



**REPORT ON EXAMINATION  
OF  
CONSTITUTION INSURANCE COMPANY**

**AS OF DECEMBER 31, 2021**

**EXAMINER:  
DATE OF REPORT:**

**JUSTIN MATHEW  
AUGUST 31, 2023**

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KATHY HOCHUL  
Governor



ADRIENNE A. HARRIS  
Superintendent

August 31, 2023

Honorable Adrienne Harris  
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 32331 dated January 10, 2022, attached hereto, I have made an examination into the condition and affairs of Constitution Insurance Company as of December 31, 2021, and submit the following report thereon.

Wherever the designation “the Company” appears herein without qualification, it should be understood to indicate Constitution Insurance Company.

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

## 1. SCOPE OF EXAMINATION

The Department has performed an examination of Constitution Insurance Company, a multi-state insurer. The previous examination was conducted as of December 31, 2016. This examination covered the five-year period from January 1, 2017 through December 31, 2021. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

The examination was conducted in conjunction with the state of California, which was the lead state of the AU Holding Company Group (the “Group”). The examination was performed concurrently with the examinations of the following insurers:

<u>Company</u>	<u>Domicile</u>
Applied Underwriters Captive Risk Assurance Company, Inc.	NM
California Insurance Company	CA
Centauri National Insurance Company	LA
Centauri Specialty Insurance Company, Inc.	FL
Continental Indemnity Company	NM
Florida Casualty Insurance Company	FL
Illinois Insurance Company	NM
Oklahoma Property and Casualty Insurance Company	OK
Pennsylvania Insurance Company	NM
Texas Insurance Company	TX

Other states participating in this examination were Florida, Louisiana, New Mexico, Oklahoma, and Texas.

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.

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

- Company history
- Management and control
- Territory and plan of operation
- Reinsurance
- Holding company description
- Financial statement presentation
- Loss review and analysis
- Significant subsequent events
- Summary of recommendations

A review was also made to ascertain what actions were taken by the Company with regard to the 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 COMPANY**

The Company was incorporated under the laws of the State of New York on February 10, 1992, as the Folksamerica National Reinsurance Company (“FNRC”). It became licensed on March 31, 1992 and commenced business on September 1, 1992. On December 31, 1992, substantially all of the assets and liabilities of FNRC and its underwriting and investment activities were transferred to Folksamerica Reinsurance Company. In December 1996, the Company’s name was changed to Gerling Global Reinsurance Corporation of America (“GGRCA”).

In August 2002, the Company voluntarily ceased writing new business. In 2007, management decided to pursue the sale of the Company. Effective January 1, 2008, the Company commuted a 3% assumed quota share agreement with Global Reinsurance Company of America (“GRCA”), and at the same time, increased a 97% ceded quota share agreement with GRCA to 100%. The Company also transferred all of its direct policy obligations to GRCA pursuant to an assumption agreement, which was approved by the Department. As a result of these transactions, the Company became a clean shell with no remaining underwriting liabilities.

On July 24, 2008, Constitution Group, LLC (“Constitution Group”) and Mr. Steven M. Menzies filed an application with the Department to acquire control of the Company from GRCA. Constitution

Group, a New York limited liability company, is 100% owned by Mr. Menzies. The acquisition was completed on May 6, 2009.

Effective July 2, 2009, the Department approved a Plan of Quasi-Reorganization whereby the Company reset its unassigned funds to \$0 through a transfer from gross paid in and contributed surplus.

A. Corporate Governance

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 seven nor more than 13 members. At December 31, 2021, the board of directors was comprised of the following eight members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Eric L. Butler San Francisco, California	Senior Vice President, Applied Underwriters, Inc.
Linda S. Davis LaVista, Nebraska	Administrator, Applied Underwriters, Inc.
Carl J. DeBarbrie Ocean City, New Jersey	Executive Vice President, Remco Insurance Agency
Steven M. Menzies Omaha, Nebraska	President and Chief Executive Officer, AU Holding Company, Inc.
David S. Percey Cambridge, New York	Director of Data Warehouse, Constitution Group LLC
Jeffrey A. Silver Omaha, Nebraska	Secretary and General Counsel, AU Holding Company, Inc.
Robert L. Stafford Omaha, Nebraska	Senior Vice President, AU Holding Company, Inc.
Marc M. Tract Brookville, New York	Attorney, Katten Muchin Rosenman LLP

Since the acquisition of the Company, all actions of the Board of Directors have been by unanimous written consent in lieu of a meeting. The use of unanimous written consent on a universal basis does not allow for robust discussion and adequate governance.

It is recommended that the Board of Directors hold meetings either in-person or virtually to promote active oversight.

As of December 31, 2021, the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
Steven M. Menzies	President and Treasurer
Jeffrey A. Silver	Secretary

B. Territory and Plan of Operation

As of December 31, 2021, the Company was licensed to write business in 44 states and the District of Columbia. The Company was also qualified and/or accredited to conduct reinsurance business in five states, namely, Connecticut, Maine, Massachusetts, Minnesota and Wyoming.

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>
3	Accident & health
4	Fire
5	Miscellaneous property
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
19	Motor vehicle and aircraft physical damage
20	Marine and inland marine

<u>Paragraph</u>	<u>Line of Business</u>
3	Accident & health
21	Marine protection and indemnity

The Company is also empowered to transact such workers' compensation insurance as may be incidental to coverage contemplated under paragraphs 20 and 21 of Section 1113(a) of the New York Insurance Law, including insurances described in the Longshoremen's and Harbor Workers' Compensation Act (Public Law No. 803, 69<sup>th</sup> Congress as amended; 33 USC Section 901 et. seq. as amended). The Company is also licensed to conduct business of special risk insurance pursuant to Article 63 of the New York Insurance Law.

Based upon 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, 41, and 63 of the New York Insurance Law, the Company is required to maintain a minimum surplus to policyholders in the amount of \$4,400,000. However, pursuant to Section 6302(c)(1) of the New York Insurance Law, in order to be licensed to write special risks, the Company is required to maintain a surplus as regards policyholders of at least 250% of its authorized control level risk-based capital; therefore, the Company was required to maintain a minimum surplus to policyholders in the amount of \$7,410,883 as of December 31, 2021.

The following schedule shows the direct written premiums and premiums assumed by the Company for the period under examination:

<u>Calendar Year</u>	<u>Direct Premiums</u>	<u>Assumed Premiums</u>	<u>Total Gross Premiums</u>
2017	\$ 887,206	\$ 0	\$ 887,206
2018	\$1,338,579	\$ 0	\$ 1,338,579
2019	\$3,412,405	\$ 0	\$ 3,412,405
2020	\$3,122,234	\$27,588,657	\$30,710,891
2021	\$2,185,821	\$11,167,500	\$13,353,321

During the examination period, the Company wrote business in two states: New York and California. The Company mainly wrote personal property insurance. As of December 31, 2021, the Company's largest lines of business based on direct premiums written were fire (48.3%), and homeowners multi-peril (36.9%). The Company reported a small amount of direct business workers' compensation premiums in its 2021 Annual Statement. This is due to coverage for domestic workers covered under homeowners policies in California. This coverage is mandatory in California. Starting in 2020, the



Company discontinued writing personal property business in California and in October 2021, stopped renewing this California business. The Company's business is written through managing general agents.

As of December 31, 2021, assumed premiums are wholly attributable to workers' compensation business assumed from affiliate Continental Indemnity Company pursuant to a Quota Share Reinsurance Treaty with North American Casualty Co. and subsidiary companies, effective January 1, 2021. Upon examination, this agreement was filed with the Department (refer to section 2C for further detail).

Effective December 31, 2020, the Company, as a subscribing reinsurer, entered into a non-catastrophe net quota share reinsurance contract ("Gulfstream QS") with Gulfstream Property and Casualty Insurance Company ("Gulfstream"), an unaffiliated insurer, whereby Gulfstream cedes 100% of all business classified as property or casualty business. The Company agreed to assume a 20% share in the interest and liabilities. Pursuant to the terms of the quota share contract, the contract shall take effect at 11:59 p.m. on December 31, 2020, and shall remain in effect until 11:59 p.m. on May 31, 2021, on losses occurring.

#### C. Reinsurance Ceded

The Company entered into a retrocession agreement with Commercial General Indemnity Company, Inc. ("CGIC"), an affiliated captive insurance company, whereby the Company reinsured any and all liabilities under the aforementioned Gulfstream QS to CGIC. This retrocession agreement was effective 11:59 p.m. on December 31, 2020 and continued in force until the expiration or termination of the Gulfstream QS.

Effective January 1, 2021, the Company had in place a quota share reinsurance treaty with California Insurance Company ("CIC"), an authorized affiliate. The business covered under this treaty is the California Homeowners and Dwelling Property Policies underwritten by the Company. Pursuant to the terms of the reinsurance treaty, the Company shall cede and CIC shall accept a quota share participation of 75% of the ultimate net loss, each loss occurrence. The Company shall cede to CIC its proportionate share of written premium, not to exceed \$400,000 during the reinsurance period. This treaty had a reinsurance period covering January 1, 2021, to December 31, 2021.

At December 31, 2021, the Company had taken a statutory reinsurance reserve credit of approximately \$1,967,000, attributable to CIC, and approximately \$1,376,000, attributable to CGIC. As

previously stated, CIC was examined concurrently with the Company. As a result of the examination, financial adjustments were made to CIC's balance sheet and income statement. For further details, refer to the "Report on Examination of California Insurance Company as of December 31, 2021" which was issued by the California Department of Insurance. CGIC was not examined as part of the Group. However, the Company reported approximately \$2.3 million in funds held from reinsurance treaties with CGIC in Schedule F Part 3 of its 2021 filed Annual Statement.

Section 1505(d)(2) of the New York Insurance Law states, in part:

“. . . Transactions between a domestic controlled insurer and any person in its holding company system may not be entered into unless the insurer has notified the superintendent in writing of its intention to enter into any such transaction at least thirty days prior thereto, or with regard to reinsurance treaties or agreements at least forty-five days prior thereto, or such shorter period as the superintendent may permit, and the superintendent has not disapproved it within such period: . . . reinsurance treaties or agreements. . . .”

The Company did not file its affiliated reinsurance agreements (including the quota share reinsurance treaty described above in section 2B) with the Department during the examination period.

It is recommended that the Company institute controls to ensure compliance with Section 1505(d)(2) of the New York Insurance Law regarding the timely filing of reinsurance agreements.

Management has represented that the ceded reinsurance agreements transfer both underwriting and timing risk as set forth in the NAIC Accounting Practices and Procedures Manual, Statement of Statutory Accounting Principles ("SSAP") No. 62R. 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 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 SSAP No. 62R.

#### D. Holding Company System

The Company is a member of the AU Holding Company Group. The Company is wholly-owned by Constitution Group, LLC, a New York limited liability company, which is ultimately controlled by Mr. Steven M. Menzies.

A review of the holding company registration statements filed with this Department indicated that such filings were complete and were filed in a timely manner pursuant to Article 15 of the New York Insurance Law and Department Regulation 52.

The following is an abridged chart of the holding company system at December 31, 2021:

Steven M. Menzies

Constitution Group, LLC (New York)  
**Constitution Insurance Company** (New York)  
 Simon New York Inc. (New York) (50.0%)  
 AU Holding Company, Inc. (Delaware)  
 North American Casualty Co. (Nebraska)  
 California Insurance Company (California)  
 Continental Indemnity Company (New Mexico)  
 Applied Underwriters Captive Risk Assurance Company, Inc. (New Mexico)  
 Illinois Insurance Company (New Mexico)  
 Florida Casualty Insurance Company (Florida)  
 Pennsylvania Insurance Company (New Mexico)  
 Oklahoma Property and Casualty Insurance Company (Oklahoma)  
 Texas Insurance Company (Texas)  
 Commercial General Indemnity, Inc. (Hawaii)  
 California Insurance Company (New Mexico)  
 Applied Warranty and Insurance Services, LLC (Delaware)  
 Applied Group Insurance Holdings, Inc. (Hawaii)  
 Centauri Acquisition Corporation, LLC (Delaware)  
 Centauri Specialty Managers, Inc. (Florida)  
 Centauri Specialty Insurance Holdings, Inc. (Delaware)  
 Centauri Specialty Insurance Company, Inc. (Florida)  
 Centauri National Insurance Company (Louisiana)

### Holding Company Agreements

As of December 31, 2021, the Company was party to the following agreements with other members of its holding company system:

#### Service Agreement

Effective March 1, 2019, the Company entered into a management services agreement with Applied Underwriters, Inc. (“AUI”). AUI is an indirect subsidiary of Berkshire Hathaway Inc. and writes workers

compensation premiums through California Insurance Company and Continental Indemnity Company. The lead state, California, has determined that AUI is affiliated with the Group.

Pursuant to the terms of the agreement, AUI provides claims services, reinsurance, accounts receivable, deposits of monies received, accounts payable, computer equipment, computer systems and software, purchasing and mail services, personnel and administrative services, and loss prevention services to the Company.

Section 1505(d)(3) of the New York Insurance Law states, in part:

“ . . . Transactions between a domestic controlled insurer and any person in its holding company system may not be entered into unless the insurer has notified the superintendent in writing of its intention to enter into any such transaction at least thirty days prior thereto . . . and the superintendent has not disapproved it within such period: . . . rendering of services on a regular or systematic basis . . . ”

During the examination period, the Company did not file with the Department its management services agreement with Applied Underwriters, Inc. Subsequent to the examination date, on September 6, 2022, the Company submitted the management services agreement to the Department. On October 28, 2022, the Department non-disapproved the agreement.

It is recommended that the Company institute controls to ensure compliance with Section 1505(d)(3) of the New York Insurance Law regarding the timely filing of agreements with affiliates.

#### Tax Allocation Agreement

Effective May 6, 2009, and subsequently amended, the Company is a party to a tax allocation agreement with Constitution Group, LLC. The agreement stipulates that the Company's tax liability on a consolidated basis would not exceed the liability had the Company filed its tax return on a stand-alone basis. Upon examination, this agreement was submitted to the Department pursuant to Circular Letter 33 (1979).

#### E. Significant Ratios

The Company's operating ratios, computed as of December 31, 2021, fall within the benchmark ranges set forth in the Insurance Regulatory Information System of the NAIC.

<u>Operating Ratios</u>	<u>Result</u>
Net premiums written to policyholders' surplus	68%
Adjusted liabilities to liquid assets	79%
Two-year overall operating	97%

### Underwriting Ratios

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

	<u>Amount</u>	<u>Ratio</u>
Losses and loss adjustment expenses incurred	\$18,511,807	50.37%
Other underwriting expenses incurred	16,774,338	45.64
Net underwriting gain	<u>1,467,623</u>	<u>3.99</u>
Premiums earned	<u>\$36,753,768</u>	<u>100.00%</u>

The Company's reported risk-based capital ("RBC") score was 927% at December 31, 2021. The RBC score is a measure of the minimum amount of capital appropriate for a reporting entity to support its overall business operations in consideration of its size and risk profile. An RBC score of 200% or below can result in regulatory action.

There was a financial adjustment, as described herein under sections 3(d) and 5 of this report, that slightly impacted the Company's RBC score.

### F. Accounts and Records

- i. Section 310(a)(2) of the New York Insurance Law states, in part:

"Any examiner authorized by the Superintendent shall be given convenient access at all reasonable hours to the books, records, files, securities and other documents of such insurer or other person, including those of any affiliated or subsidiary companies thereof..."

Throughout the course of the examination, the Company failed to provide timely and convenient access, which led to a significant delay in the examination process.

To facilitate the process with future examinations, it is recommended that the Company institute procedures to ensure compliance with Section 310(a)(2) of the New York Insurance Law.

ii. Section 89.5(h) of Department Regulation 118 states, in part:

“The company’s audit committee shall pre-approve all auditing services and non-audit services provided to the company by a CPA of the company. . .”

Section 89.12(a)(1) of Department Regulation 118 states:

“The audit committee shall be directly responsible for the appointment, compensation and oversight of the work of any CPA (including resolution of disagreements between management and the CPA regarding financial reporting) for the purpose of preparing or issuing the audited financial report or related work pursuant to this Part. The CPA shall report directly to the audit committee.”

The Company failed to provide the audit committee minutes for the period under examination (2017-2021) so that the examiner could verify that the audit committee fulfilled its responsibilities.

It is recommended that the Company minute the meetings of the audit committee and have them readily available for the examiner’s review to ensure compliance with Department Regulation 118.

iii. Section 1411(a) of the New York Insurance Law states, in part:

“No domestic insurer shall make any loan or investment . . . unless authorized or approved by its board of directors or a committee thereof responsible for supervising or making such investment or loan. The committee’s minutes shall be recorded and a report submitted to the board of directors at its next meeting.”

A review of the minutes of the board of directors’ meetings revealed that acquisitions and disposals for the last quarter of each year under examination were not reflected in the investment committee reports and were not approved.

It is recommended that the Company approve all acquisitions of investments in accordance with Section 1411(a) of the New York Insurance Law.

### 3. FINANCIAL STATEMENTS

#### A. Balance Sheet

The following shows the assets, liabilities and surplus as regards policyholders as of December 31, 2021, as reported by the Company:

<u>Assets</u>	<u>Assets</u>	<u>Assets Not Admitted</u>	<u>Net Admitted Assets</u>
Bonds	\$ 7,575,155	\$ 0	\$ 7,575,155
Real estate: Properties held for the production of income	2,367,583	340,351	2,027,232
Cash, cash equivalents and short-term investments	13,757,372	0	13,757,372
Other invested assets	365,658	0	365,658
Investment income due and accrued	49,397	0	49,397
Uncollected premiums and agents' balances in the course of collection	358,345	0	358,345
Amounts recoverable from reinsurers	1,968,491	0	1,968,491
Funds held by or deposited with reinsured companies	13,153,165	0	13,153,165
Current federal and foreign income tax recoverable and interest thereon	200,000	0	200,000
Net deferred tax asset	1,309,562	643,319	666,243
Furniture and equipment, including health care delivery assets	6,152	6,152	0
Receivables from parent, subsidiaries and affiliates	1,818,906	1,818,906	0
Other assets	192,955	192,955	0
Prepaid expenses	<u>30,861</u>	<u>30,861</u>	<u>0</u>
Total assets	<u>\$43,153,602</u>	<u>\$3,032,544</u>	<u>\$40,121,058</u>

Liabilities, Surplus and Other FundsLiabilities

Losses and loss adjustment expenses	\$11,520,861
Reinsurance payable on paid losses and loss adjustment expenses	968,440
Commissions payable, contingent commissions and other similar charges	45,920
Other expenses (excluding taxes, licenses and fees)	224,273
Taxes, licenses and fees (excluding federal and foreign income taxes)	29,184
Unearned premiums	985,263
Ceded reinsurance premiums payable (net of ceding commissions)	385,502
Funds held by company under reinsurance treaties	2,328,869
Escheat payable	12,621
Other liability – related party	<u>450,000</u>
 Total liabilities	 \$16,950,933

Surplus and Other Funds

Common capital stock	\$4,200,002
Gross paid in and contributed surplus	9,059,495
Unassigned funds (surplus)	<u>9,910,628</u>
 Surplus as regards policyholders	 <u>23,170,125</u>
 Total liabilities, surplus and other funds	 <u>\$40,121,058</u>

Note: During the examination period, the Company was not subject to audit by the Internal Revenue Service. 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. Statement of Income

The net income for the examination period as reported by the Company was \$3,214,206, as detailed below:

Underwriting Income

Premiums earned		\$36,753,768
Deductions:		
Losses and loss adjustment expenses incurred	\$18,511,807	
Other underwriting expenses incurred	<u>16,774,338</u>	
Total underwriting deductions		<u>35,286,145</u>
Net underwriting gain or (loss)		\$ 1,467,623

Investment Income

Net investment income earned	\$ 1,145,074	
Net realized capital loss	<u>(275,059)</u>	
Net investment gain or (loss)		870,015

Other Income

Finance and service charges not included in premiums	\$ 678,506	
Waiver of management fee	296,191	
Miscellaneous income	<u>113</u>	
Total other income or (loss)		<u>974,810</u>
Net income before dividends to policyholders and before federal and foreign income taxes		\$ 3,312,448
Dividends to policyholders		<u>0</u>
Net income after dividends to policyholders but before federal and foreign income taxes		\$ 3,312,448
Federal and foreign income taxes incurred		<u>98,242</u>
Net income		<u>\$ 3,214,206</u>

C. Capital and Surplus

Surplus as regards policyholders increased \$1,515,895 during the five-year examination period January 1, 2017 through December 31, 2021, as reported by the Company, detailed as follows:

Surplus as regards policyholders, as reported by the Company as of December 31, 2016			\$21,654,230
	<u>Gains in Surplus</u>	<u>Losses in Surplus</u>	
Net income	\$3,214,206		
Net unrealized capital gains or (losses)	1		
Change in net deferred income tax		\$2,318,726	
Change in nonadmitted assets		478,136	
Surplus adjustments paid in	<u>1,098,550</u>	<u>0</u>	
Total gains and losses	\$4,312,757	\$2,796,862	
Net increase in surplus			<u>1,515,895</u>
Surplus as regards policyholders, as reported by the Company as of December 31, 2021			<u>\$23,170,125</u>

Capital paid in is \$4,200,002 consisting of 509,709 shares of \$8.24 par value per share common stock. Gross paid in and contributed surplus is \$9,059,495. Gross paid in and contributed surplus increased by \$1,098,550 during the examination period, as follows:

<u>Year</u>	<u>Description</u>	<u>Amount</u>
2017	Beginning gross paid in and contributed surplus	\$7,960,945
2018	Increase in paid-in capital	<u>1,098,550</u>
2021	Ending gross paid in and contributed surplus	<u>\$9,059,495</u>

In 2018, specific real estate was purchased by an unrelated party for \$1,690,616 and sold to the Company for \$592,066. The difference of \$1,098,550 was deemed to be paid-in capital by the Company's external auditor.

D. Analysis of Changes to Surplus

Surplus as regards policyholders as of December 31, 2021, as reported by the Company	\$23,170,125
Decrease in surplus due to non-admittance of other invested assets – collateral loans	<u>(365,658)</u>
Surplus as regards policyholders as of December 31, 2021, per report on examination	<u>\$22,804,467</u>

4. LOSSES AND LOSS ADJUSTMENT EXPENSES

The examination liability for the captioned items of \$11,520,861 is the same as reported by the Company as of December 31, 2021. The examination analysis of the loss and loss adjustment expense reserves was conducted in accordance with actuarial standards of practice and statutory accounting principles, including SSAP No. 55.

As of December 31, 2021, the Company's loss and loss adjustment expense reserves are concentrated in the workers' compensation line of business, which accounted for 89.8% of the total reserves.

5. OTHER INVESTED ASSETS

In its 2021 Annual Statement, the Company reported \$365,658 of "Other invested assets". This asset represents two collateral loans issued by the Company. Pursuant to SSAP No. 21, paragraph 4.b, collateral loans secured by assets that do not qualify as investments shall be non-admitted. The Company was unable to provide evidence of the collateral backing the underlying loans. Therefore, an examination adjustment of \$365,658 was made to non-admit this asset.

It is recommended that the Company institute procedures to ensure its reporting of assets complies with statutory accounting principles.

## 6. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior report on examination contained five recommendations as follows (page number refers to the prior report):

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Corporate Governance</u>	
It was recommended that the Company comply with its by-laws and hold regular board meetings and not substitute these for meetings held by written consent.	5
The Company has not complied with this recommendation. A similar recommendation is made in this report.	
B. <u>Holding Company System</u>	
i. It was recommended that the Company follow the agreed upon terms contained within the Management Services Agreement. A similar comment was included in the prior report on examination.	9
The Company has complied with this recommendation	
ii. It was recommended that the Company comply with Section 1217 of the New York Insurance Law.	10
The Company has complied with this recommendation	
iii. It was recommended that the Company strengthens its internal controls over expenses by requiring all expenditures be adequately supported by vouchers that sufficiently identify the services rendered, the nature of the disbursement and the business purpose as it relates to the insurer.	10
The Company has complied with this recommendation.	
iv. It was recommended that all approvals to disburse funds from the insurer be appropriately documented, in writing, by an officer or responsible employee of the insurer.	10
The Company has complied with this recommendation.	

## 7. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Corporate Governance</u>	
It is recommended that the Board of Directors hold meetings either in-person or virtual to promote active oversight.	5
B. <u>Reinsurance</u>	
It is recommended that the Company institute controls to ensure compliance with Section 1505(d)(2) of the New York Insurance Law.	8
C. <u>Holding Company System</u>	
It is recommended that the Company institute controls to ensure compliance with Section 1505(d)(3) of the New York Insurance Law.	10
Subsequent to the examination period, on September 6, 2022, the Company submitted the management services agreement to the Department. On October 28, 2022, the Department non-disapproved the agreement.	
D. <u>Accounts and Records</u>	
i. It is recommended that the Company institute procedures to ensure compliance with Section 310(a)(2) of the New York Insurance Law.	12
ii. It is recommended that the Company minute the meetings of the audit committee and have them readily available for the examiner's review to ensure compliance with Department Regulation 118.	12
iii. It is recommended that the Company approve all acquisitions of investments in accordance with Section 1411(a) of the New York Insurance Law.	12
E. <u>Other Invested Assets</u>	
It is recommended that the Company institute procedures to ensure its reporting of assets comply with statutory accounting principles.	17

Respectfully submitted,

\_\_\_\_\_/S/\_\_\_\_\_  
Justin Mathew  
Senior Insurance Examiner

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

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

\_\_\_\_\_/S/\_\_\_\_\_  
Justin Mathew

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 2023

*APPOINTMENT NO. 32331*

*NEW YORK STATE*

***DEPARTMENT OF FINANCIAL SERVICES***

*I, Adrienne A. Harris, Acting 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:*

***Justin Mathew***

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

***Constitution Insurance Company***

*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 10th day of January, 2022*

*ADRIENNE A. HARRIS  
Acting Superintendent of Financial Services*

*By:*

*Joan Riddell*

*Joan Riddell  
Deputy Bureau Chief*

