

REPORT ON EXAMINATION

OF THE

UTICA FIRST INSURANCE COMPANY

AS OF

DECEMBER 31, 2007

DATE OF REPORT

AUGUST 21, 2008

EXAMINER

WAYNE LONGMORE

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STATE OF NEW YORK  
INSURANCE DEPARTMENT  
ONE COMMERCE PLAZA  
ALBANY, NEW YORK 12257

August 21, 2008

Mr. Eric R. Dinallo  
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 22731 dated January 14, 2008 attached hereto, I have made an examination into the condition and affairs of the Utica First Insurance Company as of December 31, 2007, and submit the following report thereon.

Wherever the designations “the Company” or “UFIC” appear herein without qualification, they should be understood to indicate the Utica First Insurance Company.

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

The examination was conducted at the Company’s home office located at 5981 Airport Road, Oriskany, New York 13424.

## **1. SCOPE OF EXAMINATION**

The previous examination was conducted as of December 31, 2002. This examination covered the five-year period from January 1, 2003 through December 31, 2007. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

The current examination was organized, planned, and conducted based upon the application of the risk-focused surveillance approach in accordance with the guidelines and procedures established in the Financial Condition Examiners Handbook of the National Association of Insurance Commissioners (“NAIC”). To the extent considered appropriate, work performed by the Company’s independent certified public accountants was considered. A review was also made of the following items as called for in the Financial Condition Examiners Handbook of the NAIC:

- History of Company
- Management and control
- Corporate records
- Territory and plan of operation
- Business in force by states
- Loss experience
- Reinsurance
- Accounts and records
- Financial statements
- Market Conduct Activities

A review was also made to ascertain what action was taken by the Company 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, which involve departures from laws, regulations or rules, or which are deemed to require explanation or description.

## 2. DESCRIPTION OF COMPANY

The Company was organized in 1903 for the purpose of transacting business as a co-operative fire insurance corporation in Oneida County, New York.

On March 1, 1942, the Company was authorized to issue non-assessable policies.

Under Agreements of Merger approved by this Department, the Company merged with the Colonial Co-operative Fire Insurance Company, of Newburgh, New York and the Dwelling Insurance Association of Central New York, of Ilion, New York in 1941 and 1956, respectively, under the title and charter of the Utica Fire Insurance Company of Oneida County, N.Y.

Effective January 1, 1994, the Company was authorized by this Department to change its name to the "Utica First Insurance Company".

### 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 nine or more than fifteen members. As of the examination date, the board of directors was comprised of eleven members.

At least four board meetings were held in each of the years during the period under examination, thereby complying with Section 6624(b) of the New York Insurance Law.

The directors as of December 31, 2007, were as follows:

<u>Director</u>	<u>Principal Business Affiliation</u>
Dominick Donald Carbone Boonville, NY	President, Don-Al Management Company Inc.
Lawrence Michael Fitzgerald New Hartford, NY	Partner in the CPA firm of Rinehard, Fitzgerald & DePietro, PC
Richard Robert Griffith New Hartford, NY	President, Sturges Manufacturing
Kirk Buol Hinman Rome, NY	President, Rome Strip Steel Company, Inc.
Camille Tauroney Kahler Rome, NY	Partner of Saunder, Kahler, Amoroso, Locke Law Firm

**Director**

Alan Remy Leist  
New Hartford, NY

Joseph Kemper Matt  
Fayetteville, NY

John Bradford Millet, Jr.  
Clinton, NY

Earle Clifford Reed  
Utica, NY

John Alan Zawadzki  
Manlius, NY

Richard James Zick  
Rome, NY

**Principal Business Affiliation**

Chief Executive Officer, Strategic Financial Services, LLC

Chairman of the board, UFIC; President, Dupli Envelope & Graphics Corporation

President, Mohawk Metal Products Company, Inc.

Retired Chief Executive Officer – Utica Boilers

Retired Chief Executive Officer – Partners Trust

President and Chief Executive Officer, UFIC

The minutes of all of the board of directors' meetings and the committees thereof held during the examination period were reviewed. Such review indicated that all of the meetings were well attended. Each of the directors had a satisfactory attendance record for the board meetings held.

Each of the director's qualifications, as set forth in Article III Section 3.02 of the Company's by-laws, was reviewed and it appears that each director was duly qualified.

As of December 31, 2007, the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
Joseph Kemper Matt	Chairman of the Board
Richard James Zick	President and Chief Executive Officer
William Clarence Bowers	Senior Vice President
Scott Andrew Shatraw	Vice President/Chief Financial Officer/Treasurer/ Secretary
Richard Raymond Shlotzhauer	Vice President-Director of Information Systems Operations
David Bruce Jarvis	Vice President- Director of Marketing
Don Philip Murnane	General Counsel

B. Territory and Plan of Operation

As of December 31, 2007, the Company was licensed to transact business in the following six states: Connecticut, New Jersey, New York, Ohio, Pennsylvania and Rhode Island.

As of the examination date, 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>Line of Business</u>
4	Fire
5	Miscellaneous property
6	Water damage
7	Burglary and theft
8	Glass
9	Boiler and machinery
10	Elevator
12	Collision
13	Personal injury liability
14	Property damage liability
16	Fidelity and surety
19	Motor vehicle and aircraft physical damage
20	Marine and inland marine (inland marine only)

The Company was also licensed as of December 31, 2007, to accept and cede reinsurance as provided in Section 6606 of the Insurance Law of the State of New York.

The following schedule compares direct premiums written during the examination period in New York State with the total direct premiums written in the United States:

<u>Calendar Year</u>	<u>New York State</u>	<u>Total United States</u>	<u>Premiums Written in New York State as a percentage of United States Premium</u>
2003	\$62,465,220	\$73,032,282	85.53%
2004	\$73,157,762	\$85,688,175	85.38%
2005	\$77,931,195	\$92,439,233	84.31%
2006	\$79,777,512	\$97,445,901	81.87%
2007	\$77,628,648	\$97,100,989	79.95%

Based on the lines of business for which the Company is licensed and pursuant to the requirements of Articles 13, 41 and 66 of the New York Insurance Law, as of December 31, 2007, the Company is required to maintain a minimum surplus to policyholders in the amount of \$1,200,000.

At December 31, 2007, the Company wrote insurance through independent agents. The Company's predominate lines of business are commercial multiple peril and homeowners multiple peril, which accounted for 83.6% and 14.0% respectively of the Company's 2007 direct written business.

### C. Reinsurance

#### Assumed Reinsurance

Assumed reinsurance accounted for less than 1% of the Company's gross premium written at December 31, 2007. The Company's assumed reinsurance program consists solely of coverages assumed from pools. The Company utilizes reinsurance accounting as defined in Statement of Statutory Accounting Principles ("SSAP") No. 62 for all of its assumed reinsurance business.

#### Ceded Reinsurance Program

The Company has structured its ceded reinsurance program to limit its maximum exposure to any one risk, to \$100,000. A summary of the Company's ceded reinsurance program for 2007 is as follows:

<u>Type of Coverage</u>	<u>Cession</u>
<u>Property</u> (includes terrorism coverage) 3 layers	\$2.4 million in excess of \$100,000 each risk. Each layer has a limit for all risks involved in one occurrence as follows: First- \$300,000, Second - \$900,000 and Third - \$2 million.
<u>Casualty</u> (includes terrorism coverage) 3 layers	\$900,000 in excess of \$100,000 each occurrence.
<u>Combination Basket Retention</u> (occurrence involves any combination of property, casualty, and/or inland marine)	\$100,000 in excess of \$100,000 each risk, each combination occurrence.
<u>Property Buffer</u> (includes terrorism coverage)	\$1,000,000 in excess of \$2,500,000 each occurrence.
<u>Casualty Clash</u> (includes terrorism coverage)	\$1,000,000 in excess of \$1,000,000 each occurrence.



<u>Type of Coverage</u>	<u>Cession</u>
<u>Terrorism</u>	\$8,000,000 in excess of \$1.5 million ultimate net loss each loss occurrence.
<u>Property Catastrophe excess of loss- 5 layers</u>	\$30,000,000 in excess of \$2,000,000 each loss occurrence subject to a limit of two times the reinsurers' limit of liability on each separate layer during the term of the contract. The Company retains a 5% participation on each of the first two layers.
Umbrella Facultative contract - covering policies classified as personal, farm, and commercial umbrella liability	95% of the first \$1 million of ultimate net loss any one policy any one loss occurrence and 100% of up to an additional \$4 million in excess of \$1 million each loss occurrence, each policy.
Quota share contract covering policies to which the Systems Breakdown Coverage form is attached (Equipment Breakdown Liability)	100% quota share up to \$20 million per accident.
Quota share contract covering losses under the Data Compromise Coverage Form ("DC"), the Employment Practices Liability Insurance Coverage Endorsement ("EPL"), and under the Identity Recovery Coverage Endorsement form ("IDR")	100% quota share with a \$25,000 annual aggregate per policy limit for the DC coverage, a \$100,000 aggregate limit per policy for the EPL coverage, and a \$15,000 annual aggregate per insured under the IDR coverage.

The Company's retention for property and casualty remained at \$100,000 throughout the examination period. This was an increase from \$75,000 at the close of the previous examination period. The Company's property coverage went from \$900,000 in excess of \$100,000 in 2003 to the 2007 coverage of \$2,400,000 in excess of \$100,000 as the Company increased the coverage provided on its own policies. The Company's casualty coverage has been constant throughout the examination period. The Company's catastrophe coverage remained steady from 2003 through 2005 at \$25,500,000 in excess of \$1,500,000 increasing to \$30,000,000 in excess of \$2,000,000 in 2006 and 2007; finally the Company's stand alone terrorism coverage gradually increased from \$2,000,000 in excess of \$1,500,000 in 2003 to the \$8,000,000 in excess of \$1,500,000 coverage for 2007.

The Company ceded to authorized and unauthorized reinsurers during the period under examination.

### Review of Ceded Reinsurance Contracts

The Company's ceded reinsurance contracts were either placed through intermediaries Guy Carpenter or AON Reinsurance Services or directly with The Hartford Steam Boiler Inspection and Insurance Company. For 2007 one contract, entitled the Multi-line Excess of Loss Reinsurance Agreement, was placed through AON Reinsurance Services. The agreements placed through Guy Carpenter included a Terrorism Excess of Loss Reinsurance Contract and an Umbrella Facultative Reinsurance Contract. Two contracts were placed with the Hartford Steam Boiler Inspection and Insurance Company, one of which covered equipment breakdown liability and one covering data compromise, employment practices, and identity recovery liability.

All ceded reinsurance contracts, in effect at the examination date, were reviewed for required and standard clauses.

It was noted that the insolvency clause included in the Multi-line Excess of Loss Reinsurance Agreement, placed through AON Reinsurance Services, contained language that deviated from Section 1308(a)(2)(A) of the New York Insurance Law. The insolvency clause in the 2007 Multi-line Excess of Loss Reinsurance Agreement, states in part "...without diminution by reason of the inability of the Company to pay all or part of the claim, except as otherwise specified in the statutes of any state having jurisdiction of the insolvency proceedings..."

Company management was informed that the wording above appears to allow an exception by other states to the diminution language required by New York State and as such does not appear consistent with the requirements of Section 1308 of the New York Insurance Law. Company management indicated that the affected agreement was corrected upon renewal in 2008. A request for a retro-active amendment was not made of the Company. Nonetheless, it is recommended that the Company include an insolvency clause in future reinsurance contracts that complies with Section 1308 of the New York Insurance Law.

The insolvency clauses in the Multi-line Excess of Loss agreement and in the ceded reinsurance contracts placed with the Hartford Steam Boiler Inspection and Insurance Company make reference to a novation. Circular letter No. 5 (1988) states the following in reference to a novation:

"Any references to such an event in the reinsurance agreement should indicate that, prior to the implementation of a novation, the certificate of assumption on New York risks would have to be approved by the Superintendent..."

It is recommended that the Company include language consistent with Circular Letter No. 5 (1988) in all reinsurance contracts which make reference to a novation. The Company indicated that the multi-line excess of loss contract has been corrected in 2008. As of the date of this report, Company management has indicated that they are in the process of amending the other affected agreements as well.

Examination review of the Schedule F data reported by the Company in its filed annual statement was found to accurately reflect its reinsurance transactions. Additionally, management has represented that all material ceded reinsurance agreements transfer both underwriting and timing risk as set forth in SSAP No. 62. Representations were supported by appropriate risk transfer analyses and an attestation from the Company's Chief Executive Officer and Chief Financial Officer pursuant to the NAIC's Annual Statement Instructions. Additionally, examination review indicated that the Company was not a party to any finite reinsurance agreements. All ceded reinsurance agreements were accounted for utilizing reinsurance accounting as set forth in paragraphs 25 and 26 of SSAP No. 62 as of December 31, 2007.

During the period covered by this examination, the Company commuted one reinsurance agreement where it was a ceding insurer. This commutation was neutral to the Company's surplus position.

D. Holding Company System

As of December 31, 2007, the Company was not a member of a holding company system. As of December 31, 2002, the Company had a wholly owned subsidiary, UFIC Agency, Inc. During the first half of 2003 the subsidiary was dissolved.

E. Significant Operating Ratios

The following ratios have been computed as of December 31, 2007, based upon the results of this examination:

Net premiums written to surplus as regards policyholders	86%
Liabilities to liquid assets (cash and invested assets less investments in affiliates)	60%
Premiums in course of collection to surplus as regards policyholders	4%

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	\$167,434,627	63.48%
Other underwriting expenses incurred	60,936,130	23.11
Aggregate write-ins for underwriting deductions	845,919	0.32
Net underwriting Gain	<u>34,535,809</u>	<u>13.09</u>
 Premiums earned	 <u>\$263,752,485</u>	 <u>100.00%</u>

F. Accounts and Records

1. Surplus Note Reporting

It was noted that on December 17, 2007, the Company received Department approval to repay \$1,000,000 of principal on its \$7,000,000 Surplus Note (issued December 4, 2002). The principal payment was scheduled to be made on March 4, 2008. The Company did not reclassify the approved payment to a liability in the 2007 filed Annual Statement which resulted in an overstatement of reported surplus to policyholders in the amount of \$1,000,000. In accordance with Statement of Statutory Accounting Principles (“SSAP”) No. 41, Paragraph 6:

“As of the date of approval of principal repayment by the commissioner of the state of domicile, the issuer shall reclassify such approved payments from surplus to liabilities.”

It is recommended that the Company, in subsequent statutory filings, comply with SSAP No. 41 and classify all principal repayments approved by the Department, as a liability.

The examiner did not change the financial statements included in this report in reference to the issue addressed above due to the immateriality of the amount involved.

2. Schedule P Claim Count Reporting

It was noted, during the examination of the 2007 Schedule P, that the totals indicated for number of cumulative claims reported, at December 31, 2007, appeared to be overstated and inconsistent with the

supporting documentation provided by the Company. The specific sections of Schedule P, at issue, are column 10, Sections 3 or 3a of parts 5A, 5B, 5E, and 5H.

The Company agreed with the examination analysis and agreed to take corrective action. Nevertheless, it is recommended that the Company take due care when completing future Schedule P filings.

3. Quarterly Premium Reporting

The examination review of quarterly and annual statement filings revealed that the Company does not update, in its quarterly filings, the amounts being booked for “Deferred premiums, agents’ balances and installments booked but deferred and not yet due.” The Company does not properly allocate premiums receivable between uncollected premiums in course of collection and deferred premiums in its quarterly filings. However, in total the premium receivable amount is materially accurate.

As the quarterly filing instructions do not provide for estimations in reporting these figures, it is recommended that the Company properly allocate its premium receivable between uncollected premiums in course of collection and deferred premiums in all statements filed with this Department, henceforth.

### 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, 2007. This is the same as the balance sheet filed by the Company.

<u>Assets</u>	<u>Assets</u>	<u>Assets Not Admitted</u>	<u>Net Admitted Assets</u>
Bonds	\$120,896,902	\$ 0	\$120,896,902
Common stocks	12,825,880	0	12,825,880
Real estate: properties occupied by the company	256,848	0	256,848
Cash, cash equivalents and short-term investments	9,805,703	0	9,805,703
Investment income due and accrued	1,383,739	0	1,383,739
Uncollected premiums and agents' balances in the course of collection	2,857,884	79,570	2,778,314
Deferred premiums, agents' balances and installments booked but deferred and not yet due	18,915,381	0	18,915,381
Amounts recoverable from reinsurers	3,863,170	0	3,863,170
Current federal and foreign income tax recoverable and interest thereon	42,336	0	42,336
Net deferred tax asset	5,045,210	2,328,803	2,716,407
Electronic data processing equipment and software	211,158	0	211,158
Furniture and equipment, including health care delivery assets	124,032	124,032	0
Key man life insurance	406,596	0	406,596
FAIR Plan/ NAMICO assets	654,026	940	653,086
Other non-admitted assets	<u>38,873</u>	<u>38,873</u>	<u>0</u>
Total assets	<u>\$177,327,738</u>	<u>\$2,572,218</u>	<u>\$174,755,520</u>

Liabilities, surplus and other fundsLiabilities

Loss and loss adjustment expenses	\$68,762,016
Commissions payable, contingent commissions and other similar charges	2,813,819
Other expenses (excluding taxes, licenses and fees)	1,645,361
Taxes, licenses and fees (excluding federal and foreign income taxes)	477,816
Unearned premiums	31,142,355
Advance premiums	974,207
Ceded reinsurance premiums payable (net of ceding commissions)	(579,062)
Amounts withheld or retained by company for account of others	52,012
Remittances and items not allocated	20,600
Provision for reinsurance	234,600
Reserve – outstanding stale dated checks written off	396,696
Reinsurers in liquidation- amounts held	<u>620</u>
Total liabilities	\$105,941,040

Surplus and Other Funds

Required surplus	\$ 1,200,000
Surplus notes	11,000,000
Unassigned funds (surplus)	<u>56,614,480</u>
Surplus as regards policyholders	<u>68,814,480</u>
Total liabilities, surplus and other funds	<u>\$174,755,520</u>

NOTES:

1. On December 4, 2002, the Company issued a surplus note, in the amount of \$7 million to I-Preferred Term Securities I, Ltd., a company with limited liability established under the laws of the Cayman Islands. The note has a thirty-year maturity. The interest rate will be set each quarter based upon the 3-month LIBOR plus 4%; however, prior to December 4, 2007, the interest rate shall not exceed 12.50%. The terms of this surplus note were approved by the New York Insurance Department on November 27, 2002. The Company has received approval from the State of New York to pay down \$2,750,000 of principal on the 2002 Surplus Note. Payments of \$1 million each were made in March and June of 2008. As of the date of this report, one additional payment was approved on July 14, 2008 for \$750,000 to be paid September 4, 2008. At 12/31/07 the balance on this note was \$7 million with accrued interest thereon approximating \$47,939.

2. On September 15, 2005, the Company issued another surplus note in the amount of \$4 million. The note was issued to Preferred Term Securities XIX, Ltd, a company with limited liability established under the laws of the Cayman Islands. The term of the 2005 surplus note is 30 years and the Company is restricted in paying down the principal until after the 7th year. The interest rate of the note is fixed at 8.08% for the first 7 years. Subsequently it changes to a floating rate. The rate is adjusted quarterly and is based on the 3-month LIBOR plus 3.62%. The terms of this surplus note were approved by the New York Insurance Department on August 15, 2005. At 12/31/07 the balance on this note was \$4 million with accrued interest thereon approximating \$13,467.

Both surplus notes are subject to the provisions of Section 1307 of the New York Insurance Law and as such the payment of principal and interest under both these notes requires the prior approval of the Superintendent of the New York Insurance Department.

3. The Internal Revenue Service has completed its audit of the Company's Federal Income Tax return for tax year 2006. No adjustments were made subsequent to the date of examination arising from said audit. The examiner is unaware of any potential exposure of the Company to any tax assessment and no liability has been established herein relative to such contingency.



B. Underwriting and Investment Exhibit

Surplus as regards policyholders increased \$43,531,482 during the five-year examination period January 1, 2003 through December 31, 2007, detailed as follows:

Underwriting Income

Premiums earned		\$263,752,485
Deductions:		
Losses and loss adjustment expenses incurred	\$167,434,627	
Other underwriting expenses incurred	60,936,130	
Aggregate write-ins for underwriting deductions	<u>845,919</u>	
Total underwriting deductions		<u>229,216,676</u>
Net underwriting gain		\$ 34,535,809

Investment Income

Net investment income earned	\$13,716,543	
Net realized capital gain	<u>4,391,992</u>	
Net investment gain		18,108,535

Other Income

Net loss from agents' or premium balances charged off	\$(1,709,995)	
Finance and service charges not included in premiums	4,225,316	
Aggregate write-ins for miscellaneous income	<u>114,180</u>	
Total other income		<u>2,629,501</u>
Net income before federal income taxes		\$ 55,273,845
Federal and foreign income taxes incurred		<u>17,045,150</u>
Net Income		<u>\$ 38,228,695</u>

Surplus as regards policyholders per report on examination as of December 31, 2002			\$25,282,998
	<u>Gains in Surplus</u>	<u>Losses in Surplus</u>	
Net income	\$38,228,695	\$ 0	
Net unrealized capital losses	0	1,544,692	
Change in net deferred income tax	4,960,487	0	
Change in non-admitted assets	0	1,924,342	
Change in provision for reinsurance	0	234,600	
Change in surplus notes	4,000,000	0	
Aggregate write-ins for gains and losses in surplus	<u>45,934</u>	<u>0</u>	
Total gains or losses in surplus	<u>\$47,235,116</u>	<u>\$3,703,634</u>	
Net increase in surplus			<u>43,531,482</u>
Surplus as regards policyholders per report on examination as of December 31, 2007			<u>\$68,814,480</u>

#### **4. LOSSES AND LOSS ADJUSTMENT EXPENSES**

The examination liability for the captioned items of \$68,762,016 is the same as reported by the Company as of December 31, 2007. 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.

#### **5. MARKET CONDUCT ACTIVITIES**

In the course of this examination, a review was made of the manner in which the Company conducts its business and fulfills its contractual obligations to policyholders and claimants. The review was general in nature and is not to be construed to encompass the more precise scope of a market conduct investigation, which is the responsibility of the Market Conduct Unit of the Property Bureau of this Department.

The general review was directed at practices of the Company in the following areas:

- A. Sales and advertising
- B. Underwriting
- C. Treatment of Policyholders and Claimants

Department Regulation 90

The previous report on examination, as of December 31, 2002, included a recommendation that the Company comply with Department Regulation 90 Parts 218.4(a) and 218.5(b) when terminating agent's contracts. It should be noted that during the period under examination Regulation 90 was amended so that the requirements of the previous Part 218.5(b) became the requirements of Part 218.5(a).

During the current review, of agent termination notices issued by the Company, it was found that some of the agent termination notices contained unsupported general statements as the reason for termination. This is not in compliance with Part 218.4(a) of Department Regulation 90 which states:

“All notices to agents or brokers that their contract or account is to be terminated, in whole or in part, shall state the specific reason or reasons for such termination. A specific reason shall not be an unsupported general statement, such as “insufficient volume” or “poor loss ratio”.

The notice would be more specific if the Company's thresholds are identified and how the agency failed to meet that threshold is clearly stated in the termination notice.

It was also noted that in at least one instance the termination notice provided the agent did not include the red-lining notice required by Part 218.5(a) of Department Regulation 90. Furthermore the Company, when it did include the red-lining notice, failed to include the most current version.

Given the foregoing, it is recommended that the Company comply with Department Regulation 90 Parts 218.4(a) and 218.5(a) when terminating agent's contracts. It is noted that a similar recommendation was included in the prior report.

Personal lines “non-renewals”

The examination review of “non-renewed” personal lines business revealed that the Company was labeling some policy cancellations as non-renewals. The reason for this is that the examination found that the Company cancelled some personal lines policies prior to the end of the required three-year policy period specified by Section 3425(a)(7) of the New York Insurance Law. Cancellation of a personal lines policy after the first sixty days it is in effect is only allowed under certain conditions specified by Section 3425(c) of the New York Insurance Law which states in part:

“After a covered policy has been in effect for sixty days, or upon the effective date if the policy is a renewal, no notice of cancellation shall be issued to become effective unless required pursuant to

a program approved by the superintendent as necessary because a continuation of the present premium volume would be hazardous to the interests of the policyholders of the insurer, its creditors or the public, or unless it is based on one or more of the following...”

The cancelled policies, noted by the examination, did not meet the conditions allowing for cancellation specified in Section 3425(c) of the New York Insurance Law. Given this observation, it is recommended that the Company comply with Section 3425(c) of the New York Insurance Law and not issue mid-term cancellations for other than statutory reasons. It is noted that a similar recommendation was included in the prior report.

It was further noted that the company, in its correspondence with the policyholders of the cancelled policies noted by the examination, referred to the cancellations as non-renewals. A non-renewal of this nature should only occur at the end of a three-year policy period and requires at least 45 days but not more than sixty days notice to the policyholder prior to the end of the three-year policy period. It is recommended that the Company use the correct terminology in corresponding with policyholders as far as distinguishing between a cancellation and a non-renewal.

The observations noted above have been directed to the Market Conduct Unit of the Property Bureau of this Department.

## 6. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior report on examination contained 11 recommendations as follows (page numbers refer to the prior report):

<u>ITEM</u>	<u>PAGE NO.</u>
<p>A. <u>Management</u></p> <p>It was recommended that the Company take the steps necessary to ensure that it is in compliance with its charter and by-laws related to the election of directors and the number of directors. In addition, it is recommended that the Company only allow individuals that have been properly elected to function as a director.</p> <p>The Company has complied with these recommendations.</p>	5
<p>B. <u>Territory and plan of operation</u></p> <p>It was recommended that the Company complete the steps necessary to conform its licenses outside this state to its New York license.</p> <p>The Company has complied with this recommendation.</p>	7
<p>C. <u>Reinsurance</u></p> <p>It was recommended that the Company submit its currently effective reinsurance contracts to this Department, and any subsequent amendments thereto, as well as any new contracts it becomes a party to, for our review in accordance with Section 1308(e)(1)(A) of the New York Insurance Law.</p> <p>The Company has complied with this recommendation.</p>	10-11
<p>D. <u>Accounts and Records</u></p> <p>i. <u>Advance Premiums</u></p> <p>It was recommended that the Company comply with SSAP No. 53 paragraph 13 and the annual statement instructions and show premiums received prior to the effective date of the contract as a liability and not as an offset to agents' balances or uncollected premiums.</p> <p>The Company has complied with this recommendation.</p>	13

<u>ITEM</u>	<u>PAGE NO.</u>
ii. <u>Remittances and items not allocated</u>	14
<p>It was recommended that the Company comply with SSAP No. 67 paragraph 9 and the annual statement instructions and show cash receipts that cannot be identified for a specific purpose or, applied to a specific account when received under the liability caption “Remittances and items not allocated” instead of as an offset to agents’ balances or uncollected premiums.</p> <p>The Company has complied with this recommendation.</p>	
iii. <u>CPA Contracts</u>	14
<p>It was recommended that the Company ensure that its contracts with its CPA firm covering all future audit years meet the requirements of Department Regulation 118 and Section 307(b) of the New York Insurance Law.</p> <p>The Company has complied with this recommendation.</p>	
iv. <u>Allocation of Expenses</u>	15
<p>Management was directed to establish and maintain written documentation supporting the allocation of each expense category to the major expense groups as required by this Department’s Regulation No. 30.</p> <p>The Company has complied with this recommendation.</p>	
E. <u>Losses and loss adjustment expenses</u>	21
<p>It was recommended that the Company provide an adequate reserve for unpaid losses and loss adjustment expenses in all future financial statements filed with this Department in order to comply with the requirements of Section 1303 of the New York Insurance Law.</p> <p>The Company has complied with this recommendation.</p>	
F. <u>Market Conduct Activities</u>	
i.      It was recommended that the Company comply with Section 3425(c) of the New York Insurance Law and not issue mid-term cancellations for other than statutory reasons.	22
<p>The Company has not fully complied with this recommendation. A similar recommendation is made in this report.</p>	

ITEMPAGE NO.

- ii. It was recommended that the Company comply with Department Regulation 90 Parts 218.4(a) and 218.5(b) when terminating agent's contracts. 22

The Company has not complied with this recommendation. A similar recommendation is made in this report.

- iii. It was recommended that the Company comply with the provisions of the New York Standard Mortgage Clause and Department Circular Letter No. 17 (1976). 23

The Company has complied with this recommendation.

## 7. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>		<u>PAGE NO.</u>
A.	<u>Reinsurance</u>	
i.	It is recommended that the Company include an insolvency clause in future reinsurance contracts that complies with Section 1308 of the New York Insurance Law.	8
ii.	It is recommended that the Company include language consistent with Circular Letter No. 5 (1988) in all reinsurance contracts which make reference to a novation.	9
B.	<u>Account and Records</u>	
i.	It is recommended that the Company, in subsequent statutory filings, comply with SSAP No. 41 and classify all principal repayments approved by the Department, as a liability.	10
ii.	It is recommended that the Company take due care when completing future Schedule P filings.	11
iii.	It is recommended that the Company properly allocate its premium receivable between uncollected premiums in course of collection and deferred premiums in all statements filed with this Department, henceforth.	11
C.	<u>Market Conduct Activities</u>	
i.	It is recommended that the Company comply with Department Regulation 90 Parts 218.4(a) and 218.5(a) when terminating agent's contracts. It is noted that a similar recommendation was included in the prior report.	17
ii.	It is recommended that the Company comply with Section 3425(c) of the New York Insurance Law and not issue mid-term cancellations for other than statutory reasons. It is noted that a similar recommendation was included in the prior report.	18
iii.	It is recommended that the Company use the correct terminology in corresponding with policyholders as far as distinguishing between a cancellation and a non-renewal.	18





Appointment No 22731

STATE OF NEW YORK  
INSURANCE DEPARTMENT

I, ERIC DINALLO, Superintendent of Insurance of the State of New York,  
pursuant to the provisions of the Insurance Law, do hereby appoint:

*Utica First Insurance Company*

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

**Wayne Longmore**

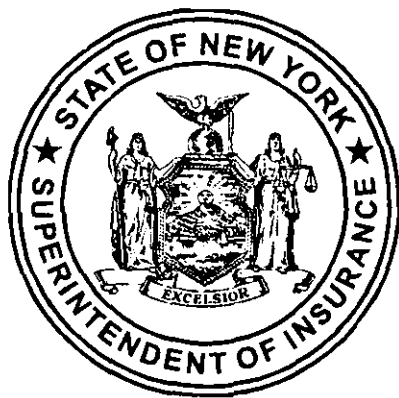
*and to make a report to me in writing of the condition of the said*

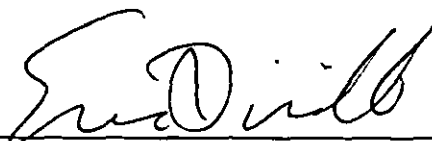
**Company**

*with such other information as he shall deem requisite.*

*In Witness Whereof, I have hereunto subscribed by the  
name and affixed the official Seal of this Department, at  
the City of New York,*

*this 14<sup>th</sup> day of January 2008*



  
ERIC DINALLO  
*Superintendent of Insurance*