

REPORT ON EXAMINATION

OF

STATE INSURANCE FUND WORKERS' COMPENSATION FUND

AS OF

DECEMBER 31, 2014

DATE OF REPORT

JANUARY 20, 2016

EXAMINER

RAJENDRA SUNDER

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Department of Financial Services

KATHY HOCHUL
Governor

ADRIENNE A. HARRIS
Acting Superintendent

November 16, 2021

Honorable Adrienne A. Harris
Acting 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 31227 dated January 20, 2015, attached hereto, I have made an examination into the condition and affairs of State Insurance Fund Workers' Compensation Fund as of December 31, 2014, and submit the following report thereon.

Wherever the designation "WC Fund" appears herein without qualification, it should be understood to indicate the State Insurance Fund Workers' Compensation Fund. The State Insurance Fund ("NYSIF"), for purposes of this report, refers to the New York State agency, which administers the operations of the Workers Compensation Fund, which is the subject of this examination report, and the Disability Benefits 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 WC 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 (“Handbook”), which requires that we plan and perform the examination to evaluate the financial condition and identify current and prospective risks of the WC Fund by obtaining information about the company including corporate governance, identifying and assessing inherent risks within the WC Fund 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 WC Fund were considered in accordance with the risk-focused examination process. This examination also included a review and evaluation of the WC Fund’s own control environment assessment. The examiners relied upon audit work performed by the WC Fund’s independent public accountants when appropriate.

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

- WC Fund history
- Management and control
- Territory and plan of operation
- Reinsurance
- Accounts and records
- Financial statement presentations
- Loss review and analysis
- Summary of recommendations

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

The examination of the WC Fund was performed concurrently with the examinations of the State Insurance Fund Disability Benefits Fund, and the Aggregate Trust Fund. The Aggregate Trust Fund is another fund administered by the State Insurance Fund. The purpose of the Aggregate Trust Fund is to assure and oversee the regular payments of benefits on adjudicated death cases and certain permanent disability cases.

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

2. DESCRIPTION OF THE WORKERS' COMPENSATION FUND

The State Insurance Fund ("the Fund") was created in 1914, pursuant to the provisions of Article 6, Section 76 of the New York Workers' Compensation Law ("NYWCL"). Its primary purpose was to provide workers' compensation insurance for employers in the State of New York. The Fund is comprised of two separate funds; the Workers' Compensation Fund ("WC Fund") and the Disability Benefits Fund ("DB Fund"). The WC Fund insures employers against occupational injury and disease suffered by their employees; the DB Fund insures against disabling off-the-job sickness or injury sustained by employees. The DB Fund was created in 1950 by amendment to Section 76 of the NYWCL.

The Fund is required to maintain separate records and file separate financial statements for the WC Fund and the DB Fund. This report is confined to the operations of the WC Fund. A separate report on examination was prepared for the DB Fund.

A. Corporate Governance

Pursuant to Article 6, Section 77 of the NYWCL, the Fund shall be administered by a board of commissioners consisting of ten members. The New York State Labor Commissioner is a member by virtue of the office, with the other members being appointed by the Governor with the consent of the State Senate. The commissioners are appointed for terms of three years each and they must be policyholders insured by the State Insurance Fund.

In 2007, Section 77 of the NYWCL was amended to increase the number of commissioners from eight to ten, with one of the new commissioners to be appointed by the Governor upon the recommendation

of the New York State AFL-CIO, and the other new commissioner to be appointed upon the recommendation of the Business Council of the State of New York.

The board meets every month, with the exception of August, during each calendar year. At December 31, 2014, the board of commissioners was comprised of the following nine members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Joseph Canovas Staten Island, NY	Director of Special Projects, AFL/CIO
Eileen Asandra Frank New York, NY	President, J.P. West, Inc.
Charles MacLeod Northport, NY	President, SMM Advertising
David Elihu Ourlicht New York, NY	Managing Director, GAMCO Asset Management
Peter Manuel Rivera (ex-officio) Bronx, NY	Commissioner, NYS Department of Labor
Sheila Stamps New York, NY	Independent Consultant, Formerly of Dreambuilder Investments, Inc.
Barry Swidler Brookville, NY	President, Long Island Carpet Cleaners, Inc.
Kenneth Rudolph Theobalds New Rochelle, NY	VP of Government & Regulatory Affairs, Entergy
Alexis Thomas Brooklyn, NY	Principal & Manager, The Williams Capital Group, L.P.

It is noted that the State Insurance Fund did not have ten commissioners. Commissioners are appointed by the Governor, by and with the advice and consent of the Senate.

A review of the minutes of the board of commissioners' meetings held during the examination period indicated that the meetings were generally well attended.

A review of the minutes of the board of commissioners revealed that each member of the board of commissioners was not furnished a copy of the prior report on examination.

It is therefore, recommended, as a best practice, that the Fund present the report on examination to its board of commissioners and each such member shall sign a statement, which shall be retained in the Fund's files.

Section 82 of Article 6 of the NYWCL prescribes that the commissioners shall appoint an executive director, a general attorney, and a secretary for terms of nine years each. The executive director shall, subject to the direction of the commissioners, be responsible for the direction and operation of the Fund. As of December 31, 2014, the principal officers of the WC Fund were as follows:

<u>Name</u>	<u>Title</u>
Eric Madoff	Executive Director
William Henry O'Brien	General Attorney
Shirley Stark	Deputy Executive Director

The WC Fund has established a budget and audit committee, which reports to the board of commissioners and helps the board fulfill its oversight responsibilities with respect to its financial reporting process and system of internal controls.

B. Territory and Plan of Operation

The WC Fund operates only in the State of New York. It writes workers' compensation insurance which covers job-related disabilities and includes the cost of medical treatment. It also acts as claims administrator for the State of New York, which since 1981, self-insures its workers' compensation liabilities.

On January 31, 2008, legislation was enacted to replace the rate system for workers' compensation insurance with a loss cost system. In a loss cost system, the rate service organization only files the portion of the rates related to losses; this system allows the WC Fund to apply its own expense factors.

The New York Workers' Compensation Law provides that the WC Fund's premiums be fixed at the lowest possible rates, consistent with the maintenance of a solvent fund, with reasonable reserves and surplus.

The following schedule shows the direct premiums written by the WC Fund during the examination period:

<u>Calendar Year</u>	<u>Direct Premium Written</u>
2010	\$1,309,759,096
2011	\$1,495,864,902
2012	\$1,943,837,922
2013	\$2,283,286,622
2014	\$2,374,259,270

C. Reinsurance Ceded

The WC Fund is a direct writer and does not assume any business. Additionally, the WC Fund had no new ceded reinsurance contracts since 2010.

Commutation of Ceded Reinsurance Agreements

During the period covered by this examination, the NYSIF commuted the following four reinsurance agreements, which had a minimal effect on the WC Fund's Surplus.

Inter-Ocean Reinsurance (Ireland) Limited and NYSIF

Effective December 24, 2010, NYSIF entered into a commutation and release agreement with Inter-Ocean Reinsurance Limited, whereby Inter-Ocean paid \$23,000,000.00 to NYSIF as full and final settlement of any claim arising under the reinsurance agreement.

Clarendon National Insurance Company and NYSIF

On January 18, 2012, NYSIF entered into a commutation agreement with Clarendon National Insurance Company ("CNIC"), whereby CNIC paid the sum of \$18,000,000 to NYSIF as full satisfaction of CNIC's liability under the reinsurance agreement.

Transatlantic Reinsurance Company and NYSIF

On January 9, 2012, NYSIF entered into a commutation agreement with Transatlantic Reinsurance Company ("TRC"), whereby TRC paid the sum of \$38,550,000 to NYSIF as full satisfaction of TRC's liability under the reinsurance agreement.

Continental Casualty Company and NYSIF

Effective December 2010, NYSIF entered into a commutation agreement with Continental Casualty Company ("CNA"), whereby CNA paid the sum of \$37,500,000.00 to NYSIF as full and final settlement of any claim arising under the reinsurance agreement.

D. Significant Operating Ratios

The following ratios have been computed as of December 31, 2014, fall within the benchmark ranges set forth in the Insurance Regulatory Information System of the National Association of Insurance Commissioners.

<u>Operating Ratios</u>	<u>Results</u>
Net premiums written to surplus as regards policyholders	64%
Liabilities to liquid assets (cash and invested assets less investments in affiliates)	86%
Premiums in course of collection to surplus as regards policyholders	4%

Underwriting Ratios

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 and loss adjustment expenses incurred	\$7,581,672,394	81.74%
Other underwriting expenses incurred	624,889,222	6.74
Net underwriting gain	<u>1,068,901,186</u>	<u>11.52</u>
Premiums earned	<u>\$9,275,462,802</u>	<u>100.00%</u>

E. Accounts and Records

Securities Lending Agreement

The WC Fund is engaged in a security lending program with JP Morgan Chase Bank and Key Trust Company. A review of the WC Fund's security lending agreement revealed that it is inconsistent with Department guidance as detailed in Circular Letter No. 16 (2010).

It is recommended that the WC Fund amend its securities lending agreement in accordance with Department Circular Letter No. 16 (2010).

F. Other Significant Information

i) Contingent Receivable from New York State

The WC Fund is reporting an admitted asset in the amount of \$1,295,000,000 under the caption “Contingent receivable from New York State.” The WC Fund was required to transfer to the State an aggregate of \$1,295,000,000 as follows:

<u>Year</u>	<u>Amount (in thousands)</u>
1982	\$ 190,000
1986	325,000
1987	300,000
1989	250,000
1990	<u>230,000</u>
Total	<u>\$1,295,000</u>

New York State statutes require the State to appropriate \$1,295,000,000 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 WC Fund. These statutes specifically direct the contingent receivable to be an admitted asset. The receivable is non-interest bearing.

ii) Discounting of Loss and Loss Adjustment Expenses

Section 86 of the New York State Workers’ Compensation Law mandates that reserves for the incurred but not reported (“IBNR”) loss and loss adjustment expenses of the WC Fund to be discounted to present value using an annual effective interest rate of five percent. The five percent discount is referred to as the non-tabular discount. It should be noted that the actual investment yield per the Insurance Regulatory Information System ratios (“IRIS”) has not exceeded five percent during the examination period. The IRIS investment yield ratios for each year of the examination period are as follows:

<u>Year</u>	<u>Yield</u>
2010	4.1%
2011	3.8%
2012	3.4%
2013	3.0%
2014	2.8%

iii) Workers Compensation Reform

Chapter 57 of the New York State Laws of 2013 significantly changed and simplified the assessment calculation and billing process effective January 1, 2014. The changes create one unified assessment rate determined by the Workers' Compensation Board for which all employers, including WC Fund policyholders, will be liable. In addition, Workers' compensation insurers, including the WC Fund, will be required to remit assessment payments to the WCB on a prospective basis, such assessments are charged and collected from policyholders based on premiums. Moreover, assessment reserves, (including loss and administrative), held by the Workers' Compensation Fund for the payment of future assessments are no longer required. On March 31, 2013, the Workers' Compensation Fund estimated that the liability for assessments that are no longer due to the WCB were approximately \$2.3 billion, which comprised \$1.85 billion of loss-based assessments related to Sections 15.8 and 25A of the Workers' Compensation Law and \$450 million of assessments related to the administrative expenses of the Workers' Compensation Board.

iv) Catastrophe Exposure

The WC Fund segregated \$700 million of its surplus for its net catastrophe exposure. The WC Fund has exposure to significant losses from terrorism. The Terrorism Risk Insurance Act of 2002, ("TRIA") was enacted into Federal law and established a temporary Federal program through the Department of the Treasury providing a system of shared public and private compensation for insured losses resulting from foreign terrorism. The Terrorism Insurance Program ("Terrorism Program") generally requires that all property casualty insurers licensed in the United States participate in the Terrorism Program. In December 2007, President Bush signed into law the Terrorism Risk Insurance Program Reauthorization Act of 2007 ("TRIPRA"), extending TRIA for another seven years through December 31, 2014.

In January 2015, President Obama signed into law an extension which expires December 31, 2020, with certain changes. TRIPRA adds domestic terrorism to the list of covered acts, triggers a year-long study of a proposal to mandate coverage for nuclear, biological, chemical and radiological attacks and retains the government's share of insured losses for a major attack at \$100 billion.

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 WC Fund:

<u>Assets</u>	<u>Assets</u>	<u>Assets Not Admitted</u>	<u>Net Admitted Assets</u>
Bonds	\$11,425,737,513	\$ 0	\$11,425,737,513
Preferred stocks (stocks)	8,622,808	0	8,622,808
Common stocks (stocks)	1,489,615,870	0	1,489,615,870
Properties occupied by the company	16,690,958	0	16,690,958
Cash, cash equivalents and short-term investments	810,330,166	0	810,330,166
Securities lending reinvested collateral assets	257,551,122	0	257,551,122
Investment income due and accrued	78,001,877	0	78,001,877
Uncollected premiums and agents' balances in the course of collection	294,705,359	157,188,605	137,516,754
Deferred premiums, agents' balances and installments booked but deferred and not yet due	56,359,260	5,635,926	50,723,334
Amounts recoverable from reinsurers	86,837	0	86,837
Electronic data processing equipment and software	8,058,766	1,984,204	6,074,562
Furniture and equipment, including health care delivery assets	1,660,808	1,660,808	0
Receivables from parent, subsidiaries and affiliates	40,794,420	0	40,794,420
Contingent Receivable from New York State	1,295,000,000	0	1,295,000,000
Recoverable under supplemental benefits	1,597,807	0	1,597,807
Employee travel advances	12,150	12,150	0
Prepaid expenses	7,977,040	7,977,040	0
Bulk Train Tickets	72,835	72,835	0
VFAW	8,786	0	8,786
Other Receivables	127,468	0	127,468
Recoverable for Premium Tax	2,464,901	0	2,464,901
Advance for WCB Assessment	<u>35,807,063</u>	<u>0</u>	<u>35,807,063</u>
Totals	<u>\$15,831,283,814</u>	<u>\$174,531,568</u>	<u>\$15,656,752,246</u>

Liabilities, surplus and other fundsLiabilities

Losses and Loss Adjustment Expenses	\$ 9,370,072,000
Other expenses (excluding taxes, licenses and fees)	69,693,363
Unearned premiums	467,225,537
Policyholders (dividends declared and unpaid)	228,677
Payable to parent, subsidiaries and affiliates	250,000,000
Payable for securities lending	266,749,339
Estimated assessment for special funds	134,398,853
Safety group contingent balances	1,289,667,571
New business suspense	1,953,507
Accrued interest payable	3,686
Run-off case reserve	1,998,888
Miscellaneous suspense	3,028,225
Policyholder credit balances	82,754,263
Loss payments in process	<u>4,463,636</u>
Total liabilities	\$11,942,237,544

Surplus and Other Funds

Security fluctuation surplus	\$ 400,000,000
Catastrophe surplus	208,154,440
Foreign terrorism catastrophe surplus	413,147,062
Domestic terrorism catastrophe surplus	78,698,498
Unassigned funds (surplus)	<u>\$2,614,514,702</u>
Surplus as regards policyholders	<u>3,714,514,702</u>
Total liabilities, surplus and other funds	<u>\$15,656,752,246</u>

NOTE: The WC Fund is exempt from federal income tax.

B. Statement of Income

Net income for the five-year examination period as reported by WC Fund was \$1,159,623,003 as detailed below:

Underwriting Income

Premiums earned		\$9,275,462,802
Deductions:		
Losses and loss adjustment expenses incurred	\$7,581,672,394	
Other underwriting expenses incurred	624,889,222	
Total underwriting deductions		<u>8,206,561,616</u>
Net underwriting gain or (loss)		\$1,068,901,186

Investment Income

Net investment income earned	\$2,204,076,789	
Net realized capital gain	<u>1,136,677,570</u>	
Net investment gain or (loss)		3,340,754,359

Other Income

Net gain or (loss) from agents' or premium balances charged off	\$ (219,381,231)	
Finance and service charges not included in premiums	47,053,705	
Aggregate write-ins for miscellaneous income	<u>(2,147,085,883)</u>	
Total other income		<u>(2,319,413,409)</u>
Net income before dividends to policyholders and before federal and foreign income taxes		\$2,090,242,136
Dividends to policyholders		<u>930,619,133</u>
Net Income		<u>\$1,159,623,003</u>

C. Capital and Surplus Account

Surplus as regards policyholders increased \$1,319,561,429 during the five-year examination period January 1, 2010 through December 31, 2014, as reported by WC Fund, detailed as follows:

Surplus as regards policyholders per report on examination as of December 31, 2009				\$2,394,953,273
		<u>Gains in Surplus</u>	<u>Losses in Surplus</u>	
Net income	\$1,159,623,003			
Net unrealized capital gains or (losses)	220,613,801			
Change in non-admitted assets			\$42,037,617	
Aggregate write-ins for gains and losses in surplus	<u>0</u>		<u>18,637,758</u>	
Net increase (decrease) in surplus	\$1,380,236,804		\$60,675,375	<u>\$1,319,561,429</u>
Surplus as regards policyholders per report on examination as of December 31, 2014				<u>\$3,714,514,702</u>

4. LOSSES AND LOSS ADJUSTMENT EXPENSES

The examination liability for the captioned items of \$9,370,072,000 is the same, as reported by the WC Fund as of December 31, 2014. The examination analysis was conducted in accordance with generally accepted actuarial principles and statutory accounting principles, including the NAIC Accounting & Procedures Manual and Statement of Statutory Accounting Principles No. 55 (“SSAP No. 55”), and statistical information contained in the WC Fund’s internal records and filed annual statements.

5. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

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

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Reinsurance</u>	
i. It was recommended that in the future the WC Fund correctly classify its reinsurance recoverables on Schedule F, Part 3.	6
The WC Fund has complied with this recommendation.	
ii. It was recommended that the WC Fund exercise due care in its classification of reinsurers in Schedule F-Part 3 as authorized or unauthorized.	7
The WC Fund has complied with this recommendation.	
iii. It was recommended that the WC Fund comply with Part 125.6(b) of Department Regulation 20 and not take credit for reinsurance ceded to unauthorized reinsurers without appropriate collateral in place.	7
The WC Fund has complied with this recommendation.	
B. <u>Accounts and Records</u>	
i. <u>Custodial Agreement</u>	
It was recommended that the WC Fund amend its custodial agreement with JP Morgan Chase to include the protective covenant suggested by Section 3-56 of the 2009 NAIC Handbook.	8
The WC Fund has complied with this recommendation.	
ii. <u>Contract with Certified Public Accountant</u>	
It was recommended that the WC Fund include the provisions required by Department Regulation 118 in all future contracts with its CPA firm. It is noted that Department Regulation 118 was revised effective January 1, 2010, and therefore, the WC Fund should comply with the revised regulation.	9
The WC Fund has complied with this recommendation.	

iii. Third Party Administration (TPA)

It was recommended that the WC Fund maintain oversight on the TPA on an on-going basis to ensure compliance with the contract, as well as the New York State Insurance and Workers' Compensation Laws. 9

The WC Fund has complied with this recommendation.

iv. Security Lending Agreements

It was recommended that the WC Fund review its securities lending agreements and incorporate the provisions recommended in Department Circular Letter No. 16 (2010) 9

The WC Fund has not complied with this recommendation. A similar comment is made in this report.

v. Uncollected Premiums and Agents' Balances in Course of Collection

It was recommended that the WC Fund review the netting of credit balances against its uncollected premiums to determine if the netting is in accordance with SSAP No. 64. 10

The WC Fund has complied with this recommendation.

. Losses and Loss Adjustment Expenses

It was recommended that the WC Fund's responses to the Notes to Financial Statements be prepared in conformity with the NAIC Annual Statement Instructions. 16

The WC Fund has complied with this recommendation.

6. SUMMARY OF COMMENTS AND RECOMMENDATIONSITEMPAGE NO.A. Corporate Governance

- . It is recommended, as a best practice, that the State Insurance Fund present the report on examination to its board of commissioners and each such member shall sign a statement, which shall be retained in the Fund's files. 5

B. Accounts and Records

- It is recommended that the WC Fund amend its Securities Lending Agreement in accordance with Department Circular Letter No. 16 (2010). It is noted that the WC Fund indicated on June 6, 2019 that a new Securities Lending Agreement was executed in January 2017. 7

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 _____, 2021.

APPOINTMENT NO. 31227

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

State Insurance Fund

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

COMPANY

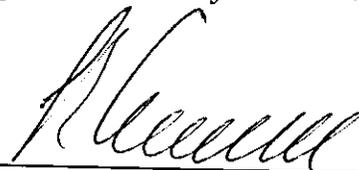
with such other information as he shall deem requisite.

*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*

