



**REPORT ON EXAMINATION
OF
AGGREGATE TRUST FUND**

AS OF DECEMBER 31, 2019

**EXAMINER:
DATE OF REPORT:**

**KEVIN MCNAMEE
MAY 27, 2022**

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KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

April 19, 2024

Honorable Adrienne A. 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 32144 dated September 22, 2021, attached hereto, I have made an examination into the condition and affairs of Aggregate Trust Fund as of December 31, 2019, and submit the following report thereon.

Wherever the designation "ATF" or the "Fund" appears herein without qualification, it should be understood to indicate Aggregate Trust Fund.

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

1. SCOPE OF EXAMINATION

The Department has performed an examination of the Aggregate Trust Fund. The previous examination was conducted as of December 31, 2014. This examination covered the five-year period from January 1, 2015 through December 31, 2019. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

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

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

- Fund history
- Management and control
- Territory and plan of operation
- Growth of fund
- Statutory deposits
- Related party
- Financial statement presentation
- Loss (unpaid awards) review and analysis
- Significant subsequent events
- Summary of recommendations

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 FUND

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

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

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

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

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

A total of 3,816 cases were outstanding at December 31, 2019, with an aggregate value of \$311,289,802.

A. Corporate Governance

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

Prior to July 1, 2017, the Aggregate Trust Fund paid the State Insurance Fund an amount equal to three percent of annual awards paid to cover administrative costs. After July 1, 2017, the percentage increased to six percent of annual awards paid.

B. Related Party

The ATF is part of the State Insurance Fund (“SIF”), which was created pursuant to the provisions of Article 6, Section 76 of the New York Workers’ Compensation Law and functions as a New York State agency. Related parties for SIF include New York State, the Worker's Compensation Board (“WCB”) and the three Funds, the Workers’ Compensation Fund (“WC Fund”), Disability Benefits Fund, and the ATF.

The WC Fund acts as administrator for ATF on behalf of SIF. This includes but is not limited to performing actuarial calculations, making payments on claims deposited into ATF, representing ATF at WCB hearings, managing investments of fund assets and involves using the facilities and staff of the WC Fund. Workers' Compensation Law § 27(2) requires the WCB to direct a carrier depositing an award into ATF to pay an additional amount necessary for a proportional payment of the WC Fund's administrative expenses.

Related Party Agreements

It is noted that the intercompany transactions between the Workers’ Compensation Fund and Aggregate Trust Fund do not have formal documented agreements. Good business practices dictate that any agreements between two or more parties should be reduced to written form.

Furthermore, SSAP No. 25 states in part:

“Transactions between related parties must be in the form of a written agreement. The written agreement must provide for timely settlement of amounts owed, with a specified due date...”

It is recommended that SIF prepare a written agreement before entering into any arrangements with affiliated entities in accordance with SSAP No. 25.

C. Significant Ratios

The following ratios have been computed as of December 31, 2019, based upon the results of this examination:

<u>Operating Ratios</u>	<u>Result</u>
Investment yield	2.80%
Liabilities to liquid assets	87.56%

The investment yield was lower than the 5 percent discount rate used in computing the unpaid award liability. The liabilities to liquid assets ratio falls within the benchmark values recommended by the NAIC.

The WCF is exempt from RBC requirements.

D. Accounts and Records

Contingent Receivable from New York State

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

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

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

3. FINANCIAL STATEMENTS

A. Balance Sheet

The following shows the assets, liabilities and surplus as regards policyholders as of December 31, 2019, as reported by the Fund:

	<u>Net Admitted Assets</u>
Bonds	\$354,473,000
Cash, cash equivalents and short-term investments	12,157,000
Award payments recoverable from the supplemental benefits fund	6,540,000
Contingent receivable from New York State	220,000,000
Accrued investment income	<u>1,825,000</u>
Total admitted assets	<u>\$594,995,000</u>
 <u>Liabilities, surplus and other funds</u>	
<u>Liabilities</u>	
Unpaid awards	\$311,290,000
Unpaid administrative fees	10,803,000
Accrued Expenses and Other Liabilities	359,000
Due to affiliates	<u>170,000</u>
Total liabilities	\$322,622,000
 <u>Surplus and other funds</u>	
Security fluctuation surplus	\$ 23,550,000
Unassigned surplus	<u>248,823,000</u>
Total surplus	<u>\$272,373,000</u>
Total liabilities and surplus	<u>\$594,995,000</u>

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

B. Statement of Income

The net loss for the examination period as reported by the Fund was \$13,966,000, as detailed below:

Revenues

Awards received		\$243,352,000
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Benefits and expenses

Awards paid	\$228,199,000	
Increase in liability for unpaid awards and administrative fees	82,854,000	
Administrative fees paid	7,102,000	
Other operating expenses	<u>(64,000)</u>	
Total benefits and expenses		<u>318,091,000</u>
Net operating loss		\$(74,739,000)

Investment Income

Net investment income earned	\$ 50,996,000	
Net realized investment gains	<u>9,777,000</u>	
Net investment gain		<u>60,773,000</u>
Net loss from operations		<u>\$(13,966,000)</u>

C. Capital and Surplus

Surplus decreased \$5,054,000 during the five-year examination period January 1, 2015 through December 31, 2019, as reported by the Fund, detailed as follows:

Surplus as reported by the Fund as of December 31, 2014			\$277,427,000
	<u>Gains in Surplus</u>	<u>Losses in Surplus</u>	
Net loss		\$13,966,000	
Net unrealized capital gains	\$ 2,000		
Correction of error	<u>8,910,000</u>	<u>0</u>	
Total gains and losses	\$8,912,000	\$13,966,000	
Net decrease in surplus			<u>(5,054,000)</u>
Surplus as reported by the Fund as of December 31, 2019			<u>\$272,373,000</u>

4. UNPAID AWARDS

The examination liability for the captioned item of \$311,290,000 is the same as reported by the Fund as of December 31, 2019.

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

5. SUBSEQUENT EVENTS

On March 11, 2020, the World Health Organization declared an outbreak of a novel coronavirus ("COVID-19") pandemic. The COVID-19 pandemic has continued to develop throughout 2020, with significant uncertainty remaining regarding the full effect of COVID-19 on the U.S. and global insurance and reinsurance industry. At the time of releasing this report, the examination's review noted that there has not been a significant impact to the Fund. The Department has been in communication with the Fund

regarding the impact of COVID-19 on its operations and financial position. The Department continues to monitor the impact of the pandemic on the Fund and will take necessary action if a solvency concern arises.

6. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior report contained no comments or recommendations.

7. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>		<u>PAGE NO.</u>
A.	<u>Related Party Agreements</u> It is recommended that SIF prepare a written agreement before entering into any arrangements with affiliated entities in accordance with SSAP No. 25.	4

Respectfully submitted,

_____/S/_____
Kevin McNamee
Associate Insurance Examiner

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

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

_____/S/_____
Kevin McNamee

Subscribed and sworn to before me

this _____ day of _____, 2024.

APPOINTMENT NO. 32144

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:

Kevin McNamee

as a proper person to examine the affairs of the

Aggregate Trust Fund

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

COMPANY

with such other information as he shall deem requisite.

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

this 22nd day of September, 2021

*ADRIENNE A. HARRIS
Acting Superintendent of Financial Services*

By:

Joan Riddell

*Joan Riddell
Deputy Bureau Chief*

