

REPORT ON EXAMINATION

OF THE

GOTHAM INSURANCE COMPANY

AS OF

DECEMBER 31, 2005

DATE OF REPORT

JULY 6, 2007

EXAMINER

BERNARD LOTT

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

July 6, 2007

Honorable Eric 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 22455 dated February 22, 2006 attached hereto, I have made an examination into the condition and affairs of Gotham Insurance Company as of December 31, 2005, and submit the following report thereon.

Wherever the designations “the Company” or “Gotham” appear herein without qualification, they should be understood to indicate the Gotham 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 919 Third Avenue, New York, New York 10022.

1. SCOPE OF EXAMINATION

The previous examination was conducted as of December 31, 2000. The current examination covered the five-year period from January 1, 2001 through December 31, 2005. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

The examination comprised a verification of assets and liabilities as of December 31, 2005. The examination included a review of income, disbursements and company records deemed necessary to accomplish such analysis or verification and utilized, to the extent considered appropriate, work performed by the Company's independent certified public accountants ("CPA"). A review or audit was also made of the following items as called for in the Examiners Handbook of the National Association of Insurance Commissioners ("NAIC"):

- History of Company
- Management and control
- Corporate records
- Fidelity bond and other insurance
- Territory and plan of operation
- Growth of Company
- Business in force by states
- Loss experience
- Reinsurance
- Accounts and records
- Financial statements

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

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.

The Company was examined concurrently with its immediate parent, New York Marine and General Insurance Company ("New York Marine"). A separate report thereon has been rendered.

2. DESCRIPTION OF COMPANY

The Company was incorporated on October 17, 1986 under the laws of the State of New York and commenced operations on February 26, 1987.

On December 27, 1989, the Company's charter was amended to authorize 25,000 shares of common stock in addition to the 25,000 already issued, outstanding and owned by New York Marine and General Insurance Company ("New York Marine"). The additional shares were purchased equally by New York Marine and NYMAGIC, Inc. an insurance holding company. As a result, ownership of the capital stock is now distributed 75% with the New York Marine and 25% with NYMAGIC, Inc.

Capital paid-in of \$5,000,000 consists of 50,000 shares of common stock with a par value of \$100 per share. Gross paid-in and contributed surplus of \$17,500,000 has remained unchanged for the period covered by this examination.

A. Management

The Company and an affiliate, Mutual Marine Office, Inc. ("MMO"), are parties to a service agreement. Under this agreement MMO supplies all services and facilities necessary for the conduct of the Company's business. The agreement is more fully described in Item 2D herein, "Holding Company System".

Pursuant to the Company's charter and by-laws, management of the Company is vested in a board of directors consisting of not less than thirteen nor more than nineteen members. At December 31, 2005, the board of directors was comprised of the following fifteen members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
John R. Anderson Wyckoff, NJ	Retired
Glenn J. Angiolillo New Canaan, CT	President, GJA Management Corp.
John T. Baily Farmington, CT	Retired
George F. Berg Succasunna, NJ	Senior Vice President, Gotham Insurance Company

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Mark W. Blackman Darien, CT	President, Gotham Insurance Company
Paul J. Hart Morristown, NJ	Senior Vice President, General Counsel, Gotham Insurance Company
David Elden Hoffman Plano, TX	Retired
Thomas J. Iacopelli Irvington, NY	Senior Vice President and Chief Financial Officer, Gotham Insurance Company
Arthur G. Kallop New York, NY	Chief Executive Officer, Gotham Insurance Company
William Jeter Michaelcheck New York, NY	Chairman, Mariner Investment Group, Inc.
William Dwight Shaw, Jr. Greenwich, CT	Vice Chairman, Gotham Insurance Company
Robert George Simses Palm Beach, FL	Managing Partner, Simses & Associates, PA.
George Rea Trumbull, III West Simsbury, CT	Chairman, Gotham Insurance Company
Glenn Robert Yanoff Delray Beach, FL	President, Risk Placement Services, Inc.
David Warren Young Stonington, CT	Partner, CCP Equity Partners

The board met four times a year for each year covered by this examination. A review of the minutes for these meetings indicated that they were generally well attended and that each member had an acceptable record of attendance for all meetings for which they were eligible to attend.

As of December 31, 2005, the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
Arthur G. Kallop	Chief Executive Officer
Mark W. Blackman	President
Paul J. Hart	Senior Vice President
George F. Berg	Senior Vice President
Thomas J. Iacopelli	Chief Financial Officer

B. Territory and Plan of Operation

As of December 31, 2005, the Company was licensed to write business only in New York. It is also licensed to write Special Risk Insurance pursuant to Article 63 of the New York Law. It also operates on surplus lines in all states except New York.

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 damage
6	Water damage
7	Burglary and theft
8	Glass
9	Boiler and machinery
10	Elevator
11	Animal
12	Collision
13	Personal injury liability
14	Property damage liability
15	Workers' compensation and employers' liability
16	Fidelity and surety
17	Credit
18	Title
19	Motor vehicle and aircraft physical damage
20	Marine and inland marine
21	Marine protection and indemnity

The Company is empowered to transact such workers' compensation insurance as may be incident to coverages contemplated under paragraphs 20 and 21 of Section 1113(a) of the New York Insurance, including insurances described in the Longshoremen's and Harbor Workers' Compensation Act (Public Law No. 803, 69 Congress as amended; 33 USC Section 901 et seq. as amended).

Based on the lines of business for which the Company is licensed and the Company's current capital structure, and pursuant to the requirements of Articles 13 and 41 of the New York Insurance Law, Gotham is required to maintain a minimum surplus to policyholders in the amount of \$4,200,000. Surplus to policyholders as of December 31, 2005 was \$61,812,779.

The following schedule shows the direct premiums written by the Company both in total and in New York for the period under examination:

<u>Calendar Year</u>	<u>Direct Premiums Written ("DPW")</u>		<u>% of Total DPW in New York</u>
	<u>New York State</u>	<u>Total DPW</u>	
2001	(\$17,823)	\$6,310,201	-0.28%
2002	\$0	\$10,460,790	0.00%
2003	\$78,949	\$16,979,277	0.46%
2004	\$166,533	\$27,313,914	0.61%
2005	\$373,742	\$45,173,100	0.83%

C. Reinsurance

Inter-company Reinsurance Agreement

The Company entered into a reinsurance agreement, effective January 1, 1987, with New York Marine. Under the terms of the agreement, Gotham cedes 100% of its writings to New York Marine. Gotham then assumes 15% of New York Marine's "net pooled business" (direct business plus assumed business minus cessions to non-affiliated insurers) and related expenses except for federal and foreign income taxes and investment expenses.

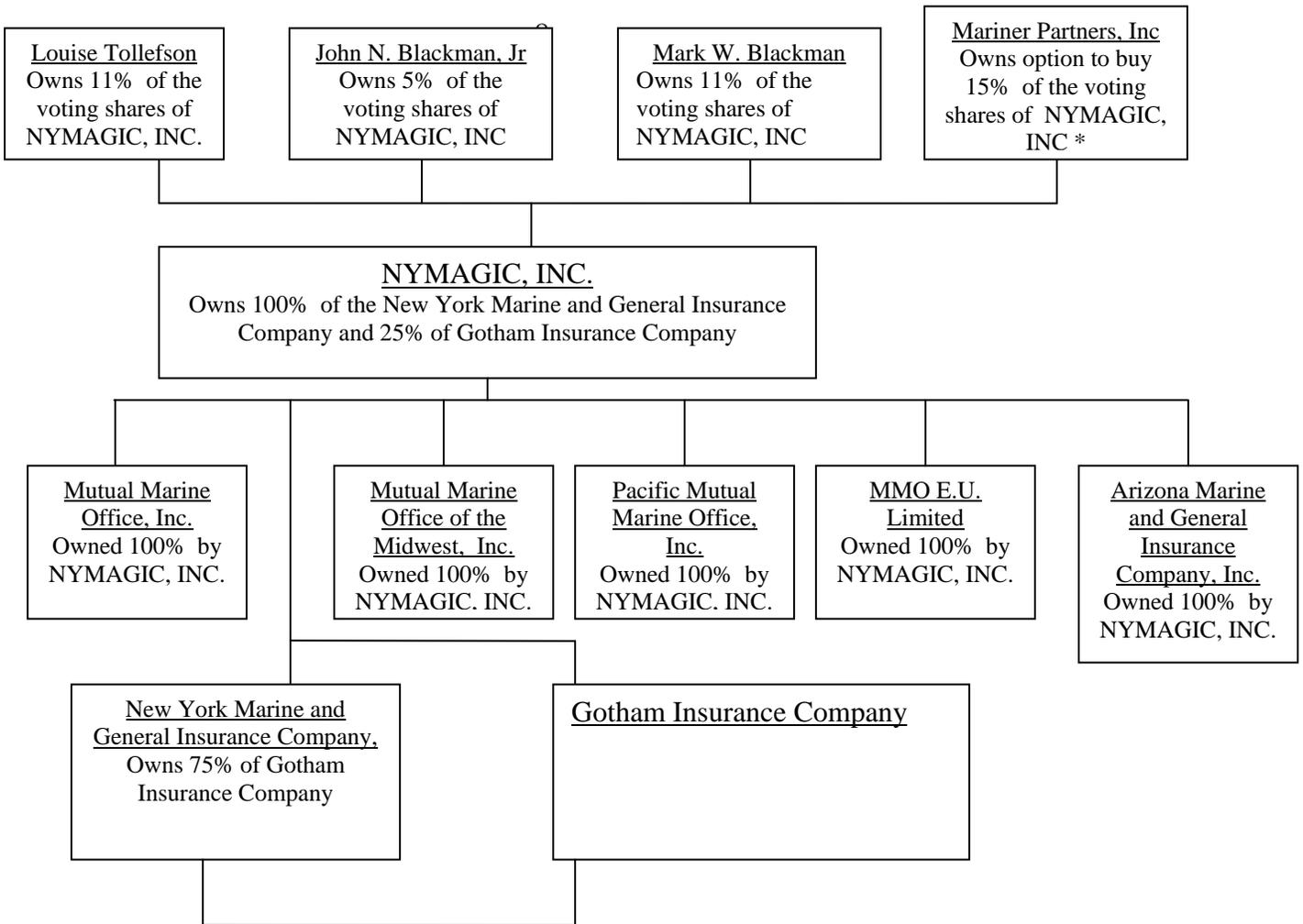
The agreement has been submitted to the Department pursuant to Section 1505(d)(3) of the New York Insurance Law and was non-disapproved. No changes were made to the agreement during the period covered by this examination. As of the examination date New York Marine ceded \$86,550,427 to reinsurers, with \$20,072,427 of that amount going to Gotham.

D. Holding Company System

The Company is controlled by NYMAGIC, Inc., a publicly traded insurance holding company, domiciled in the State of New York. John N. Blackman, Jr., Mark W. Blackman and Louise Tollefson owned 5%, 11% and 11%, respectively, of the voting shares of NYMAGIC, Inc. Mariner Partners, Inc. owned options to purchase 15% of the voting shares of NYMAGIC Inc.

NYMAGIC, Inc. and the New York Marine and General Insurance Company own 25% and 75%, respectively, of the Company. NYMAGIC, Inc. also owns 100% of Company affiliates, Mutual Marine Office, Inc., Mutual Marine Office of the Midwest, Inc. and Pacific Mutual, Inc.

The following is a chart of the holding company system at December 31, 2005:



* William J. Michaelcheck is a majority shareholder of Mariner Partners, Inc.

As a controlled insurer the Company is required to file registration statements and amendments with this Department, pursuant to Section 1504 of the Insurance Law and Department Regulation 52. Part 80-1.2 of Regulation 52 requires that the amendments be filed annually within 120 days following the end of its ultimate holding company's fiscal year (April 30). The prior examination noted that the Company failed to file amendments on a timely basis for two of the years covered. A review of the years covered by the current examination also noted that amendments were not filed on a timely basis for years 2002 and 2005.

It is recommended that the Company comply with Part 80-1.2 of Regulation 52 and file the amendments to its holding company filings by April 30 annually.

In addition to the inter-company reinsurance agreement between the Company and New York Marine noted in Item 2C herein, "Reinsurance", the Company was party to the following agreements with members of its holding company system at December 31, 2005:

1. Service Agreement

The Company entered into an amended and restated service agreement with its affiliate, Mutual Marine Office, Inc. ("MMO"), effective April 22, 2004. Under this agreement the Company appoints MMO as its attorney in fact for the transaction of the business of insurance and reinsurance for all risks written by Gotham. MMO supplies all services and facilities necessary for the conduct of the Company's business. Gotham pays MMO a service fee of one-percent of the gross premiums written on business produced or obtained through insurance pools and an additional one-percent of all direct premiums. The agreement also states that any service fee payable pursuant to the above formula shall be reduced to the extent that it is paid on the same business under MMO's management agreement with New York Marine. The agreement was submitted to and not disapproved by the Department.

MMO's compensation for its services shall not exceed the actual cost and expenses incurred by MMO in connection with fulfilling its obligations under the agreement.

2. Tax Allocation Agreement

Effective July 23, 2002 the Company filed an amended and restated tax allocation agreement with the Department pursuant to Section 1505(d)(3) of the New York Insurance Law. Under this agreement, commencing with the tax year ending December 31, 2001, the Company and its affiliates file a consolidated federal income tax return. The agreement was submitted to and not disapproved by the Department.

E. Abandoned Property Law

Section 1316 of the New York Abandoned Property Law provides that amounts payable to a resident of this state from a policy of insurance, if unclaimed for three years, shall be deemed to be abandoned property. Such abandoned property shall be reported to the comptroller on or before the first day of April each year. Such filing is required of all insurers regardless of whether or not they have any abandoned property to report.

The Company filed abandoned property reports for each year covered by this examination.

F. Significant Operating Ratios

The following ratios have been computed as of December 31, 2005, based upon the results of this examination:

Net premiums written to surplus as regards policyholders	.32 to 1
Liabilities to liquid assets (cash and invested assets less investments in affiliates)	60%
Premiums in course of collection to surplus as regards policyholders	3%

All of the above ratios fall within the benchmark ranges set forth in the Insurance Regulatory Information System of the National Association of Insurance Commissioners.

The underwriting ratios presented below are on an earned/incurred basis and encompass the five-year period covered by this examination:

	<u>Amounts</u>	<u>Ratios</u>
Losses and loss adjustment expenses incurred	\$50,567,922	64.04%
Other underwriting expenses incurred	25,898,583	32.80
Net underwriting gain	<u>2,494,312</u>	<u>3.16</u>
Premiums earned	<u>\$78,960,817</u>	<u>100.00%</u>

G. Accounts and records

Custodian Agreement

The Company answered affirmatively to the following General Interrogatory in its filed Annual Statement as of December 31, 2005:

“Excluding items in Schedule E, real estate, mortgage loans and investments held physically in the reporting entity’s offices, vaults or safety deposit boxes, were all stocks, bonds and other securities, owned throughout the current year held pursuant to a custodial agreement with a qualified bank or trust company in accordance with Part1-General, Section IV.H-Custodial or Safekeeping Agreement of the NAIC Financial Condition Examiners Handbook?”

A review of the Company’s custodial agreement, however, found that it lacked a number of the protective covenants set forth in the guidelines from the NAIC’s Examiners Handbook.

It is recommended that the Company amend its custodial agreements to include the missing safeguards.

It is also recommended that the Company take due care to correctly complete the General Interrogatories of its filed annual statement.

3. FINANCIAL STATEMENTS

A Balance Sheet

The following shows the assets, liabilities and surplus as regards policyholders as of December 31, 2005 as determined by this examination and as reported by the Company:

<u>Assets</u>	<u>Assets</u>	Assets Not <u>Admitted</u>	Net Admitted <u>Assets</u>
Bonds	\$ 74,766,566	\$ 0	\$ 74,766,566
Cash, cash equivalents and short-term investments	6,011,646	0	6,011,646
Other invested assets	26,439,913	0	26,439,913
Receivable for securities	1,348,376	0	1,348,376
Investment income due and accrued	476,471	0	476,471
Uncollected premiums and agents' balances in the course of collection	1,961,025	135,450	1,825,575
Net deferred tax asset	1,508,011	1,280,019	227,992
Prepaid expenses	<u>3,612</u>	<u>3,612</u>	<u>0</u>
Total assets	<u>\$112,515,620</u>	<u>\$1,419,081</u>	<u>\$111,096,539</u>

Liabilities, Surplus and Other FundsLiabilities

Losses		\$ 28,532,223
Loss adjustment expenses		5,592,657
Commissions payable, contingent commissions and other similar charges		579,743
Other expenses (excluding taxes, licenses and fees)		300,261
Taxes, licenses and fees (excluding federal and foreign income taxes)		68,352
Current federal and foreign income taxes		4,053,839
Unearned premiums		9,156,685
Stockholders (dividends declared and unpaid)		<u>1,000,000</u>
Total liabilities		\$ 49,283,760

Surplus and Other Funds

Common capital stock	\$ 5,000,000	
Gross paid in and contributed surplus	17,500,000	
Unassigned funds (surplus)	<u>39,312,779</u>	
Surplus as regards policyholders		\$ <u>61,812,779</u>
Total liabilities, surplus and other funds		\$ <u>111,096,539</u>

NOTE: The Internal Revenue Service has not performed any audits of the consolidated federal income tax returns filed on behalf of the Company, for the years covered by this examination. The examiner is unaware of any potential exposure of the Company to any further tax assessment and no liability has been established herein relative to such contingency.

B. Underwriting and Investment Exhibit

Surplus as regards policyholders increased \$438,616 during the five-year examination period January 1, 2001 through December 31, 2005, detailed as follows:

Statement of IncomeUnderwriting Income

Premiums earned		\$78,960,817
Deductions:		
Losses incurred	\$43,630,183	
Loss adjustment expenses incurred	6,937,739	
Other underwriting expenses incurred	<u>25,898,583</u>	
Total underwriting deductions		<u>76,466,505</u>
Net underwriting gain or (loss)		\$ 2,494,312

Investment Income

Net investment income earned	\$13,507,380	
Net realized capital gain	<u>7,970,571</u>	
Net investment gain or (loss)		21,477,951

Other Income

Net gain or (loss) from agents' or premium balances charged off	\$ (169,237)	
Bad debt write-off	<u>(1,149,062)</u>	
Total other income		<u>(1,318,299)</u>
Net income before federal and foreign income taxes		\$22,653,964
Federal and foreign income taxes incurred		<u>7,941,712</u>
Net Income		<u>\$14,712,252</u>

Capital and Surplus Account

Surplus as regards policyholders per report on examination as of December 31, 2000			\$61,374,163
	Gains in <u>Surplus</u>	Losses in <u>Surplus</u>	
Net income	\$14,712,252		
Net unrealized capital gains or (losses)		\$ 3,014,967	
Change in net deferred income tax		126,339	
Change in nonadmitted assets		253,382	
Cumulative effect of changes in accounting principles	1,421,052		
Dividends to stockholders	<u> </u>	<u>12,300,000</u>	
Total gains and losses	<u>\$16,133,304</u>	<u>\$15,694,688</u>	
Net increase (decrease) in surplus			<u>438,616</u>
Surplus as regards policyholders per report on examination as of December 31, 2005			<u>\$61,812,779</u>

4. LOSSES AND LOSS ADJUSTMENT EXPENSES

The examination liability for the captioned items of \$34,124,880 is the same as reported by the Company as of December 31, 2005. The examination analysis was conducted in accordance with generally accepted actuarial principles and practices and was based on statistical information contained in the Companies 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. Underwriting
- B. Claims

No problem areas were encountered.

6. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

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

<u>ITEM</u>	<u>PAGE NO.</u>
<p>A. It was recommended that the Company ensure that all directors and officers complete conflict of interest statements yearly.</p> <p>The Company has complied with this recommendation.</p>	5
<p>B. It was recommended that the Company comply with the NAIC instructions to the annual statements and list in Schedule T each alien jurisdiction where business is written and located.</p> <p>The Company has complied with this recommendation.</p>	7
<p>C. It is recommended that in the future, the Company comply with Part 80-1.2 of Department Regulation 52 and file the amendments to form HC-1 annually by April 30.</p> <p>The Company has not complied with this recommendation. A similar comment is made in this report.</p>	10
<p>D. It is recommended that the Company comply with Section 1505(d)(3) of the New York Insurance Law and submit to the Department the service agreement entered into with its affiliate.</p> <p>The Company has complied with this recommendation.</p>	11
<p>E. It was recommended that the Company amend its custodial agreements with Bankers Trust Company and Northern Trust Company to include, at the minimum, the provisions recommended.</p> <p>During the period covered by this examination, the Company changed custodians and obtained a new agreement. In addition, subsequent to the prior examination date, the Department has changed the guidance it uses to determine the minimum provisions that represent good business practices. The new agreement, however, was found not to contain the required provisions of the new guidance. A similar recommendation will be made in this report.</p>	13

7. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>		<u>PAGE NO.</u>
A.	<u>Holding Company System</u>	
	It is recommended that the Company comply with Part 80-1.2 of Department Regulation 52 and file the amendments to its holding company filings by April 30 annually.	9
B.	<u>Accounts and Records</u>	
i.	It is recommended that the Company amend its custodial agreements to include the missing safeguards.	11
ii.	It is also recommended that the Company take due care to correctly complete the General Interrogatories of its filed annual statement.	11

Appointment No 22455

**STATE OF NEW YORK
INSURANCE DEPARTMENT**

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

Bernard Lott

as proper person to examine into the affairs of the

GOTHAM INSURANCE COMPANY

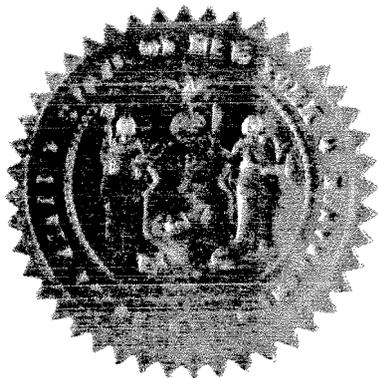
and to make a report to me in writing of the condition of the said

Company

with such other information as he shall deem requisite.

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

this 22nd day of February, 2006



A handwritten signature in cursive script, appearing to read "Howard Mills".

HOWARD MILLS
Superintendent of Insurance