violated Section 3206(d)(1) of the New York Insurance Law when it failed to provide documentation showing that the policyholder was notified of the initial rate of interest on the variable interest rate cash loans. A similar violation appeared in the prior report on examination.	22
F	The Company violated Section 53-3.6(c) of Department Regulation No. 74 when it failed to furnish in-force illustrations with the current variable loan interest rate.	22
G	The Company violated Section 3214(c) of the New York Insurance Law when it failed to pay interest on a death claim and improperly computed the interest paid on two other death claims.	23
H	The examiner recommends that the Company recalculate the interest paid on all death claims incurred during the examination period and pay any interest due to policyholders.	23

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
I	The examiner recommends that Company establish a control ensuring that the correct amount of interest is paid on New York death claim benefits.	23
J	The Company violated Section 216.11 of Department Regulation No. 64 when it failed to maintain, within each surrender file, all communications, transactions, notes and work papers relating to the transaction, whether written or oral.	23
K	The Company violated Section 86.4(a) of Department Regulation No. 95 by using claim forms that did not contain the required fraud statement.	24
L	The examiner recommends that the Company comply with the recommendation contained in the prior report on examination which requires the Company to prepare a clearly worded death claim settlement option form for New York beneficiaries which would offer them the option of having a lump sum paid directly to them.	24
M	The Company violated Section 216.4(e) of Department Regulation No. 64 when it failed to include all complaints received by the Company in the Company's complaint log.	25
N	The examiner recommends that the Company maintain its complaint log in the format outlined in Department Circular Letter No. 11 (1978).	25
O	The Company violated Section 216.11 of Department Regulation No. 64 when it failed to maintain, within each complaint file, all communications, transactions, notes and work papers relating to the complaint, whether written or oral.	26
P	The examiner recommends that the Company implement procedures to maintain data files that reconcile to the amounts reported in the Exhibit of Life Insurance and Exhibit 8 in its filed annual statement.	26



APPOINTMENT NO. 30572

STATE OF NEW YORK  
**INSURANCE DEPARTMENT**

I, JAMES J. WRYNN, Superintendent of Insurance of the State of New York,  
pursuant to the provisions of the Insurance Law, do hereby appoint:

**DOUGLAS BARTLETT**

as a proper person to examine into the affairs of the

**THE MANHATTAN LIFE INSURANCE COMPANY**

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 name  
and affixed the official Seal of the Department  
at the City of New York

this 3rd day of August, 2010



JAMES J. WRYNN  
Superintendent of Insurance

*James J. Wrynn*  
Superintendent