

REPORT ON EXAMINATION

OF

AGGREGATE TRUST FUND

AS OF

DECEMBER 31, 2014

DATE OF REPORT

JANUARY 20, 2016

EXAMINER

RAJENDRA SUNDER

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# Department of Financial Services

**ANDREW M. CUOMO**  
Governor

**LINDA A. LACEWELL**  
Superintendent

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November 3, 2020

Honorable Linda A. Lacewell  
Superintendent  
New York State Department of Financial Services  
Albany, New York 12257

Madam:

Pursuant to the requirements of the New York Insurance Law, and in compliance with the instructions contained in Appointment Number 31225 dated January 20, 2015, attached hereto, I have made an examination into the condition and affairs of the Aggregate Trust Fund as of December 31, 2014, and submit the following report thereon.

Wherever the designations “Fund” or “ATF” appear herein without qualification, it should be understood to indicate the Aggregate Trust Fund.

Wherever the term “Department” appears herein without qualification, it should be understood to mean the New York State Department of Financial Services.

The examination was conducted at the New York City office of the State Insurance Fund located at 199 Church Street, New York, NY 10007.

## **1. SCOPE OF EXAMINATION**

The Department has performed an examination of the Aggregate Trust Fund. The previous examination was conducted as of December 31, 2009. This examination covered the five-year period from January 1, 2010 through December 31, 2014. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

This examination was conducted in accordance with the National Association of Insurance Commissioners (“NAIC”) Financial Condition Examiners Handbook, which requires that we plan and perform the examination to evaluate the financial condition and identify current and prospective risks of the Company by obtaining information about the Company including corporate governance, identifying and assessing inherent risks within the Company and evaluating system controls and procedures used to mitigate those risks. This examination also includes assessing the principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation, management’s compliance with New York laws, statutory accounting principles, and annual statement instructions.

All financially significant accounts and activities of the Fund were considered in accordance with the risk-focused examination process. This examination also included a review and evaluation of the Fund’s own control environment assessment. The examiners relied upon audit work performed by the Fund’s independent public accountants when appropriate.

This examination report includes, but is not limited to, the following:

- Fund history
- Management and control
- Territory and plan of operation
- Growth of Fund
- Statutory deposits
- Accounts and records
- Loss (unpaid awards) review and analysis
- Financial statement presentation
- Summary of recommendations

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

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

## 2. DESCRIPTION OF THE AGGREGATE TRUST FUND

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

The purpose of the Fund is to assure and oversee the regular payment of benefits on adjudicated death cases and certain permanent disability cases. The Fund derives its revenue from insurance carriers and self-insured employers who, since 1935, have been required by law to deposit into the Fund the present value equivalent of all such adjudicated cases.

Deposits paid into the Fund represent the actuarially computed present value of awards made by the Workers' Compensation Board. The amount is calculated by the Workers' Compensation Fund's actuarial department and approved by the New York State Workers' Compensation Board using legally prescribed mortality and remarriage rates based upon the Dutch Royal Insurance Institution tables with an assumed interest rate of 5% for deposits relating to accidents occurring on and after January 1, 2001, 6% for deposits relating to accidents occurring before January 1, 2001 and after August 31, 1983, and 3% for deposits on accidents on and prior to August 31, 1983, plus provisions for administrative expenses.

The Fund assumes the risk that the present value amounts calculated to fund the awards are correct and will adequately fund the required payments.

Comprehensive workers' compensation reform legislation was enacted on March 13, 2007 under Chapter 6 of the Laws of 2007. This legislation reform includes various provisions that affect the Fund. The legislation requires, applicable to cases with classification dates on or after July 1, 2007, that all non-scheduled permanent partial disability claims be paid into the ATF on a mandatory basis. Additionally, the law retroactively replaced, as of January 1, 2001, the discount rate in Section 27 of the New York Workers' Compensation law with the "industry standard rate" as determined by the Superintendent of Financial Services. Finally, the legislation authorized the Fund to enter into waiver agreements with claimants making final settlements of the right to further benefits as provided under Workers' Compensation Law Section 32 for cases deposited into the ATF.

A total of 2,935 cases were outstanding at December 31, 2014, with an aggregate value of \$240,922,000.

A. Corporate Governance

In accordance with the provisions of Section 27 of the Workers Compensation Law, the State Insurance Fund is the custodian of the Fund and also serves as its administrator. Thus, the management of the Fund and the Workers' Compensation Fund is the same, although a separate operating unit has been established to administer the daily activities of the Fund.

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

B. Significant Operating Ratios

The following ratios have been computed as of December 31, 2014, based upon the results of this examination:

Investment Yield	3.00%
Liabilities to liquid assets	82.10%

The investment yield for each year during the examination was lower than the 5 percent discount rates used in computing the unpaid award liability.

The Liabilities to liquid assets ratio falls within the benchmark values recommended by the NAIC.

C. Accounts and Records

Contingent Receivable from New York State

The Fund is reporting an admitted asset in the amount of \$220,000,000 under the caption "contingent receivable from New York State." The Fund was required to transfer to the State an aggregate of \$220,000,000 as follows:

<u>Year</u>	<u>Amount (in thousands)</u>
1982	\$ 50,000
1989	110,000
1990	60,000
Total	<u>\$220,000</u>

New York State statutes require the State to appropriate \$220,000,000 annually for the potential repayment of any portion of the aggregate contingent receivable. Such repayment by the State is required only to maintain the solvency of the Fund. These statutes specifically direct the contingent receivable to be an admitted asset. The receivable is non-interest bearing.

### 3. FINANCIAL STATEMENTS

#### A Balance Sheet

The following shows the assets, liabilities and surplus as regards policyholders as of December 31, 2014, as reported by the Fund:

<u>Admitted Assets</u>		
Bonds	\$265,629,000	
Common stocks (stocks)	30,000	
Cash and short-term investments	34,665,000	
Award payments recoverable from the supplemental benefits fund	3,332,000	
Accrued investment income	2,025,000	
Contingent receivable from New York State	<u>220,000,000</u>	
		<u>\$525,681,000</u>
Total admitted assets		
 <u>Liabilities and Surplus</u>		
<u>Liabilities</u>		
Unpaid awards	\$240,922,000	
Unpaid administrative fees	7,228,000	
Due to affiliates	<u>104,000</u>	
		\$248,254,000
Total Liabilities		
 <u>Surplus</u>		
	\$ 15,000,000	
Security fluctuation surplus		
Unassigned surplus	<u>262,427,000</u>	
Total Surplus		<u>\$277,427,000</u>
Total liabilities and surplus		<u>\$525,681,000</u>

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

B. Statement of Income

The net income for the five-year examination period as reported by the Fund was \$76,267,000 as detailed below:

Revenues

Award received	\$149,668,000
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Benefits and expenses

Awards paid	\$125,663,000	
Increase in liability for unpaid awards and administrative fees	87,890,000	
Administrative fees paid	3,196,000	
Other operating expenses	<u>201,000</u>	
Total benefits and expenses		<u>216,950,000</u>
Net operating loss		(67,282,000)

Investment Income

Net investment income earned	32,616,000	
Net realized investment gains	<u>110,933,000</u>	
Net investment gain or (loss)		\$ <u>143,549,000</u>
Net Income		\$ <u>76,267,000</u>

C. Capital and Surplus Account

Surplus as regards policyholders increased \$75,944,000 during the five-year examination period January 1, 2010 through December 31, 2014, as reported by the Fund, detailed as follows:

Surplus as regards policyholders per report on examination as of December 31, 2009		\$201,483,000
Net gain	\$76,267,000	
Net unrealized capital gains or (losses)	<u>(323,000)</u>	
Net increase (decrease) in surplus		75,944,000
Surplus as regards policyholders per report on examination as of December 31, 2014		<u>\$277,427,000</u>

4. UNPAID AWARDS

The examination liability for the captioned item of \$ 240,922,000 is the same as reported by the Fund as of December 31, 2014.

This liability represents the present value of individual case estimates at year-end with mortality and remarriage rates based upon the 1914 Dutch Mortality and Remarriage Tables as required by the Workers' Compensation Law of the State of New York. The Fund uses an interest rate of five percent to estimate the present value for unpaid losses.

## 5. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior report on examination contained one recommendation as follows (page number refer to the prior report):

<u>ITEM</u>		<u>PAGE NO.</u>
A.	<u>Custodial Agreement</u>	
	It was recommended that the Fund amend its custodian agreement with JP Morgan Chase to include the protective covenant set forth in Section 3-56 of the 2009 Handbook.	5
	The Fund has complied with this recommendation.	

## 6. SUMMARY OF COMMENTS AND RECOMMENDATIONS

This report contains no comments or recommendations.

Respectfully submitted,

\_\_\_\_\_/S/  
Rajendra Sunder  
Senior Insurance Examiner

STATE OF NEW YORK     )  
  )ss:  
COUNTY OF NEW YORK    )

Rajendra Sunder, being duly sworn, deposes and says that the foregoing report, subscribed by him,  
is true to the best of his knowledge and belief.

\_\_\_\_\_/S/  
Rajendra Sunder

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

APPOINTMENT NO. 31225

NEW YORK STATE  
**DEPARTMENT OF FINANCIAL SERVICES**

I, BENJAMIN M. LAWSKY, Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:

**Rajendra Sunder**

as a proper person to examine the affairs of the

**Aggregate Trust Fund**

and to make a report to me in writing of the condition of 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 20th day of January, 2015

BENJAMIN M. LAWSKY  
Superintendent of Financial Services



By:



Rolf Kaumann  
Deputy Chief Examiner