

STATE OF ALABAMA  
DEPARTMENT OF INSURANCE  
MONTGOMERY, ALABAMA

REPORT OF

ASSOCIATION EXAMINATION

OF

**BOOKER T. WASHINGTON INSURANCE COMPANY, INC.**

**Birmingham, Alabama**

AS OF

DECEMBER 31, 2004

PARTICIPATION:

SOUTHEASTERN ZONE, NAIC

ALABAMA

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**STATE OF ALABAMA  
COUNTY OF JEFFERSON**

Blase Francis Abreo, being first duly sworn, upon his oath deposes and says:

THAT he is an examiner appointed by the Commissioner of Insurance for the State of Alabama;

THAT an examination was made of the affairs and financial condition of *BOOKER T. WASHINGTON INSURANCE COMPANY, INC.*, for the period from January 1, 2000 through December 31, 2004;

THAT the following 89 pages constitute the report to the Commissioner of Insurance of the State of Alabama; and

THAT the statements, exhibits and data therein contained are true and correct to the best of his knowledge and belief.

*Francis Blase Abreo*

Blase Francis Abreo, CFE

Subscribed and sworn to before the undersigned authority this 10<sup>th</sup> day of March, 2006.

*Christine W. Johnson*  
(Signature of Notary Public)

Christine W. Johnson Notary Public  
(Print Name)

in and for the State of Alabama

My commission expires 11-18-09



BOB RILEY  
GOVERNOR

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Birmingham, Alabama  
March 10, 2006

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Honorable Walter A. Bell  
Secretary, Southeastern Zone  
Alabama Department of Insurance  
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Dear Commissioners:

Pursuant to your instructions and in compliance with the statutory requirements of the State of Alabama and the resolutions adopted by the National Association of Insurance Commissioners, a full scope financial and market conduct examination as of December 31, 2004, has been made of

**BOOKER T. WASHINGTON INSURANCE COMPANY, INC.**

at its home office located at 1728 3<sup>rd</sup> Avenue North, Birmingham, Alabama 35203.  
The report of examination is submitted herewith.

Where the description "Company" or "BTW" appears herein, without qualification, it will be understood to indicate **Booker T. Washington Insurance Company, Inc.** See "SCOPE OF EXAMINATION" pages 2 - 5 for important disclosures.

## SCOPE OF EXAMINATION

A full scope financial and market conduct examination was authorized pursuant to the instructions of the Alabama Insurance Commissioner and in accordance with the statutory requirements of the *Alabama Insurance Code* and the regulations and bulletins of the State of Alabama Department of Insurance in accordance with the applicable guidelines and procedures promulgated by the National Association of Insurance Commissioners (NAIC); and in accordance with generally accepted examination standards.

The Company was last examined for the five-year period ended December 31, 1999. The current examination covers the intervening period from January 1, 2000, through December 31, 2004, and was conducted by examiners from the Alabama Department of Insurance. Where deemed appropriate, transactions subsequent to December 31, 2004, were reviewed.

The examination included a general review of the Company's operations, administrative practices, and compliance with statutes and regulations. Corporate records were inspected. Income and disbursement items for selected periods were tested. Assets were verified and valued, and all known liabilities were established or estimated as of December 31, 2004 [see NOTES TO FINANCIAL STATEMENTS]. However, the discussion of assets and liabilities contained in this report has been confined to those items which resulted in a change to the financial statements, or which indicated a violation of the *Alabama Insurance Code* and the Insurance Department's rules and regulations, or other insurance laws or rules, or which were deemed by the examiner to require comments and/or recommendations.

Company office copies of the filed Annual Statements for the years 2000 through 2004 were compared with or reconciled to account balances with respect to ledger items.

The market conduct phase of the examination consisted of a review of the Company's territory, plan of operation, complaint handling, marketing and sales, producer licensing, policyholder service, underwriting and rating, claims payments and practices, and privacy policies and practices.

A signed certificate of representation was obtained during the course of the examination. In this certificate, management attests to have valid title to all assets and to the nonexistence of unrecorded liabilities as of December 31, 2004. A signed letter of representation was also obtained at the conclusion of the examination whereby management represented that, through the date of this examination report, complete

disclosure was made to the examiners regarding asset and liability valuation, the financial position of the Company, and contingent liabilities.

**THIS REPORT OF THE EXAMINATION IS QUALIFIED AND EXPRESSES NO OPINION ON THE ACCURACY OF THE FINANCIAL STATEMENTS OF BOOKER T. WASHINGTON INSURANCE COMPANY, INC. FURTHERMORE, DUE TO THE COMPANY'S INABILITY OR UNWILLINGNESS TO PROVIDE INFORMATION REQUESTED BY THE EXAMINERS DURING THE COURSE OF THE EXAMINATION, THE EXAMINATION WAS NOT COMPLETED. HOWEVER, BASED ON THE FINDINGS THROUGH JANUARY 24th 2006, THE EXAMINERS DETERMINED THAT THE COMPANY WAS INSOLVENT. THE REASONS FOR THE QUALIFICATION OF THE REPORT CAN BE FOUND IN VARIOUS SECTIONS AND CAPTIONS OF THE REPORT.**

The Company did not maintain adequate records and workpapers to support all accounting transactions, which was not in compliance with ALA. CODE § 27-27-29(a)(1975), which states:

“Every domestic insurer shall have, and maintain, its principal place of business and home office in this state and shall keep therein complete records of its asset, transactions and affairs in accordance with such methods and systems as are customary or suitable as to the kind or kinds, of insurance transacted.”

The records in question were related to, but were not limited to, the following items:

- Electronic data files provided to the examiners did not contain certain significant fields to examine specific line items and had data integrity issues.
  1. The contract loans data set, with Cash Surrender Value (CSV) information column, was requested on November 16, 2005, and was provided by the Company on January 23, 2006. The data set was not reviewed for accuracy by the examiners because new examination work ceased on January 24, 2006, per a directive from the Alabama Department of Insurance.
  2. The Company did not provided aging details of due premiums at December 31, 2004. A review of the detailed due and deferred listing indicated that 183 policies, some dating back to July 1, 1996, on which death claims had been processed, were included in the due premiums listing.
- Original documentation, which included application and claim files, requested to verify the accuracy of the electronic data provided by the Company were as follows:
  1. For a sample of seventy-six application files for due and deferred premiums, twenty application files were not provided;
  2. For a sample of seventy-six items taken from the premiums payments listing, for aggregate reserves for life contracts, ten application files were not provided;
  3. For a sample of fifty paid life claims, nine claim files were not provided;

4. For a sample of fifty paid accident and health claims, twenty-four claim files were not provided;
  5. For a sample of thirty-two paid accident and health claims, one claim file was not provided;
  6. For a sample of 110 claim files, ten claim files were not provided.
- The in-force policies/valuation dataset which was provided to the examiners and reconciled to the Annual Statement was rendered invalid when the Company elected to recalculate the reserves, because of data integrity issues and retroactive permission obtained by the Company from the Commissioner of Insurance to revalue the reserves on burial policies under ALA. CODE § 27-17-16(1975), which states:

“Except as hereinafter provided, any authorized insurer who issues or has heretofore issued “burial insurance” in this state shall value the life insurance reserve liabilities for such policies (hereinafter “burial reserves”) in accordance with the provisions of section 27-36-7.

- Unclaimed property filings were not provided for the examination period.
- The Company did not provide the detailed listing of the cancelled/non-renewed policies for the years 2000 through 2004.
- The Company did not provide a reconciliation of the 2004 commissions paid to agents with the Company’s 2004 Summary of Operations.
- Evidence of 2004 tax payments for two of the Company’s properties and evidence of hazard insurance for three of the Company’s properties were not maintained in the real estate files.
- On July 21, 2003, Golden Circle Life Insurance Company (Golden Circle) was merged into the Company. Company management indicated that it was unable to locate Golden Circle applications for the policies selected in the examiners’ samples. When questioned further, Company management indicated that there was a mix-up with the movers and the owner of the office space where the application files were located. The movers were instructed to clear out the office space as the owner thought the Company had all of its important papers. The Golden Circle application files were discarded. The Company’s due diligence documentation for Golden Circle was then requested. The Company’s Treasurer/CFO stated, “In response to your inquiry, Golden Circle due diligence was completed in 2001. Since acquisition of Golden Circle in 2002, the due diligence files are not available.”

The Company did not provide all requested information in a timely manner in accordance with Alabama Department of Insurance *Regulation No. 118, Section 6*, which states:

“The insurer shall provide, within ten (10) working days, any record or response requested in writing by any duly appointed deputy, assistant, employee, or examiner of the commissioner...”

The records in question were related to, but were not limited to, the following items:

- Various electronic data files, which included cash disbursements/receipts, due and deferred premiums, premiums received in advance, in-force policies listings (Life), and claim payments.
- Reconciliation of the following data sets to the 2004 Annual Statement balance sheet, exhibits and schedules 1) Aggregate reserve for life contracts, 2) Aggregate reserve for accident and health contracts, 3) Contract claims, and 4) Due and deferred premiums.
- Documentation supporting bond acquisitions and disposals, Related parties transactions, IMR/AVR, Aggregate write-ins for other assets, Deferred taxes, Commissions to agents due and accrued, Reinsurance transactions, Amounts held or retained by company as agents and trustee, Treasury stocks, Taxes, licenses and fees, and Fidelity bond insurance policy.
- Bank reconciliations, which include outstanding check listings and deposits in transit.
- Policyholders’ files, which included application files, claim files, complaint files, underwriting files, etc. For comments on files that were not provided see sections MARKET CONDUCT ACTIVITIES and NOTES TO FINANCIAL STATEMENTS under specific captions to which they pertain.
- Management services agreements with affiliated companies, reinsurance agreements, safekeeping agreement and repurchase agreement.
- Information necessary for the documentation of MARKET CONDUCT ACTIVITIES, which include, Company plan of operation, complaint handling, producers licensing, marketing and sales, and policyholders services.

## **ORGANIZATION AND HISTORY**

The Company was incorporated on December 22, 1931, under the laws of the State of Alabama. The *Certificate of Incorporation* was filed for record in the office of the Probate Judge of Jefferson County, Alabama. Business commenced as a mutual aid insurance company on January 1, 1932, under the name of “Booker T. Washington Burial Insurance Company.” On December 23, 1946, the Company’s name was changed to the current “Booker T. Washington Insurance Company, Inc.”

The Company's authorized capital stock has been changed several times since incorporation, including changes in the number of authorized shares and the par value per share, and the addition of preferred stock. The changes in the capital are listed below:

- At incorporation, the authorized capital of the Company was \$5,000, which consisted of 100 shares of common capital stock with a par value of \$50 per share.
- On December, 5, 1951, the Company increased its capitalization to \$100,000, which consisted of 2,000 shares of common capital stock with a par value of \$50 per share. On March 6, 1964, the number of shares increased to 20,000 shares of common capital stock with a par value of \$5 per share.
- On February 26, 1965, the Company increased its capitalization to \$200,000, which consisted of 40,000 shares of common capital stock with a par value of \$5 per share.
- On April 1, 1966, the Company increased its capitalization to \$500,000, which consisted of 100,000 shares of common capital stock with a par value of \$5 per share.
- On April 1968, the authorized capital was changed to include two classes of stocks: 1) 100,000 shares of common capital stock with a par value of \$5 per share and 2) 60,000, 4% cumulative preferred stock with par value of \$12.50 per share.

At December 31, 2004, the Company's Annual Statement reflected outstanding capital stock totaling \$1,059,880, which consisted of 61,976 shares of common capital stock at \$5 par value per share, and 60,000 shares of 4% cumulative preferred stock at \$12.50 par value per share. Treasury stock, reported at cost, included 5,038 shares of common capital stock and 59,289 shares of preferred, for a total of \$486,344.

The following companies have been merged into the Company: Peoples Insurance Company, Alabama, 1962; Unity Life Insurance Company, Alabama, 1984; Bradford Industrial Insurance Company, 1985; and Golden Circle Life Insurance, Tennessee, 2003.

In 1987, the parent sold all of its assets to an Employee Stock Ownership Plan (ESOP), making the employees of the Company and its subsidiaries the owners of the collective companies. No employee holds or owns five percent or more of the voting security of the ultimate controlling ESOP. ESOP owns 82.64% of the A.G. Gaston Corporation (AGGC). The remaining 17.36% is owned by the Company. AGGC

owns 56,797 shares of the 61,976 shares or 91.64% of the Company's common voting stock outstanding.

BTW of Tennessee, Inc., a wholly owned subsidiary of the Company was formed in Tennessee on June 11, 2001. Pursuant to the plan of merger filed with the Tennessee Secretary of State on May 17, 2002, BTW of Tennessee, Inc. was merged into Golden Circle Life Insurance Company (Golden), a Tennessee Corporation. Pursuant to the Plan of Merger, BTW of Tennessee, Inc. purchased for cash the shares owned by the shareholders of Golden. The Company owns 198,591.78 shares of the outstanding 200,000 shares of Golden's common stock, which represents 99.29% ownership in Golden. BTW of Tennessee, Inc. funded the purchase of the shares of Golden through capital contributed by the Company in the amount of \$6,062,600. Per approval from the Alabama and Tennessee Departments of Insurance, Golden was merged into the Company on July 21, 2003.

## **MANAGEMENT AND CONTROL**

### **Stockholders**

At December 31, 2004, the A.G. Gaston Corporation owned 56,797 shares or 99.75% of the common voting stock of the Company, or 91.64% of the total issued and outstanding common shares. The remaining 5,179 shares were held 8.13% in the Company treasury and .23% by six individuals, none of whom owned more than 200 shares. The Company's ultimate parent was ESOP.

The Company also issued 60,000 shares of preferred stock. 59,289 shares of preferred stock, or 98.81%, were held by the Company in treasury stock and 711 shares, or 1.19%, by twelve individuals.

### **Board of Directors**

The *By-Laws* of the Company provided that the business and affairs of the Corporation shall be managed by its Board of Directors. ARTICLE TWO, Section 2 of the amended and restated *By-Laws*, adopted on June 14, 2004, set the number of directors at "...no fewer than three (3), no more than seven (7) and shall be elected by the shareholders..."

Directors elected by the shareholders on June 14, 2004 and serving at December 31, 2004, were as follows:

<u>Name and Residence</u>	<u>Principal Occupation</u>
Walter Howlett, Jr. Birmingham, Alabama	Chairman of the Board, and President Booker T. Washington Insurance Company
Cleophus Thomas, Jr. Anniston, Alabama	Executive Vice President, and General Counsel
Bunny Stokes Birmingham, Alabama	Real Estate Broker Realty South
Christopher Womack Atlanta, Georgia	Senior Vice President Georgia Power

### Officers

Officers elected by the Board of Directors and serving at December 31, 2004, were as follows:

<u>Officer</u>	<u>Title</u>
Walter Howlett, Jr.	Chairman of the Board, CEO, and President
Cleophus Thomas, Jr.	Senior Executive Vice President, and General Counsel
Josie Diane Skanes**	Senior Vice President, and Corporate Secretary
Barry Anthony Williams	Senior Vice President, and Treasurer
George Slone	Vice President – Operations Manager, Information Systems
Booker Joseph*	Senior Vice President - Chief Marketing Officer
Betty Louise Clay	Vice President - Human Resources
Johnny Woolen	Vice President - Audit and Compliance Officer
Rose Walker	Vice President - Public Relations and Assistant to the President
Willie Perry	Vice President - Regional Sales Director
Johnny Banks	Vice President - Regional Sales Director
Jimi Clark	Vice President - Regional Sales Director
Linda Stoudemire	Vice President - Regional Sales Director
Patricia McLemore	Assistant Vice President – Director of Claims
Bernice Holman	Assistant Vice President – Supervisor, Cashier Department
Douglas White	Vice President – Controller

\*Resigned in 2005. \*\*Resigned in 2006.

### Committees

ARTICLE II, Section 10 of the By-Laws provided that “The Board of Directors shall have power, by resolution or resolutions passed by a majority of the Board to designate one or more committees, each committee to consist of two or more Directors of the Corporation...” The review of the Company’s corporate records

indicated that two committees, audit and compensation, were formed during the examination period and the existence of executive and investment committees. The minutes of the Board of Directors meetings that were reviewed did not indicate the appointment of the investment committee or the members on that committee; however, the names of the members on the investment committee were provided by Company management:

<u>Audit Committee</u>	<u>Executive Committee</u>
Bunny Stokes	Walter Howlett, Jr.
Christopher Womack	Cleophus Thomas, Jr.
<u>Compensation Committee</u>	<u>Investment Committee</u>
Bunny Stokes	Walter Howlett, Jr.
Christopher Womack	Cleophus Thomas, Jr.
	Barry Anthony Williams

The investment committee included three board members, Mr. Walter Howlett, Jr., Mr. Cleophus Thomas, Jr., and Mr. Bunny Stokes. Mr. Barry Williams, Treasurer, was also included in the investment committee. This was in conflict with the By-laws and ALA. CODE § 10-2B-8.25 (1975), which requires that:

“... a board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee may have one or more members, who serve at the pleasure of the board of directors.”

The review of the minutes of the meetings indicated that the minutes of the meetings of the abovementioned committees were not maintained during the examination period except, the investment committee minutes held in the year 2002. This was in conflict with ALA. CODE § 10-2B-16.01(1975), which requires that:

“A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors...a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.”

### Conflict of Interest

The Company follows an established procedure for the disclosure of conflicts between the Company's interest and personal interest of directors and officers. The conflict of interest statements filed, annually, by the officers and directors of the Company were reviewed for the period covered by the examination.

The conflict of interest statements for the years 2002 and 2003 were completed and

signed by Mr. Bunny Stokes, Director, on April 27, 2005; conflict of interest statement for the year 2002 was completed and signed by Mr. Barry Williams, Treasurer, on May 5, 2005. There was no conflict of interest statement signed by Ms. Josie Skanes, Secretary for the year 2000, which was not in compliance with the GENERAL INTERROGATORIES of the NAIC Annual Statement Instructions and the Company's *Conflict of Interest Policy*. No conflicts of interest were disclosed.

The examination identified a \$91,171 mortgage loan with a 6.75% interest rate, was extended to Mr. Bunny Stokes and his wife Della W. Stokes. The book value of the loan was \$33,526 at December 31, 2004. Mr. Bunny Stokes was appointed director of the Company in 2002 and came into conflict with ALA. CODE § 27-27-26 (1975), which states:

"Any officer, or director, or any member of any committee or any employee of a domestic insurer who is charged with the duty of investment...shall not borrow the funds of such insurer; shall not be pecuniarily interested in any loan ..."

The documentations provided by the Company indicated that the aforementioned conflict was corrected on April 4, 2005, when Mr. Stokes paid off the mortgage loan to the Company.

### **Agreements with Funeral Directors**

As of December 31, 2004, the Company maintained agreements with ten funeral home directors, which were entered into on March 1, 1989. The funeral home directors agreed to distribute promotional material for the Company to various organizations in the local community.

The purpose of engaging the services of the funeral directors was to create an ongoing public awareness of the role and availability of services through the Company. According to documentation furnished by the Company, the total annualized amount payable was \$20,040.

### **CORPORATE RECORDS**

The Company's Certificate of Incorporation, By-Laws, and related amendments were inspected and found to provide for the operation of the Company in accordance with usual corporate practices and applicable statutes and regulations.

Records of the meetings and actions of the Stockholders, Board of Directors, and one Investment committee meeting were reviewed. Other than the items noted under the

caption MANAGEMENT AND CONTROL, the minutes appeared to be complete with regards to recording actions taken on matters before the respective bodies for deliberation and action. The review of the minutes of the Board of Directors' meeting held on September 30, 2005, indicated that the directors' fees were raised from \$4,800 to \$10,000 per annum, beginning second quarter of 2004.

## **HOLDING COMPANY AND AFFILIATE MATTERS**

### **Holding Company Registration**

The Company was subject to the *Alabama Insurance Holding Company Regulatory Act*, as defined in ALA. CODE § 27-29-1 (1975). In connection therewith, the Company was registered with the Alabama Department of Insurance as registrant of an Insurance Holding Company System.

Appropriate filings required under the Holding Company Act were made from time to time by the Company as registrant. A review of the Company's filings during the period under examination indicated that all required disclosures were included in the Company's filings.

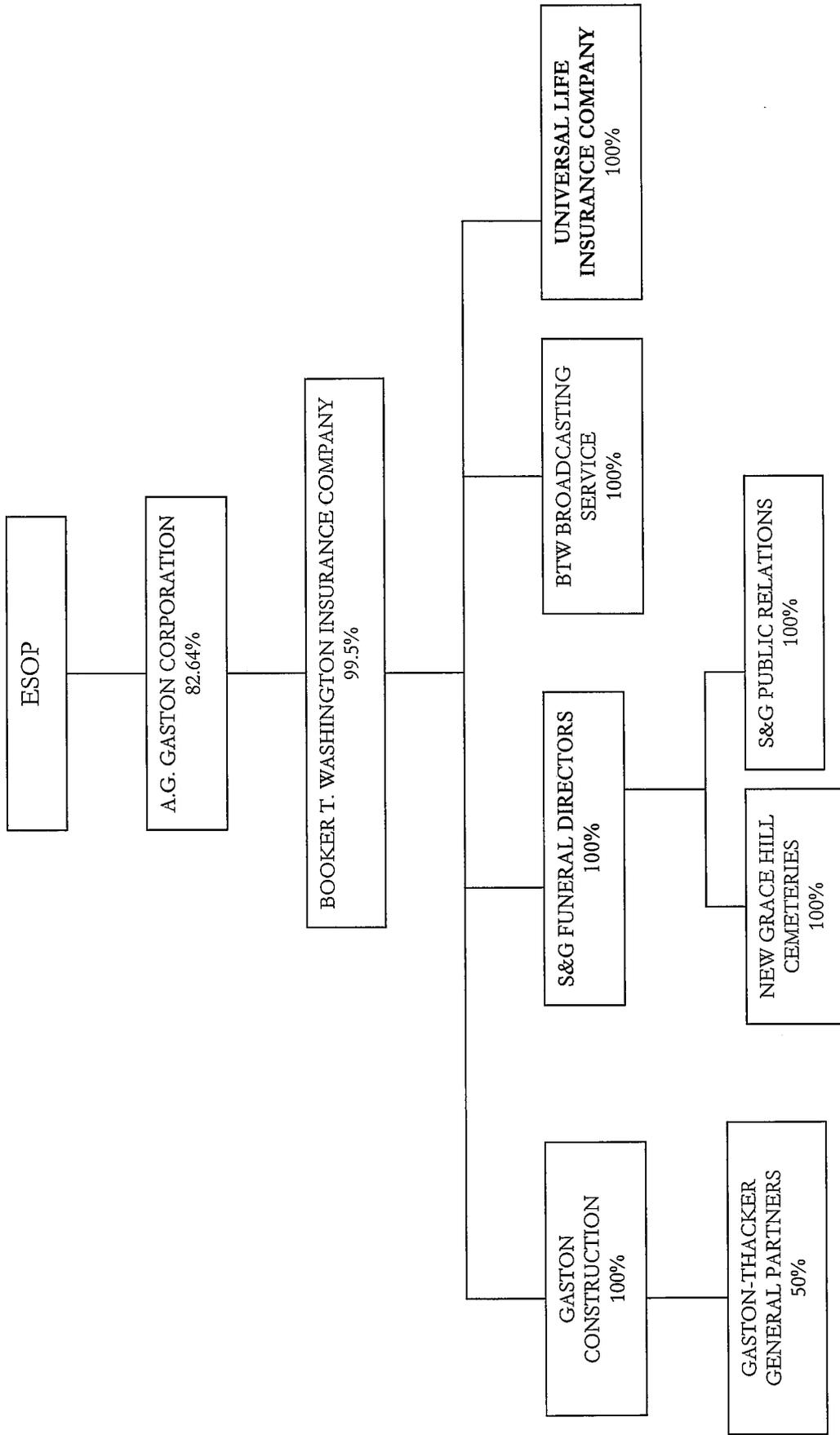
On April 16, 2004, the Company purchased the outstanding stock of Protective Industrial Insurance Company (PIICO). The consideration for this transaction was \$5,177,802. PIICO owned substantially all of the shares of Universal Life Insurance Company (ULICO). On August 1, 2004, PIICO was merged into ULICO.

### **Dividends to Stockholders**

The Company declared and paid dividends to its common and preferred stockholders during the year 2000. The common stockholders received \$329,777 in stock and \$1,734 in cash dividends. The preferred stockholders received \$28,491 in cash dividends.

### **Organizational Chart**

The following chart presents the identities of and interrelationships among all affiliated persons within the Insurance Holding Company System at December 31, 2004.



## Transactions and Agreements with Affiliates

### *Business Consultant and Management Agreements*

The Company had management agreements with certain of its affiliates in effect during the examination period. Except for the rates charged for services, the agreements were identical.

The agreements with affiliated companies, provided that the Company would furnish business consultation services, specifically payroll processing, human resources advisory services and benefit coordination, data processing and bookkeeping services.

The agreements were effective on January 4, 1999, were renewed annually, and were subject to termination upon sixty days written notice by either party.

In accordance with the agreements between the Company and the respective affiliates, monthly fees were payable to the Company as follows:

	Amount
BTW Broadcasting Service	\$1,000
A.G. Gaston Construction	500
New Grace Hill Cemetery	500
Gaston Company (Funeral Directors)	150
S&G Public Relations	150
Universal Life Insurance Company*	2,000

**\*Agreement signed on August 16, 2004**

A review of *Schedule Y - Part 2* indicated that Gaston Company (Funeral Directors) did not pay the service fees in the amount of \$150 per month from July through December 2004; and hence, had not complied with the *Business Consultant and Management Agreement*.

It was also established that during the year 2004 several expenses and other charges applicable to the affiliates were paid by the Company and were either charged directly or were allocated to the affiliates on a percentage basis. At December 31, 2004, \$61,299 and \$260,117 was due from New Grace Hill Cemeteries and BTW Broadcasting Services (BTWB), Inc. respectively. The accounts and records, maintained by the Company, indicated that \$251,640 out of the \$260,117 owed by BTWB was rent (owed to the Company) deposited in BTWB's account. It is recommended that the Company collect the amounts that belong to it from affiliated

companies. A discussion concerning the collection of receivables in accordance with these agreements may be found in the "NOTES TO FINANCIAL STATEMENTS" section of this report under the caption "*Note 9 - Receivable from parent, subsidiaries and affiliates.*"

### ***Tax Allocation Agreement***

On April 9, 1997, a tax allocation agreement was executed by A.G. Gaston Corporation (Holding Company) and five members of the affiliated group (subsidiaries), including the Company. Company management indicated that no changes were made to the agreement after it was approved by the Alabama Department of Insurance on June 19, 1997.

The affiliated group of companies subject to the agreement would be required to file a U.S. consolidated income tax return for the tax year 1996 and for subsequent taxable periods unless the Holding Company, the Company and the Subsidiaries, agree to terminate the agreement. Notwithstanding such termination, this agreement would continue in effect with respect to any payment or refunds due for all taxable periods prior to termination.

The Holding Company, the Company and Subsidiaries, parties to the agreement, agree as follows:

- The U.S. consolidated income tax return shall be filed by the Holding Company for the tax year ended December 31, 1996, and for subsequent taxable periods in respect of which this agreement is in effect and for which the Affiliated Group is required or permitted to file a consolidated tax return.
- The parties to the agreement agreed that the consolidated tax liability for each year, determined in accordance with Regulation §1.1502-2, shall be apportioned among them in accordance with the provisions of Regulation § 1.1502-53(d)(3)(Percentage Method). For the purpose of this agreement, the consolidated tax liability shall include any liability for alternative minimum tax.
- In the event that the state shall require a different procedure with respect to the payment of federal income taxes for the purposes of regulation insurance companies, such other method shall be utilized with respect to the companies affected thereby.
- Payment of the consolidated tax liability for a taxable period would include estimated tax installments due for such taxable period, and Holding Company and each Subsidiary shall pay the Company its share within ten days of receiving notice of such payment. Any amounts paid by Holding Company or a Subsidiary on

account of a separate return or separate estimated tax payments that are credited against the consolidated tax liability shall be included in determining the payments due from such Holding Company or Subsidiary. Any overpayment of estimated tax should be refunded to the Holding Company or Subsidiary.

- If the consolidated tax liability is adjusted for any taxable period, whether by means of an amended return, claim for refund, or after tax audit by the Internal Revenue Service, the liability of each member shall be recomputed to give effect to such adjustments. In the case of a share of the refund, the Holding Company shall make payment to each member for its share of the refund, within ten days after the refund is received by the Holding Company.
- If the consolidated tax liability is adjusted for any taxable period, then the liability of each member will be recomputed to give effect to such adjustment, and in the case of an increase in tax liability, each member shall pay to the Company the increased tax liability within ten days after receiving notice of such liability from the Company.
- If during a consolidated return period, the Holding Company, the Company or any Subsidiaries acquires or organizes another corporation that is required to join in the consolidated return, that corporation would join in and be bound by this agreement.
- The agreement would be binding upon and inure to the benefit of any successor, whether by statutory merger, acquisition of assets, or otherwise, to any of the parties hereto, to the same extent as if the successor had been an original party to the agreement.

### *Subsidiary Loan*

The Company is the guarantor on a loan in the amount of \$960,000, made to BTW Broadcasting Services, Inc. The liability is shown on the books of BTW Broadcasting Services, Inc. and therefore reduces the market value on such stock recorded by the Company. The unpaid balance of the loan at December 31, 2004, according to Note 10 (E) of the NOTES TO FINANCIAL STATEMENTS was \$87,109.

At December 31, 2004, the Company had an outstanding mortgage loan to New Grace Hill Cemetery, Inc., an affiliated company in the amount of \$878,476, and overdue interest in the amount of \$58,000. *Schedule B – Part 1* reported that the mortgaged property was appraised on December 27, 1996, and the value of the property was \$11,156,210. This mortgage loan was nonadmitted by the examiners. [See *Note 3 – Mortgage loans on real estate*, under the caption NOTES TO FINANCIAL STATEMENT.]

## **FIDELITY BOND AND OTHER INSURANCE**

At December 31, 2004, the Company was insured by a Fidelity Bond issued through Travelers Casualty and Surety Company of America. The bond provided coverage in accordance with the NAIC guidelines.

Additionally, the Company maintained several other policies with the following coverages at the examination date:

- Business Auto;
- Commercial General Liability;
- Contractor's Equipment;
- Business Computer;
- Valuable Papers and Records;
- Directors and Officers and Company Reimbursement;
- Commercial Umbrella (Excess of loss);
- Fiduciary Liability.

The type of coverages and the maximum limits indicated for each occurrence appears to have been sufficient to cover the Company against hazards to which it might be exposed.

During the review of real estate, the examiner determined that the insurance carried by the Company on its office building and other properties appeared to adequately protect the Company's interest as of the examination date, except those properties noted in *Note 4 – Real estate* under the caption NOTES TO FINANCIAL STATEMENTS.

## **EMPLOYEES' AND AGENTS' WELFARE**

As of December 31, 2004, the Company provided the following benefits to its employees and agents:

- Employee Stock Ownership Plan (ESOP);
- 401(k) Plan;
- Group Medical and Dental Insurance;
- Group Life Insurance;

- Paid Vacation;
- Sick Leave;
- Paid Holidays; and
- Deferred compensation plan for its key executive employees (2002).

The employee benefits shown above were in accordance with usual industry practices. The Company's agents were eligible to participate in all benefits that were available to employees.

### Section 1033 of Title 18 of the US Code

The Company was asked how it determined if prospective and current employees were in conflict with Section 1033 of Title 18 of the US Code and ALA. ADMIN. CODE 482-1-121(2003), which prohibits certain persons from participating in the business of insurance.

A review of Company documentation indicated that the Company complied with Section 1033 of Title 18 of the US Code and ALA. ADMIN. CODE 121 (2003).

### SPECIAL DEPOSITS

In order to comply with the statutory requirements for doing business in the various jurisdictions in which it was licensed, the Company had the following securities on deposit with state authorities at December 31, 2004. Also see *Note 1 – Bonds* under the caption NOTES TO FINANCIAL STATEMENTS.

<u>State and Description</u>	<u>Par Value</u>	<u>Statement Value</u>	<u>Fair Value</u>
<i>Alabama</i>			
US Treasury Notes	\$ 200,000	\$ 200,038	\$ 198,766
<i>Total – Alabama*</i>	\$ 200,000	\$ 200,038	\$ 198,766
<i>Tennessee</i>			
Johnson City TN 4.75% Bond	\$ 100,000	\$ 99,448	\$ 101,602
Wilson Cnty 5.375% Bond	50,000	49,494	50,000
Fed Home Loan Bank 5.75% Bond	100,000	100,000	100,000
FNMA, 5.5% Bond	100,000	100,000	100,000
<i>Total-Tennessee</i>	\$ 350,000	\$ 348,942	\$ 351,602
<b>TOTAL</b>	<b>\$ 550,000</b>	<b>\$ 548,980</b>	<b>\$ 550,368</b>

\*Held for the protection of all policyholders.

## **MARKET CONDUCT ACTIVITIES**

### **Territory**

At December 31, 2004, the Company was licensed to transact business in the states of Alabama and Tennessee. The certificates of authority were inspected for the period under review and found to be in order. There were no pending licenses at the examination date.

### **Plan of Operation**

The Company's agency operations were under the direction of a Senior Vice President/Chief Marketing Officer. As of December 31, 2004, the Company had three regional offices in Alabama; each office had a regional manager; and two regional offices in Tennessee under one manager. As of December 31, 2004, the Company had 48 agents.

The Company is currently writing new whole life and term life business and renewal industrial and A&H business. The Company did not write any group life business but did assume business from SEGLI and FEGLI pools.

Premiums were collected by direct mail, automatic premium bank draft and by agents. The majority of premiums were collected by direct mail. Deposits by agents were electronically transferred to the Company's primary banking facility in Birmingham on a daily basis.

### **Policy Forms and Underwriting Practices**

At December 31, 2004, the Company was issuing the following non-participating policies:

- Whole Life Policies:
  1. premium payable to age 65 (monthly debit ordinary);
  2. 15 - year pay (monthly debit ordinary);
  3. premium payable to age 65 (premium notice ordinary);
  4. 15 - year pay (premium notice ordinary);
  5. single premium (premium notice ordinary);
  6. whole life (premium notice ordinary); and
  7. permalife;
- Renewable Term Life Policy.

- Decreasing Term Life Policy.
- Gold Shield Hospitalization Policy.
- Graded Death Benefit Whole Life.
- Increasing Benefit Term.
- Level term riders: 1) accelerated living benefit rider, 2) spouse term rider, 3) children term rider, 4) waiver of premium rider, and 5) accidental death benefit rider.

The Company did not issue any new policy forms during the four-year period covered by this examination.

During the examination period, the Company did not implement any rate increases to its term, whole life, or accident and health policies (hospital). The Company's health and hospital policy rates are fixed throughout the life of the insurance contract because the benefits under its policies are at flat rates and/or specified amounts.

The examiners reviewed the Company's renewal billing notice and its procedures for sending the statements to policyholders. It was determined that the Company's renewal notice should provide policyholders with written instructions on how the policy can be reinstated in accordance with guidelines of *Standard 6 of the Policyholder Service*, of the NAIC Market Conduct Examiners Handbook, which requires that:

"Nonforfeiture options are communicated to the policyholder and correctly applied in accordance with the policy contract."

During the review of the declined applications, the examiner determined that the Company's standard declination letter did not include the reason for declination nor did it indicate that the proposed insured could request in writing the specific reason for declination in accordance with the guidance established by the NAIC Insurance Information and Privacy Protection Model Act, Section 10, which states the following:

"In the event of an adverse underwriting decision the insurance institution or agent responsible for the decision shall: Either provide the applicant, policyholder or individual proposed for coverage with the specific reason or reasons for the adverse underwriting decision in writing or advise such person that upon written request he or she may receive the specific reason or reasons in writing."

The Company did not maintain complete records of adverse underwriting in its files, which was in conflict with ALA. CODE § 27-27-29(a) (1975), which states:

"Every domestic insurer shall have, and maintain...complete records of its assets, transactions and affairs in accordance with such methods and systems as are customary or suitable as to the kind, or kinds, of insurance transacted."

### **Advertising and Marketing**

The Company's advertisements consisted of: radio, television, and printed ads published in newspapers, periodicals, and billboard/signs. During the review of the Company's advertisements, the examiner determined that printed, published, and radio ad scripts were not misleading; however, the advertisements did not include a notation which indicated the manner and extent of distribution and the form number of every policy advertised. ALA. ADMIN. CODE 482-1-132-.10(2005), states:

"Each insurer shall maintain at its home or principal office a complete file containing a specimen copy of every printed, published or prepared advertisement ... with a notation indicating the manner and extent of distribution and the form number of any policy advertised."

The Company's Final Expense Brochure, which was used as a marketing and sales tool by agents, did not prominently describe the type of policy or policies advertised. ALA. ADMIN. CODE 482-1-132-.06 (2005), states:

"An advertisement shall clearly and prominently describe the type of policy advertised."

### **Dividends to Policyholders**

The Company did not pay any dividends to its policyholders during the five-year period of this examination.

### **Claims Payment Practices**

#### ***Life Claims Reviewed:***

For a sample of fifty paid life claims, nine claim files were not provided, which was in conflict with ALA. CODE § 27-27-29 (a) (1975), which states:

"Every domestic insurer shall have, and maintain, its principal place of business and home office in this state and shall keep therein complete records of its assets, transactions and affairs in accordance with such methods and systems as are customary or suitable as to the kind, or kinds of insurance transacted."

The Company is also required to maintain all records for five (5) years in accordance

with Alabama Department of Insurance *Regulation No. 118, Section 3*, which states:

"All records must be maintained for not less than five (5) years."

Of the forty-one out of the fifty paid life claim files provided by the Company, there were two claim files that did not contain evidence that the Company appropriately notified claimants, in writing, the reason for the delay in paying their claim. The Company is required to comply with ALA. ADMIN. CODE 482-1-124.04 (4)(2004), which states:

"As to life insurance claims, upon receipt of proof of loss from a claimant, the insurer shall affirm or deny liability, or inform the claimant that the claim is being investigated, within the time set forth within the life insurance policy not to exceed sixty (60) days."

### *A&H Claims Reviewed:*

For a sample of fifty paid A & H claims, twenty-four claim files were not provided, which was in conflict with ALA. CODE § 27-27-29 (a) (1975), which states:

"Every domestic insurer shall have, and maintain, its principal place of business and home office in this state and shall keep therein complete records of its assets, transactions and<sup>b</sup> affairs in accordance with such methods and systems as are customary or suitable as to the kinds, of insurance transacted."

Of the twenty-six out of the fifty A & H claim files, there was one claim file that did not evidence the reason for the delay in claim payment, which was in conflict with ALA. ADMIN. CODE 482-1-124.04 (4)(2004), which states:

"As to life insurance claims, upon receipt of proof of loss from a claimant, the insurer shall affirm or deny liability, or inform the claimant that the claim is being investigated, within the time set forth within the life insurance policy not to exceed sixty (60) days."

The examiners were unable to determine if initial contact procedures were in place as required by ALA. ADMIN. CODE 482-1-124.04 (2004). The Company did not maintain evidence of when the claimant initially notified the Company to begin the claims process. The only evidence maintained in the claim file, for life claims, was the claimant's statement, and insured's death certificate. The only evidence, maintained in the claim file, for A&H claims, was the medical claim form from the policyholder's physician or hospital. ALA. ADMIN. CODE 482-1-124.04 (1)(2004), states:

"every insurer, upon receiving notification of a claim shall, within fifteen (15) days of the notification, mail or otherwise provide necessary claim forms, instructions or reasonable assistance so the claimant can properly comply with the insurer's reasonable requirements for filing a claim."

### Reporting Resisted Claims in the Annual Statement:

The Company did not report any resisted claims in Schedule F and Exhibit 8 of its Annual Statement during entire examination period (2000 - 2004) as required by the NAIC Annual Statement Instructions.

### Policyholder Complaints

Complaints recorded by the Consumer Division of the ALDOI in the Company Complaint Report, were compared with the complaints received by the Company for the period January 1, 2000 through December 31, 2004. There were twenty-five complaints recorded by the ALDOI that were submitted to the Company for handling. Of these twenty-five, eight complaints were not included in the Company's complaint documentation.

The Company recorded thirty-eight complaints from Alabama policyholders, which included seventeen complaints submitted by the ALDOI. The examiner reviewed the documentation (complaint files) to determine if the complaints were being appropriately addressed by the Company. The examiner came across two cases where the Company's documentation did not fully address the information requested by the policyholder through their attorney or ALDOI. There were two other cases where the examiners did not find evidence that the cases were resolved, which was in conflict with ALA. CODE § 27-27-29 (a) (1975), which states:

"Every domestic insurer shall have, and maintain...complete records of its assets, transactions and affairs in accordance with such methods and systems as are customary or suitable as to the kind, or kinds, of insurance transacted."

The examiner determined that the Company did not maintain adequate written procedures for handling complaints. The Company should detail and address in its procedures how both written and verbal complaints are handled as follows:

- The Company should indicate its responsibility to respond to the customer and/or the ALDOI within ten days in accordance with Alabama Department of Insurance Bulletin dated January 31, 1963, which states:  
"complaints from the Department of Insurance to your Company must be answered within ten days after receipt thereof or an adequate excuse be supplied therefore..."
- The Company should detail in its written procedures how complaints are responded to in writing. The Company's current complaint procedures only referenced how complaints "calls" are handled;

- The Company did not evidence or indicate that its written procedures were "periodically reviewed in order to maximize the value of its complaint records as a management tool" in accordance with the guidelines of NAIC, Unfair Trade Practices Act;
- The complete name of the insurance company should be referenced in the first sentence of written responses to customers;
- If applicable, the insurance department's reference number should also be included in the content of written responses to customers;
- The Company's telephone number should be included disclosed in the content of written responses to customers.

### **Compliance with Agents' Licensing Requirements**

The examiners made an inspection of the Company's records to determine that agents representing the Company were duly licensed by the State of Alabama. The agents' listing, consisting of 39 active agents, from the Alabama Department of Insurance Licensing Division was compared with the listing maintained by the Company. No discrepancies were found.

The agents' commission listing requested by the examiner for 2004 was not provided by the Company, which was not in compliance with ALA. CODE § 27-27-29(a)(1975), which states:

"Every domestic insurer shall have, and maintain, its principal place of business and home office in this state and shall keep therein complete records of its assets, transactions and affairs..."

The examiner obtained the policy application files for a sample of in-force policies as of December 31, 2004, which were issued during the years under examination. The examiner reviewed all pages of the application including the signature page for each of the policies in the sample. It was established that the agents were properly licensed and appointed to transact business on behalf of the Company at the time the policies were written.

### **Privacy Policies and Practices**

[Compliance with ALA. ADMIN. CODE 482-1-122 (2002), formerly known as Alabama Department of Insurance *Regulation No. 122.*]

The Company did not disclose in its customer service procedures its responsibility for providing adequate training of its employees regarding the specifics for protecting the confidentiality and security of policyholders and consumers nonpublic personal information as required by ALA. ADMIN. CODE 482-1-122.07 C(6)(2001), which states:

"(6) Confidentiality and security. A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following: (a) Describes in general terms who is authorized to have access to the information. (b) States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy."

The Company is also required to comply with ALA. ADMIN. CODE 482-1-126.08 (2001), which states:

"(a) Designs its information security program to control the identified risks, commensurate with the sensitivity of the information, as well as the complexity and scope of the licensee's activities. (b) Trains staff, as appropriate, to implement the licensee's information security program."

## **FINANCIAL CONDITION/GROWTH OF THE COMPANY**

The following table sets forth the significant items indicating the growth and financial condition of the Company for the period under review:

<b><u>Year</u></b>	<b><u>Admitted Assets</u></b>	<b><u>Liabilities</u></b>	<b><u>Capital and Surplus</u></b>	<b><u>Premiums Written</u></b>
2004*	\$52,046,184	\$56,403,713	\$(4,357,529)	\$7,876,811
2003	57,769,231	53,665,350	4,103,881	9,197,416
2002	54,863,652	50,379,762	4,483,888	8,487,356
2001	56,438,067	49,459,328	6,978,739	8,009,790
2000	56,447,271	49,161,592	7,285,679	8,828,362
1999*	56,162,497	47,419,486	8,743,011	9,181,713

\*Per examination. Amounts for the remaining years were obtained from Company copies of filed Annual Statements. Also See "SCOPE OF EXAMINATION" – Pages 2-5 for important disclosures.

## **REINSURANCE**

### **Reinsurance Assumed**

*Schedule S – Part 1 – Section 1* of the Company's 2004 Annual Statement indicated that the Company assumed reinsurance under the following reinsurance agreements:

Metropolitan Life Insurance Company, New York, NY

Type	FEGLI Pool
Coverage	Policy No. 17000-G, US Civil Service Commission under FEGLI
Effective	January 1, 1975
Insolvency	Standard insolvency language without cut-through provisions

Protective Life Insurance Company, Birmingham, AL

Type	Quota Share Agreement
Coverage	33 1/3% of insurance under Group Life Insurance policy #G-5576, issued by the insurer to the City of Birmingham
Effective	July 1, 1989
Insolvency	Standard insolvency language without cut-through provisions

Prudential Insurance Company, Roseland, NJ

Type	SEGLI Pool
Coverage	Class 2 conversion policies, SEGLI Pool
Effective	July 29, 1979
Insolvency	Standard insolvency language without cut-through provisions

**Reinsurance Ceded**

According to the Company's Schedule S-Part 3- Section 1, the Company's ceded program encompassed an agreement with Swiss Re Life & Health and Optimum Re with Optimum Re assuming 95.67% of the Company's total 12/31/2004 reserve credit (\$88,627 of \$92,635). [See Note 11 – Aggregate reserves for life contracts under the caption NOTES TO FINANCIAL STATEMENTS.] The Company combined the four treaties with Optimum Re Insurance Company into a single line in its 2004 Schedule S- Part 3- Section 1 and used an incorrect effective date. This presentation was not in accordance with the NAIC Annual Statement Instructions, which requires that each treaty be presented by type and by the contract's original effective date. Because Optimum Re's reserve credit of \$88,627 comprised 95.67% of the total reserve credit taken, the treaties with Optimum Re were reviewed. These treaties are discussed below:

Optimum Re Insurance Company; Dallas, TX

Treaty Number	262-97AC03
Type	Automatic Coinsurance/Facultative Reinsurance Agreement
Coverage	Permalife Whole Life with Accelerated Living Benefit Rider and/or Spouse Rider with a \$1,000 minimum amount of risk to be reinsured.
Effective	January 1, 1997
Retention	Fifty percent to a maximum of \$10,000 of initial face amount; however, effective November 3, 2003, the Company's retention increased to \$20,000.
Limit	For automatic reinsurance- \$100,000. For facultative- \$2,000,000 per life, and amount of waiver of premium corresponding to \$1,000,000 of life and \$250,000 on the accelerated living benefit rider. Life amounts in excess of the coinsurance capacity, up to an additional \$3,000,000, will be reinsured on a YRT using the rates in Schedule E for a total capacity of \$5,000,000.
Amendment	Effective November 3, 2003, the Company's retention increased to \$20,000, all new business will only be accepted on a facultative basis, and any existing and future Errors and Omissions claims will not be payable by Optimum Re.
Insolvency	Standard insolvency language without cut-through provisions

Optimum Re Insurance Company; Dallas, TX

Treaty Number	262-97AC04
Type	Automatic Coinsurance/Facultative Reinsurance Agreement
Coverage	Increasing benefit term on 10 year term life
Effective	January 1, 1997
Retention	Fifty percent to a maximum of \$5,000 of initial face amount with the retention increasing proportionately to the full amount throughout the life of the policy. Effective November 3, 2003, the Company's retention increased to \$20,000.
Limit	For automatic reinsurance- eight times the Company's retention on a case to a maximum of \$40,000 based on the initial face amount of the policy. For facultative- The amount purchased by \$50 a month. The jumbo limit was \$1 million.
Amendment	Effective November 3, 2003, the Company's retention increased to \$20,000, all new business will only be accepted on a facultative basis, and any existing and future Errors and Omissions claims will not be payable by Optimum Re.
Insolvency	Standard insolvency language without cut-through provisions

Optimum Re Insurance Company; Dallas, TX

Treaty Number	262-00AC06
Type	Automatic Coinsurance/Facultative Reinsurance Agreement
Coverage	(a) Lifeguard 10; Ten Year Renewable to Age 70 and Convertible Term to Age 65 with Accelerated Living Benefit Rider, Accidental Death and Dismemberment with Common Carrier Benefit and (b) Accelerated Living Benefit Rider
Effective	May 1, 2000
Retention	Fifty percent to a maximum of \$10,000 of initial face amount with a minimum cession of \$5,000. Effective November 3, 2003, the Company's retention increased to \$20,000.
Limit	For automatic reinsurance- four times the Company's retention on a case to a maximum of \$40,000 based on the initial face amount of the policy. For facultative- \$1,000,000 with a jumbo limit of \$4,000,000.
Amendment	Effective November 3, 2003, the Company's retention increased to \$20,000, all new business will only be accepted on a facultative basis, and any existing and future Errors and Omissions claims will not be payable by Optimum Re.
Insolvency	Standard insolvency language without cut-through provisions

Optimum Re Insurance Company; Dallas, TX

Treaty Number	262-93AB12
Type	Coinsurance- Bulk Reinsurance Agreement
Coverage	All individual accidental death benefit policies and riders issued by the Company on and after January 1, 1993.
Effective	January 1, 1993
Retention	\$10,000 less amount attained on life; however, this amount was increased to \$20,000 effective November 3, 2003.
Limit	\$200,000
Amendment	<p>Effective October 1, 1993, Optimum Re and the Company agree to include the reinsurance of the Accidental Death Benefit on a list of policies, recaptured from Lincoln National, according to the terms of this Agreement. The premium shall be prorated for the period from October 1, 1993 to December 31, 1993. Annual billing started with the January 1, 1994 reporting period. Optimum Re's limit decreased to \$100,000 over the Company's retention of \$10,000 on a listing of policies recaptured by Lincoln National.</p> <p>Effective November 3, 2003, the Company's retention increased to \$20,000, all new business will only be accepted on a facultative basis, and any existing and future Errors and Omissions claims will not be payable by Optimum Re. Effective January 1, 2004, a cession fee of \$15.00 will be charged for every policy that has not been recaptured each year.</p>
Insolvency	Standard insolvency language without cut-through provisions

## ACCOUNTS AND RECORDS

The Company's principal accounting records were maintained on electronic data processing (EDP) equipment. Certain detail records were kept manually and by computer.

The Company was audited annually by the independent certified public accounting (CPA) firm of McReynolds, Keith, Stewart, & Treglown, P.C., Birmingham, Alabama, which conducted all of the Company's audits for the period covered by the examination. The name of the firm was changed to Stewart & Treglown, P.C. in the year 2004. The engagement partner for the Company's audit for the period 1996 - 2001 was Ms. Virginia G. Treglown, CPA, and 2002 - 2004 was Mr. David M. Stewart, CPA.

The audit of the Company's 2004 Annual Statement was in progress during the planning of the examination. All audit workpapers for 2000 - 2003 were made available for review with the 2004 work papers being provided during the course of the examination. The workpapers were tested and utilized in this examination to the extent deemed appropriate. The management letters and audit reports issued by the CPAs were reviewed for the examination period.

Harrison and Associates Inc. was retained by the Company during the years 2003 and 2004. The 2004 valuation report was prepared by Mr. James C. Harrison, FSA, MAAA. Thornthwaite & Company, Brentwood, Tennessee, was retained by the Company during the first three years of examination.

**THIS REPORT OF THE EXAMINATION IS QUALIFIED AND EXPRESSES NO OPINION ON THE ACCURACY OF THE FINANCIAL STATEMENTS OF BOOKER T. WASHINGTON INSURANCE COMPANY, INC. FURTHERMORE, DUE TO THE COMPANY'S INABILITY OR UNWILLINGNESS TO PROVIDE INFORMATION REQUESTED BY THE EXAMINERS DURING THE COURSE OF THE EXAMINATION, THE EXAMINATION WAS NOT COMPLETED. HOWEVER, BASED ON THE FINDINGS THROUGH JANUARY 24th 2006, THE EXAMINERS DETERMINED THAT THE COMPANY WAS INSOLVENT. THE REASONS FOR THE QUALIFICATION OF THE REPORT CAN BE FOUND IN VARIOUS SECTIONS AND CAPTIONS OF THE REPORT.**

The Company did not maintain adequate records and workpapers to support all accounting transactions, which was not in compliance with ALA. CODE § 27-27-29(a)(1975), which states:

“Every domestic insurer shall have, and maintain, its principal place of business and home office in this state and shall keep therein complete records of its asset, transactions and affairs in accordance with such methods and systems as are customary or suitable as to the

kind or kinds, of insurance transacted.”

The records in question were related to, but were not limited to, the following items:

- Electronic data files provided to the examiners did not contain certain significant fields to examine specific line items and had data integrity issues.
  1. The contract loans data set, with Cash Surrender Value (CSV) information column, was requested on November 16, 2005, and was provided by the Company on January 23, 2006. The data set was not reviewed for accuracy by the examiners because new examination work ceased on January 24, 2006, per a directive from the Alabama Department of Insurance.
  2. The Company did not provided aging details of due premiums at December 31, 2004. A review of the detailed due and deferred listing indicated that 183 policies, some dating back to July 1, 1996, on which death claims had been processed, were included in the due premiums listing.
- Original documentation, which included application and claim files, requested to verify the accuracy of the electronic data provided by the Company were as follows:
  1. For a sample of seventy-six application files for due and deferred premiums, twenty application files were not provided;
  2. For a sample of seventy-six items taken from the premiums payments listing, for aggregate reserves for life contracts, ten application files were not provided;
  3. For a sample of fifty paid life claims, nine claim files were not provided;
  4. For a sample of fifty paid accident and health claims, twenty-four claim files were not provided;
  5. For a sample of thirty-two paid accident and health claims, one claim file was not provided;
  6. For a sample of 110 claim files, ten claim files were not provided.
- The in-force policies/valuation dataset which was provided to the examiners and reconciled to the Annual Statement was rendered invalid when the Company elected to recalculate the reserves, because of data integrity issues and retroactive permission obtained by the Company from the Commissioner of Insurance to revalue the reserves on burial policies under ALA. CODE § 27-17-16(1975), which states:

“Except as hereinafter provided, any authorized insurer who issues or has heretofore issued “burial insurance” in this state shall value the life insurance reserve liabilities for such policies (hereinafter “burial reserves”) in accordance with the provisions of section 27-36-7.

- Unclaimed property filings were not provided for the examination period.
- The Company did not provide the detailed listing of the cancelled/non-renewed

policies for the years 2000 through 2004.

- The Company did not provide a reconciliation of the 2004 commissions paid to agents with the Company's 2004 Summary of Operations.
- Evidence of 2004 tax payments for two of the Company's properties and evidence of hazard insurance for three of the Company's properties were not maintained in the real estate files.
- On July 21, 2003, Golden Circle Life Insurance Company (Golden Circle) was merged into the Company. Company management indicated that it was unable to locate Golden Circle applications for the policies selected in the examiners' samples. When questioned further, Company management indicated that there was a mix-up with the movers and the owner of the office space where the application files were located. The movers were instructed to clear out the office space as the owner thought the Company had all of its important papers. The Golden Circle application files were discarded. The Company's due diligence documentation for Golden Circle was then requested. The Company's Treasurer/CFO stated, "In response to your inquiry, Golden Circle due diligence was completed in 2001. Since acquisition of Golden Circle in 2002, the due diligence files are not available."

The Company did not provide all requested information in a timely manner in accordance with Alabama Department of Insurance *Regulation No. 118, Section 6*, which states:

"The insurer shall provide, within ten (10) working days, any record or response requested in writing by any duly appointed deputy, assistant, employee, or examiner of the commissioner..."

The records in question were related to, but were not limited to, the following items:

- Various electronic data files, which included cash disbursements/receipts, due and deferred premiums, premiums received in advance, in-force policies listings (Life), and claim payments.
- Reconciliation of the following data sets to the 2004 Annual Statement balance sheet, exhibits and schedules 1) Aggregate reserve for life contracts, 2) Aggregate reserve for accident and health contracts, 3) Contract claims, and 4) Due and deferred premiums.
- Documentation supporting bond acquisitions and disposals, Related parties transactions, IMR/AVR, Aggregate write-ins for other assets, Deferred taxes, Commissions to agents due and accrued, Reinsurance transactions, Amounts held or retained by company as agents and trustee, Treasury stocks, Taxes, licenses and

- fees, and Fidelity bond insurance policy.
- Bank reconciliations, which include outstanding check listings and deposits in transit.
  - Policyholders' files, which included application files, claim files, complaint files, underwriting files, etc. For comments on files that were not provided see sections MARKET CONDUCT ACTIVITIES and NOTES TO FINANCIAL STATEMENTS under specific captions to which they pertain.
  - Management services agreements with affiliated companies, reinsurance agreements, safekeeping agreement and repurchase agreement.
  - Information necessary for the documentation of MARKET CONDUCT ACTIVITIES, which include, Company plan of operation, complaint handling, producers licensing, marketing and sales, and policyholders services.

### **Internal audit report recommendation**

The examiners reviewed the internal audit reports prepared by the Company's internal auditor, to the president of the Company during the period covered by the examination. The Company provided written responses on the implementation of the recommendations; however, Company management did not provide the documentation evidencing the implementation of the internal auditor's recommendations. Hence, the Company had not complied with the requirements of the Examination Planning Questionnaire, SECTION III C of the NAIC Financial Condition Examiners Handbook, and ALA. CODE § 27-27-29(a)(1975), which states:

“Every domestic insurer shall have, and maintain, its principal place of business and home office in this state and shall keep therein complete records of its assets, transactions and affairs in accordance with such methods and systems as are customary or suitable as to the kind or kinds, of insurance transacted.”

### **Disaster Recovery Plan**

The NAIC Information System Questionnaire (ISQ) assists the examiners in determining the strength and weaknesses within the insurers' IS Department. Company management's responses indicated that there were several weaknesses, including, but not limited to the disaster recovery plan that had never been tested. The Company is in process of updating the disaster recovery plan.

## FINANCIAL STATEMENTS INDEX

The Financial Statements included in this report were prepared based on the Company's records, the valuations and determinations made during the examination for 2004. Amounts shown in the comparative statements for the years 2000, 2001, 2002 and 2003 were compiled from Company copies of filed Annual Statements. The statements are presented in the following order:

Statement of Assets, Liabilities, Surplus and Other Funds	33 and 34
Summary of Operations	35
Capital and Surplus Account	36

**THE NOTES IMMEDIATELY FOLLOWING THE FINANCIAL STATEMENTS IN  
THIS REPORT ARE AN INTEGRAL PART THEREOF.**

**SEE "SCOPE OF EXAMINATION" PAGES 2 – 5 FOR IMPORTANT DISCLOSURES.**

**BOOKER T. WASHINGTON INSURANCE COMPANY, INC.**  
**STATEMENT OF ASSETS, LIABILITIES, SURPLUS AND OTHER FUNDS**  
**For the Year Ended December 31, 2004**

	<u>Assets</u>	<u>Assets Not Admitted</u>	<u>Net Admitted Assets</u>
<b>ASSETS</b>			
Bonds (Note 1)	\$36,631,453	\$ 50,000	\$36,581,453
Common stocks (Note 2)	7,703,096	3,179,033	4,524,063
Mortgage loans on real estate:			
First liens (Note 3)	3,642,941	986,459	2,656,482
Real estate:			
Properties occupied by the company (Note 4)	1,415,198		1,415,198
Properties held for the production of income (Note 4)	238,308	105,918	132,390
Properties held for sale (Note 4)	467,335	370,465	96,870
Cash (\$2,188,935, Sch. E-Part 1), cash equivalents and Short-term investments. (Note 5)	659,817		659,817
Contract loans (Note 6)	<u>3,003,865</u>	<u>0</u>	<u>3,003,865</u>
Subtotals, cash and invested assets	\$53,762,013	\$ 4,691,875	\$49,070,138
Investment income due and accrued	666,678	60,645	606,033
Premiums and considerations:			
Uncollected premiums and agents' balances in course of collection (Note 7)	1,797,105	331,978	1,465,127
Deferred premiums, agents' balances and installments booked but deferred and not yet due	-0-		-0-
Net deferred asset (Note 8)	1,693,292	1,492,965	200,327
Electronic data processing equipment and software	22,176		22,176
Furniture and equipment, including health care delivery assets	48,135	48,135	-0-
Receivable from parent, subsidiaries and affiliates (Note 9)	321,416	321,416	-0-
Other assets nonadmitted	43,450	43,450	-0-
Aggregate write-ins for other than invested assets (Note 10)	<u>694,483</u>	<u>12,100</u>	<u>682,383</u>
<b>TOTALS</b>	<u>\$59,048,748</u>	<u>\$7,002,564</u>	<u>\$52,046,184</u>

THE NOTES IMMEDIATELY FOLLOWING THE FINANCIAL STATEMENTS IN THIS REPORT ARE AN INTEGRAL PART THEREOF.

SEE "SCOPE OF EXAMINATION" PAGES 2 – 5 FOR IMPORTANT DISCLOSURES.

**BOOKER T. WASHINGTON INSURANCE COMPANY, INC.**  
**STATEMENT OF ASSETS, LIABILITIES, SURPLUS AND OTHER FUNDS**  
**For the Year Ended December 31, 2004**

<b>LIABILITIES</b>		
Aggregate reserve for life policies and contracts (Note 11)		\$53,491,057
Aggregate reserve for accident and health policies (Note 12)		11,167
Policy and contract claims:		
Life (Note 13)		860,141
Accident and health (Note 14)		5,818
Premiums and annuity considerations received in advance (Note 15)		131,596
Policy and contract claims not included elsewhere:		
Interest maintenance reserve		254,688
General expenses due or accrued (Note 16)		302,153
Taxes, licenses and fees due or accrued (Note 17)		24,574
Unearned investment income		101,834
Amounts withheld or retained by company as agent or trustee (Note 18)		163,318
Amounts held for agents' account		49,078
Remittances and items not allocated (Note 19)		-0-
Miscellaneous liabilities:		
Asset valuation reserve (Note 20)		481,527
Aggregate write-ins for liabilities (Note 21)		<u>526,762</u>
<b>Total Liabilities</b>		<b><u>\$56,403,713</u></b>
<b>CAPITAL AND SURPLUS</b>		
Common capital stock		\$ 309,880
Preferred capital stock		750,000
Aggregate write-ins for special surplus funds:		
Unassigned funds (surplus) (Note 22)	\$(4,931,065)	
Less treasury stock, at cost:		
(1) 5,038 shares common	(113,600)	
(2) 59,289 shares preferred	<u>(372,744)</u>	
<b>Total Surplus</b>		<b><u>(5,417,409)</u></b>
<b>Total Capital and Surplus</b>		<b><u>(4,357,529)</u></b>
<b>TOTAL LIABILITIES, CAPITAL AND SURPLUS</b>		<b><u>\$52,046,184</u></b>

THE NOTES IMMEDIATELY FOLLOWING THE FINANCIAL STATEMENTS IN  
THIS REPORT ARE AN INTEGRAL PART THEREOF

SEE "SCOPE OF EXAMINATION" PAGES 2 - 5 FOR IMPORTANT DISCLOSURES.

**BOOKER T. WASHINGTON INSURANCE COMPANY, INC.**  
**SUMMARY OF OPERATIONS**  
**For the Years Ended December 31, 2004, 2003, 2002, 2001, and 2000**

	<u>2004</u>	<u>2003</u>	<u>2002</u>	<u>2001</u>	<u>2000</u>
<b>Income:</b>					
Premiums and annuity consideration (Note 7)	\$ 7,876,811	\$ 9,197,416	\$ 8,487,356	\$ 8,009,790	\$ 8,828,362
Net investment income	1,911,005	2,539,640	2,432,110	2,707,722	2,913,070
Amortization of IMR	264,895	466,219	15,983	473,913	122,437
Miscellaneous income	42,921	31,475	27,691	29,408	40,036
<b>Total Income</b>	<b>\$ 10,095,632</b>	<b>\$ 12,234,750</b>	<b>\$ 10,963,140</b>	<b>\$ 11,220,833</b>	<b>\$ 11,903,905</b>
<b>Deductions:</b>					
Death Benefits (Note 13)	4,904,499	5,058,191	4,406,509	4,971,767	4,845,995
Matured endowments	38,291	18,959	35,989	22,345	19,678
Disability benefits and benefits under accident and health contracts	32,471	63,054	38,770	73,656	25,808
Surrender benefits and withdrawals for life contracts	556,502	957,128	809,480	763,487	1,140,584
Increase in aggregate reserves for life and accident and health contracts (Note 11)	1,924,929	(170,340)	967,149	853,407	1,235,421
Commissions on premiums, annuity considerations and deposit-type contract funds (direct business)	832,771	1,382,967	889,405	551,677	890,676
General insurance expenses (Notes 9, 10, 16)	5,673,889	4,999,213	4,549,564	4,716,271	4,977,799
Insurance taxes, licenses and fees, excluding federal income taxes	239,720	445,652	215,537	203,779	376,622
Increase in loading on deferred and uncollected premiums.	(333,148)	191,642	113,239	(130,303)	(53,767)
<b>Total deductions</b>	<b>13,869,924</b>	<b>12,946,466</b>	<b>12,025,642</b>	<b>12,026,086</b>	<b>13,458,816</b>
Net gain from operations before dividends to policyholders and federal income taxes	(3,774,292)	(711,716)	(1,062,502)	(805,253)	(1,554,911)
Federal income taxes incurred					
Net gain from operations after dividends to policyholders and federal income taxes and before realized capital gains or (losses)	(3,774,292)	(711,716)	(1,062,502)	(805,253)	(1,554,911)
Net realized capital gains or (losses) less capital gains of \$-0- (excluding taxes of \$-0- transferred to the IMR)	169,946	158,960	(9,440)	53,506	(36,487)
<b>Net income</b>	<b>(3,604,346)</b>	<b>(552,756)</b>	<b>(1,071,942)</b>	<b>(751,747)</b>	<b>(1,591,398)</b>

THE NOTES IMMEDIATELY FOLLOWING THE FINANCIAL STATEMENTS IN THIS  
REPORT ARE AN INTEGRAL PART THEREOF.

SEE "SCOPE OF EXAMINATION" PAGES 2 – 5 FOR IMPORTANT DISCLOSURES.

**BOOKER T. WASHINGTON INSURANCE COMPANY, INC.**  
**CAPITAL AND SURPLUS ACCOUNT**  
**For the Years Ended December 31, 2004, 2003, 2002, 2001, and 2000**

	<u>2004</u>	<u>2003</u>	<u>2002</u>	<u>2001</u>	<u>2000</u>
<b>Capital and surplus,</b>					
<b>December 31, prior year</b>	<u>\$4,103,877</u>	<u>\$4,483,889</u>	<u>\$ 6,978,739</u>	<u>\$ 7,285,675</u>	<u>\$ 9,137,702</u>
<b><u>Gains and (losses) in surplus:</u></b>					
Net income	\$ (3,604,346)	\$(552,756)	\$(1,071,942)	\$ (751,747)	\$ (1,591,398)
Change in net unrealized capital gains or (losses)	(3,057,384)	174,416	(1,085,686)	(316,818)	(84,617)
Change in net deferred income tax	(4,300)	(120,137)	(258,233)	582,996	
Change in nonadmitted assets and related items	(1,458,638)	(18,033)	41,270	90,854	6,980
Change in asset valuation reserve	77,866	80,086	(109,867)	422,150	(232,293)
Change in treasury stock	(5,936)	(5,446)	(10,392)	(334,371)	(1)
Transferred to capital (stock dividend)					(329,776)
Dividends to stockholders					(30,226)
Aggregate write-ins for gains and losses in surplus	(408,668)	61,858	-0-	-0-	409,304
<b>Net change in capital and surplus for the year</b>	<u>\$(8,461,406)</u>	<u>\$ (380,012)</u>	<u>\$(2,494,850)</u>	<u>\$ (306,936)</u>	<u>\$(1,852,027)</u>
<b>Capital and surplus, December 31, current year</b>	<u>\$4,357,529</u>	<u>\$4,103,877</u>	<u>\$4,483,889</u>	<u>\$ 6,978,739</u>	<u>\$ 7,285,675</u>

**THE NOTES IMMEDIATELY FOLLOWING THE FINANCIAL STATEMENTS IN THIS REPORT ARE AN INTEGRAL PART THEREOF.**

**SEE "SCOPE OF EXAMINATION" PAGES 2 – 5 FOR IMPORTANT DISCLOSURES.**

## NOTES TO FINANCIAL STATEMENTS

### Note 1 - Bonds

\$36,581,453

The captioned amount is \$1,479,118 more than the \$35,102,335 reported by the Company in its 2004 Annual Statement, and consisted of the following adjustments.

	<b>Examination changes</b>
Wilson Cnty Wtr-Wastert AU (non admit)	\$ (50,000)
Certificate of deposits (reclassified from cash)	<u>1,529,118</u>
	<u>\$ 1,479,118</u>

*Schedule D – Part 1*, reported a municipal bond “Wilson Cnty Wtr-Wastert AU WTRW” acquired on October 3, 1996, in the amount of \$50,000. The Company did not file a Security Acquisition Report (SAR) in accordance with the guidance provided by PART FIVE, Section 3(b)(ii) of the NAIC Purposes and Procedures Manual of the Securities Valuation Office, which states:

“In the case of an unrated municipal transaction where the bond to be filed is within one year of the date interest payments are to begin accruing; the reporting insurance company shall file a completed SAR together with a copy of the official statements for the issue...”

Since the Company did not file the SAR, the \$50,000 is not admitted for the purpose of this examination.

The certificates of deposit in the amount of \$1,529,118, with maturity dates in excess of one year were classified to bonds in accordance with the guidance provided by the NAIC Annual Statement Instructions and *SSAP No 26, paragraph 2*, of the NAIC Accounting Practices and Procedures Manual, which states,

"Bonds shall be defined as any securities representing a creditor relationship, whereby there is a fixed schedule for one or more future payments. This definition includes U.S. Treasury securities, U.S. government agency securities, municipal securities, corporate bonds, bank participations, convertible debt, certificates of deposit and commercial paper that have a fixed schedule of payments and a maturity date in excess of one year from the date of acquisition..."

The Company should report the long term certificates of deposit in the amount of \$1,529,118 in *Schedule D – Part 1* in accordance with the aforementioned SSAP and the NAIC Annual Statement Instructions. [See Note 5 – Cash and short-term investments in the NOTES TO FINANCIAL STATEMENT section of this report.]

A security, FNMA, CUSIP # 3136F3AH9, was held under a custodial agreement with AmSouth Bank, Tennessee. The examination established that the par value of the bond was \$350,000 of which \$100,000 was pledged to the State of Tennessee and was reported in *Schedule E – Part 3 – Special Deposits*. ALA CODE § 27-27-29(b) (1975), states:

“Every domestic insurer shall have, and maintain, its assets in this state...”

According to the aforementioned statute, the \$100,000 pledged to the State of Tennessee is an admitted asset; however, any amount in excess of the pledged amount maintained outside the state should not be admitted by the Company for all statutory accounting purposes. No adjustment was made in this report of examination.

The Company reported five corporate bonds under *Schedule D – Part 1*, with a NAIC designation of “1.” Company management indicated that the securities were NRSRO rated securities and were assigned the rating which was equivalent of NAIC Designation of “1.” The examiner established that the securities met the filing exemption conditions and should have had the “FE” SVO administrative symbol after “1” designation. [See PART FOUR, Section 2(c) of the NAIC Purposes and Procedures Manual of the Securities Valuation Office, below.]

The examiner also established that the Company did not maintain any evidence to support the continued eligibility of Filing Exemption (FE) securities, with the exception that AmSouth Bank, the custodian of the Company’s investments, provided the Company with the NRSRO ratings. The Company was unable to provide evidence that the ratings were accurate. PART FOUR, Section 2(c) of the NAIC Purposes and Procedures Manual of the Securities Valuation Office, states:

“This section sets forth filing exemptions for certain securities that are rated by an NRSRO in the equivalent of the NAIC 1 through 6 Designation categories... The SVO does not have the responsibility for determining whether specific securities should be filing exempt...”

Note 5(D) NOTES TO FINANCIAL STATEMENTS of the Company’s 2004 Annual Statement inaccurately reported that the Company had no investment in loan-backed securities. A review of *Schedule D – Part 1* indicated that the Company had several loan-backed securities. The Company did not provide any evidence that it was monitoring prepayment assumptions for its loan-backed securities in accordance with the guidance provided *SSAP No. 43, paragraph 10*, of the NAIC Accounting Practices and Procedures Manual, which states:

“Changes in prepayment assumptions and the resulting cash flows shall be reviewed periodically. For securities that have the potential for loss of a portion of the original investment, due to changes in interest rates or prepayments, the review shall be performed at least quarterly. For other securities, the review shall be performed at least annually...”

A security was acquired on March 2, 2004, for \$550,749; the maturity date was March 1, 2012. According to the bank confirmation, the par value of the security was \$500,000; however, *Schedule D – Part 1* reported the par value at \$550,000. The error in reporting the par value will have an immaterial affect on the current year’s amortization. Due to immateriality, no changes were necessary to the financial statement.

The Company did not provide the confirmation advices of the purchases and sales of securities in a timely manner in accordance with Alabama Department of Insurance *Regulation No. 118, Section 6*, which states:

“The insurer shall provide, within ten (10) working days, any record or response requested in writing by any duly appointed deputy, assistant, employee, or examiner of the commissioner...”

During the examination period, the Company obtained the purchase and sale advices from AmSouth Bank, the Company’s custodian, which was not in compliance with ALA CODE § 27-27-29(a) (1975), which states:

“Every domestic insurer shall have, and maintain, its principal place of business and home office in this state and shall keep therein complete records of its assets, transactions and affairs...”

**Note 2 - Common stocks**

**\$4,525,063**

The captioned asset is the same as reported by the Company in its 2004 Annual Statement.

The Company’s *Schedule D - Part 2 - Section 2*, reported investments in five Subsidiary, Controlled and Affiliated (SCA) companies. The rate per share for two of the SCAs was reported to be zero. These companies were: 1) A. G. Gaston Corporation, and 2) S & G Funeral Directors, operating New Grace Hill Cemeteries. [See *Note 9 - Receivable from parent, subsidiaries and affiliates* for additional information.] The Company appropriately submitted SUB-2 form filings for two subsidiaries: 1) A. G. Gaston Construction Company, and 2) B. T. W. Broadcasting Service Incorporation in accordance with the Purposes and Procedures of the Securities Valuation Office of

the NAIC. A statutory examination was in process of the Company's fifth subsidiary, Universal Life Insurance Company (ULICO), which was reported on BTW's December 31, 2004 balance sheet at its statutory equity amount of \$2,453,243. At the date of BTW's Report of Examination, the known examination adjustments to ULICO's surplus totaled \$730,773, which would also reduce BTW's surplus accordingly. No changes were made to the financial statements contained within this report because the extent of the changes to ULICO's surplus was yet to be determined at the date of this Examination Report.

The examination determined that the Company had inappropriately completed column 17, of *Schedule D – Part 2 - Section 2*, when it reported "A" in the column. The Company should report "AP" when rates per share are obtained from the NAIC SVO after submitting SUB 2-form filing, in accordance with PART THREE, Section 4(b) of the Purposes and Procedures of the Securities Valuation Office of the NAIC, which states:

"AP indicates that the value claimed by the reporting insurance company for the SCA investment in its SUB 2 filing was approved by the SVO SCA Companies Group and entered into the status field of the VOS Database screen."

**Note 3 - Mortgage loans on real estate: First liens** **\$2,656,482**

The captioned amount is \$986,459 less than the \$3,642,941 reported by the Company in its 2004 Annual Statement. The difference was comprised of three mortgages as follows:

**Affiliated Mortgage Loan**

At year-end 2004, the Company had an admitted mortgage loan in the amount of \$878,476 to its affiliate, New Grace Hill Cemetery, Inc. This mortgage loan was nonadmitted in its entirety in this Report of Examination due to the mortgage being inadequately secured. ALA. CODE § 27-41-29(1) (1975) states:

"... Unless guaranteed or insured by the administrator of veterans affairs, the secretary of housing and urban development or by a mortgage guaranteed insurance policy issued by an insurance company licensed and authorized to do business by and in the state of Alabama, no such mortgage loan or loans when made shall exceed 75 percent of the fair value of the real estate or leasehold; except, that loans made on single family dwellings shall not exceed 80 percent of the fair value of the property. ..."

This mortgage was secured by Zion Memorial Gardens Cemetery, Tarrant - Huffman Road, Birmingham, Alabama. The most recent appraisal (March 1, 2001) on the

property securing this mortgage loan, reflected an "as is" value of \$61,000 for the approximate eight undeveloped acres. The appraisal noted that proposed improvements on the site consisted of a cemetery containing 4,066 grave sites and 105 mausoleums. Based on information provided by the developer, the projected development cost was approximately \$876,891.

The appraisal contained the additional limiting conditions:

- The survey did not state the total land area of the subject property; therefore, the land area utilized throughout the appraisal was based on the appraiser's calculations from the dimensions shown on the survey and those are subject to revision.
- The appraisal relied significantly on information provided by the developer due to the difficulty of obtaining information from competing cemeteries in the area. Therefore, the appraised value was contingent upon the accuracy of the information provided and that is subject to revision.
- The subject property was zoned R-2 "Single Family Residential District." Any undeveloped land with proposed cemetery use must be approved by the Zoning Board of Adjustments. The appraisal was contingent upon the subject property being approved for development of the proposed cemetery.

Other items noted while reviewing this mortgage loan and supporting documentation:

- There was a 1996 appraisal done on this property which reflected approximately eleven acres of land that reflected an "as is" value of \$61,000.
- The discounted present value of the developed cemetery (not including the undeveloped land) was listed as approximately \$1.2 million. However, that present value was based on a ten year projection, ending in the year 2006 under an assumption that the property would have no additional lots available for sell after ten years.
- The Company reported a market value of \$11,156,210 in its 2004 Annual Statement, Schedule B - Part 1. The examiners did not review any documents that supported this market value.
- The 2001 appraisal listed a market value "as is" of \$61,000. The appraisal stated that "The undeveloped raw land value means an estimate of the market value of the undeveloped land as it exists without hypothetical conditions or assumptions as of the date of appraisal."
- A Cumulative Retail Value **Upon Completion** of the Cemetery as of March 1, 2001 was \$9,950,000. "Cumulative retail value of the cemetery is the total gross retail value of the individual grave sites and mausoleums, **excluding** deductions for development cost, real estate taxes, marketing time, commissions, administrative expenses, entrepreneurial profit, etc. This value is merely a summation of future retail values upon completion of development and does not represent the current "as is" undeveloped land value."
- A Discount Present Value **Upon Completion** of Cemetery as a Whole as of March 1, 2001 was \$1,120,000. The appraisal stated that "The discounted present value of the grave sites and mausoleums considers the net cash flow of the sales over the sell-out period after deductions for marketing time, commissions, administrative expenses,

entrepreneurial profit, etc. This value may be considered the "wholesale" value of the **developed** cemetery. The Discounted Present Value Analysis is used to estimate what the cemetery is worth to a single purchaser, or investor, who would buy the entire property then market and sell the burial sites to individuals over a period of time for a profit."

- The 2001 appraisal on page eight indicated that: "...the assessor's market value does not necessarily reflect current market condition and the condition of the improvements as of the effective date of value of this report."
- It is noted that the 1996 and 2001 appraisals were prepared by different firms (Commercial Valuation Services and Integra Realty Resources, respectively); however, the appraisals were substantially similar with similar resulting values and both appraisals were signed by Lonnie Tidwell and H. Kenneth Holcomb, both MAI appraisers.
- It also appeared that Booker T. Washington Broadcasting Service, Inc. (a subsidiary of the Company) allowed New Grace Hill Cemetery to borrow an additional \$130,000 on December 1, 2000. The examiners do not know the status of this loan as of the examination date. The examiners did not find a disclosure regarding this loan in the 2004 audited financial statements of Booker T. Washington Broadcasting Service, Inc.

A Company official provided the examiners with a listing of property available for sale as of May 5, 2004 (a current listing was not available). In addition, the 2004 and 2005 payment history was provided, which was all that was available due to the Company's computer system crashing. The payment history indicated that the loan, at December 31, 2004, was delinquent back to November 1, 2003. In addition, the payment history indicated that through January 24, 2006, no payments have been received since March 2005.

Also, the 2004 CPA report disclosed on page fourteen that approximately \$58,000 in interest income due at December 31, 2004 was nonadmitted for this mortgage loan as the interest was over 180 days past due. This indicated that the mortgage was a non-performing mortgage. The NAIC Accounting Practices and Procedures Manual SSAP No. 37, paragraph 16 requires that:

"A mortgage loan shall be considered to be impaired when, based on current information and events, it is probable that a reporting entity will be unable to collect all amounts due according to the contractual terms of the mortgage agreement. According to the contractual terms means that both the contractual principal payments and contractual interest payments of the mortgage loan will be collected as scheduled in the mortgage agreement. A reporting entity shall measure impairment based on the fair value (as determined by acceptable appraisal methodologies) of the collateral less estimated costs to obtain and sell. The difference between the net value of the collateral and the recorded investment in the mortgage loan shall be recognized as an impairment by creating a valuation allowance with a corresponding charge to unrealized loss or by adjusting an existing valuation allowance for the impaired loan with a corresponding charge or credit to unrealized gain or loss. Subsequent to the initial measurement of impairment, if there is a significant change (increase or decrease) in the net value of the collateral, the reporting entity shall adjust the

valuation allowance; however, the net carrying amount of the loan shall at no time exceed the recorded investment in the loan.”

## Nonaffiliated Mortgage Loans

According to ALA. CODE § 27-41-29(1) (1975),

“...Unless guaranteed or insured by the administrator of veterans affairs, the secretary of housing and urban development or by a mortgage guaranteed insurance policy issued by an insurance company licensed and authorized to do business by and in the state of Alabama, no such mortgage loan or loans when made shall exceed 75 percent of the fair value of the real estate or leasehold; except, that loans made on single family dwellings shall not exceed 80 percent of the fair value of the property...”

At December 31, 2004, there were two mortgage loans that were issued at amounts that exceeded the appraisal values. The commercial loan should not have exceeded 75% of the appraised value of \$283,500, which was \$212,625. The residential loan should not have exceeded 80% of the appraised value of \$45,000, which was \$36,000. The Company issued these loans in the amount of \$299,597 and \$63,150, respectively. The carrying values of these mortgage loans were \$293,700 and \$62,908, respectively, at December 31, 2004, and were reduced by the maximum loan amounts as noted above. The difference was \$107,983, which was nonadmitted by the examiners.

The examiners determined that the Company had not completed its 2004 Schedule B-Part 1, Columns 11 and 12 in accordance with the NAIC Annual Statement Instructions. The Company did not record the value of the four properties in Column 11 and the date of appraisal on one property in Column 12.

<b><u>Note 4- Real estate: Properties occupied by the company</u></b>	<b><u>\$1,415,198</u></b>
<b><u>Properties held for the production of income</u></b>	<b><u>132,389</u></b>
<b><u>Properties held for sale</u></b>	<b><u>96,870</u></b>

The captioned amounts are the same, \$18,248 less than the \$150,638, and \$370,465 less than the \$467,335, respectively, reported by the Company in its 2004 Annual Statement.

### Properties held for the production of income

The following discrepancies were noted for Properties held for the production of income with \$18,248 being nonadmitted:

Property*	Book Value*	Fair Value&@	Difference	Year Property Acquired *	Statute Non-compliance (see statute cited below)
R Kennedy ** +	3,248	#	~\$ 3,248	1989	ALA. CODE § 27-27-29 (1975), ALA. CODE § 27-37-7(1975), ALA. CODE § 27-41-4 (1975), ALA. CODE § 27-41-34(b)(2) (c)(1975)
C Vines+	7,448	#	~7,448	1994	ALA. CODE § 27-37-7(1975), ALA. CODE § 27-41-4 (1975), ALA. CODE § 27-41- 34(b)(2)(c)(1975)
Barry Ross **	13,552	6,000	~7,552		ALA. CODE § 27-37-7(1975) and ALA. CODE § 27-27-29 (1975)
Dobbins Property	121,674	121,674	-0-	2004	NAIC <u>Annual Statement Instructions.</u>
Total			\$18,248		

\* = Per Schedule A- Part 1

# = An appraisal was not provided for this property; therefore, the fair value could not be determined for this property.

& = Fair value is reflected if the Company was not in compliance with ALA. CODE § 27-37-7(1975) with the difference being nonadmitted.

@ = Per the appraisal provided by the Company.

\*\* = Company did not provide sufficient evidence to show hazard insurance was in force at December 31, 2004, which was not in accordance with ALA. CODE § 27-27-29 (1975).

+ = This property produced no income; therefore, it was not in compliance with ALA. CODE § 27-41-4 (1975) and was nonadmitted.

~ = This amount was nonadmitted. The total nonadmitted for Properties Held for the Production of Income was \$18,248.

ALA. CODE § 27-27-29(a) (1975), which states:

“Every domestic insurer shall have, and maintain, its principal place of business and home office in this state and shall keep therein complete records of its assets, transactions and affairs in accordance with such methods and systems as are customary or suitable as to the kind, or kinds, of insurance transacted.”

ALA. CODE § 27-37-7(1975), which states:

"a. Real property acquired pursuant to a mortgage loan or contract for sale, in the absence of a recent appraisal, in the absence of a recent appraisal deemed by the commissioner to be reliable, shall not be valued at an amount greater than the unpaid principal of the defaulted loan or contract at the date of such acquisition, together with any taxes and expenses paid or incurred in connection with such acquisition, and the cost of improvements thereafter made by the insurer and any amounts thereafter paid by the insurer on assessments levied for improvements in connection with the property.

b. (b) Other real property held by an insurer shall not be valued at an amount in excess of

fair value as determined by recent appraisal. If valuation is based on an appraisal more than three years old, the commissioner may at his discretion call for and require a new appraisal in order to determine fair value.”

ALA. CODE § 27-41-4 (1975), which states:

“No investment . . . shall be an eligible investment unless it is interest-bearing or interest accruing or dividend or income-paying, is not then in default, and the insurer is entitled to receive for its account and benefit the interest or income accruing thereon.”

ALA. CODE § 27-41-34(b)(2)(c)(1975), states that unless granted an extension period by the Commissioner:

“...an insurer may not carry as an admitted asset real estate acquired under this subsection following 10 years from the date of acquisition.”

For the Barry Ross Property, the Company did not comply with ALA. CODE § 27-37-7(1975), as cited above, nor did it comply with *SSAP 40, paragraph 9* of the NAIC Accounting Practices and Procedures Manual, which states

“...If the fair value of the asset is less than the carrying value, the asset shall be written down to the fair value thereby establishing a new cost basis...”

The \$7,552 difference between the book value and fair value was nonadmitted.

For the two properties without an appraisal, the Company was not in compliance with the guidance provided by *SSAP No. 40, paragraph 12*, of the NAIC Accounting Practices and Procedures Manual, which states:

“For all properties held for the production of income, the reporting entity must maintain an appraisal that is no more than five years old as of the reporting date...”

Per a review of the Company’s Dobbins Property file, this property was comprised of six properties, which were not individually listed in the Company’s 2004 Schedule A-Part 1. This combining of properties onto one line in Schedule A-Part 1 was not in compliance with the NAIC Annual Statement Instructions, which states “...The purpose of this schedule is to report individually each property owned, classified into categories that separately identify the properties occupied by the reporting entity, properties held for the production of income, and properties held for sale...”

The Company did not provide sufficient evidence that the Company had hazard insurance in effect at December 31, 2004, for its Barry Ross Property and R Kennedy Property.

## Properties held for sale

The following discrepancies were noted for Properties held for sale with \$370,465 being nonadmitted:

Property*	Book Value*	Fair Value&@	Difference	Nonadmitted Amount	Statute Non-compliance (see statute cited below)
North Bham Property+	15,000	#	15,000	~\$ 15,000	ALA. CODE § 27-37-7 (1975) and ALA. CODE § 27-41-4 (1975)
Wilson Avenue Property+	6,840		6,840	~6,840	ALA. CODE § 27-41-4 (1975)
Cemetery Lot ^+	3,959	#	3,959	~3,959	ALA. CODE § 27-27-29 (1975) and ALA. CODE § 27-41-4 (1975)
Lot 26 SO Millville ^+	650	#	650	~650	ALA. CODE § 27-27-29 (1975) and ALA. CODE § 27-41-4 (1975)
Lot Warren Street+	100	#	100	~100	ALA. CODE § 27-41-4 (1975)
Dancer Property+	12,308	6,500	5,808	~12,308	ALA. CODE § 27-37-7(1975) and ALA. CODE § 27-41-4 (1975)
30 E Main	30,373	25,200	5,173	~5,173	ALA. CODE § 27-37-7(1975)
Rachelle Road & Hill Crest **	66,690	#	66,690	~66,690	ALA. CODE § 27-37-7 (1975) and ALA. CODE § 27-27-29 (1975)
Land from Vulcan Realty+	259,745		259,745	~259,745	ALA. CODE § 27-41-4 (1975)
Total				\$370,465	

\* = per Schedule A- Part 1

# = An appraisal was not provided for this property; therefore, the fair value could not be determined for this property.

& = Fair value is reflected if the Company was not in compliance with ALA. CODE § 27-37-7(1975).

@ = Amount was per the appraisal provided by the Company.

\*\* = Company did not provide sufficient evidence to show hazard insurance was in force at December 31, 2004, which was not in accordance with ALA. CODE § 27-27-29 (1975).

^ = A property tax payment for this property for 2004 was not evident, which was not in accordance with ALA. CODE § 27-27-29 (1975).

+ = This property produced no income; therefore, it was not in compliance with ALA. CODE § 27-41-4 (1975) and was nonadmitted.

~ = Amount nonadmitted for this property. The total nonadmitted for these properties was \$370,465.

ALA. CODE § 27-27-29 (1975), which states:

“Every domestic insurer...shall keep therein complete records of its assets, transactions and affairs...”

ALA. CODE § 27-37-7(1975), which states:

"a. Real property acquired pursuant to a mortgage loan or contract for sale, in the absence of a recent appraisal, in the absence of a recent appraisal deemed by the commissioner to be reliable, shall not be valued at an amount greater than the unpaid principal of the defaulted loan or contract at the date of such acquisition, together with any taxes and expenses paid or incurred in connection with such acquisition, and the cost of improvements thereafter made by the insurer and any amounts thereafter paid by the insurer on assessments levied for improvements in connection with the property.

b. (b) Other real property held by an insurer shall not be valued at an amount in excess of fair value as determined by recent appraisal. If valuation is based on an appraisal more than three years old, the commissioner may at his discretion call for and require a new appraisal in order to determine fair value.”

ALA. CODE § 27-41-4 (1975), which states:

“No investment ... shall be an eligible investment unless it is interest-bearing or interest accruing or dividend or income-paying, is not then in default, and the insurer is entitled to receive for its account and benefit the interest or income accruing thereon.”

Appraisals were not provided for five properties with carrying values totaling \$86,399. Therefore, the fair value could not be determined for these properties. The Company was not in compliance with the guidance provide by *SSAP 40, paragraph 12* of the NAIC Accounting Practices and Procedures Manual, which states

“...For all properties held for sale, an appraisal shall be maintained that is no more than five years old as of the reporting date...”

For the two properties with fair values less than book values, the Company did not comply with ALA. CODE § 27-37-7(1975), as cited above, nor did it comply with *SSAP 40, paragraph 9*, of the NAIC Accounting Practices and Procedures Manual, which states

“... If the fair value of the asset is less than the carrying value, the asset shall be written down to the fair value thereby establishing a new cost basis...”

## Schedule A- Part 1 Discrepancies

Column 9 and Column 10 of the Company's Schedule A- Part 1 was not completed in accordance with the NAIC Annual Statement Instructions. The Company did not reflect appropriate fair values in column 10. This affected the carrying values in column 9. For seven properties, appraisals were not provided. For three properties, the appraisals provided did not correspond to the fair values reported in column 10.

### Note 5 - Cash and short-term investments

**\$ 659,817**

The captioned amount is \$1,529,118 less than the \$2,188,935 reported by the Company in its 2004 Annual Statement, and consisted of reclassifying long-term certificates of deposit to bonds.

A review of the accounts and records indicated that twelve certificate of deposits with maturity dates in excess of one year were reported on *Schedule E - Part 1 - Cash*. The total of the long-term certificate of deposits were \$1,529,118. By reporting the long-term certificates of deposit on *Schedule E - Part 1 - Cash*, the Company has not complied with the guidance provided by *SSAP No 2, paragraph 3* of the NAIC Accounting Practices and Procedures Manual:

"Also classified as cash for financial statement purposes, although not falling within the above definition of cash, are savings accounts and certificates of deposit in banks or other similar financial institutions with maturity dates within one year or less from the acquisition date..."

Certificates of deposit with maturity dates in excess of one year are reported as bonds in accordance with *SSAP No 26, paragraph 2*, of the NAIC Accounting Practices and Procedures Manual, which states,

"Bonds shall be defined as any securities representing a creditor relationship, whereby there is a fixed schedule for one or more future payments. This definition includes U.S. Treasury securities, U.S. government agency securities, municipal securities, corporate bonds, bank participations, convertible debt, certificates of deposit and commercial paper that have a fixed schedule of payments and a maturity date in excess of one year from the date of acquisition..."

The Company should report the long term certificate of deposits in the amount of \$1,529,118 in *Schedule D - Part 1* in accordance with the aforementioned SSAP and NAIC Annual Statement Instructions.

The Company had a repurchase agreement with AmSouth Bank. The amount on deposit was \$776,000, which was reported in *Schedule E - Part 1 - Cash* at December 31, 2004. Company management did not maintain the confirmation advice from

AmSouth Bank of the collateralized transferred security as required by ALA CODE § 27-27-29(a)(1975), which states:

“Every domestic insurer shall have, and maintain, its principal place of business and home office in this state and shall keep therein complete records of its assets, transactions and affairs...”

The Company made no provisions with AmSouth Bank to obtain collateral with a fair value of at least 102 percent of the purchase price paid by the Company for the securities. Hence, the examiner established that the Company was not in compliance with *SSAP No. 45, paragraph 8(a)* of the NAIC Accounting Practices and Procedures Manual, which states:

“The reporting entity shall receive as collateral transferred securities having a fair value at least equal to 102 percent of the purchase price paid by the reporting entity for the securities. If at any time the fair value of the collateral is less than 100 percent of the purchase price paid by the reporting entity, the counterparty shall be obliged to provide additional collateral, the fair value of which, together with fair value of all collateral then held in connection with the transaction, at least equals 102 percent of the purchase price.”

The Company reported the investment acquired under repurchase agreement in *Schedule E – Part 1 – Cash*, which was not in compliance with *SSAP No. 45, paragraph 13* of the NAIC Accounting Practices and Procedures Manual, in pertinent part:

“For the purchaser in dollar repurchase agreement, an asset is recorded for the amount of the purchase. Since the term of the agreement is limited to twelve months, it is accounted for as a short-term investment.”

In addition, *SSAP No. 2, paragraph 10*, states:

“All investments with remaining maturities (or repurchase dates under repurchase agreement) of one year or less at the time of acquisition... shall be considered short-term investments. Short-term investments include, but are not limited to, bonds, commercial paper, money market instruments, repurchase agreements...”

A review of the Company's bank reconciliation statement indicated that the Company reported \$12,303 and \$12,121 amounts from Assurant and Citizen Federal Savings, respectively, as deposits in transit as of December 31, 2004. The review of the bank statement indicated that these amounts were credited to the Company's checking account on January 20, 2005 and February 22, 2005. The Company by recording receivables as deposits in transit was in conflict with *SSAP No. 2, paragraph 2*, of the NAIC Accounting Practices and Procedures Manual, which states:

"Cash constitutes a medium of exchange that a bank or other similar financial institution will

accept for deposits and allow an immediate credit to the depositor's account."

The examiner determined that the Company had not fully complied with the NAIC Annual Statement Instructions on the completion of Schedule E - Part 1 - Cash. The Company did not report separately all depositories with balances less than -\$100,000 or more than \$100,000. Those depositories were AmSouth Bank and Compass Bank.

The examiner established that the Company did not disclose the repurchase agreement in Note 5(E) of the NOTES TO FINANCIAL STATEMENT of the 2004 Annual Statement, which was in conflict with the guidance provided by *SSAP 45, paragraph 18(b)* of the NAIC Accounting Practices and Procedures Manual, which states:

"A description of the securities underlying the agreements, including book values and fair values, maturities, and weighted average interest rates for the following categories: (i) securities subject to reverse repurchase agreements; (ii) securities subject to repurchase agreements; (iii) securities subject to dollar repurchase agreements; and (iv) securities subject to dollar reverse agreements; and..."

The Company did not provide the bank reconciliation statements and the repurchase agreement in a timely manner, as required by Alabama Department of Insurance *Regulation No. 118, Section 6*, which states:

"The insurer shall provide, within ten (10) working days, any record or response requested in writing by any duly appointed deputy, assistant, employee, or examiner of the commissioner..."

**Note 6 - Contract loans**

**\$3,003,865**

The captioned amount is the same as reported by the Company in its 2004 Annual Statement.

The contract loans policy-by-policy listing provided by the Company in EDP format was reviewed by utilizing Audit Command Language (ACL). The total of the EDP file was traced to the Company's workpaper and reconciled to the 2004 Annual Statement.

The Company did not provide the workpapers, including the reconciliation of the contract loans EDP file in a timely manner as required by Alabama Department of insurance *Regulation No. 118, Section 6*, which states:

"The insurer shall provide, within ten (10) working days, any record or response requested in writing by any duly appointed deputy, assistant, employee, or examiner of the

commissioner...”

The examiner established that the EDP policy-by-policy listing did not include the CSV; hence the examination could not verify those policies with loan balances, which were in excess of the CSV. On November 16, 2005, the examiner requested the Company to include the CSV field in the EDP file. The information was received on January 23, 2006, which was not in compliance with the aforementioned *Regulation No. 118, Section 6*. Hence, the examiner could not verify Company’s compliance with *SSAP No. 49, paragraph 5*, of the NAIC Accounting Practices and Procedures Manual, which states:

“Cash surrender value shall be defined as the cash value of the basic policy plus cash value of any policy accumulations such as paid-up additions. The excess of the unpaid balance of the loan over the cash surrender value shall be evaluated for collectibility... amounts in excess of the cash surrender value shall be considered nonadmitted assets.”

ALA CODE § 27-41-25 (1975), states:

“A life insurer may lend to its policyholder upon the security of the policy any sum not exceeding the cash surrender value of the policy or may lend against pledge or assignment of any of its supplementary contracts...”

Because of the delay in providing the information, the examiner could not verify the accuracy of the reported amount. The examiner also did not perform procedures to determine if the policy contracts had the policy loan provisions activated by the policyholders. **The reasons noted above contributed to the qualification of this examination report.**

**Note 7 - Uncollected premiums and agents’  
balance in course of collection**

**\$1,465,127**

The captioned amount is \$331,978 less than the \$1,797,105 amount reported by the Company in its 2004 Annual Statement, and was composed of the entire net due premiums of \$331,978.

The examiner noted that the Company did not maintain complete records of its due and deferred premium transactions, including an accurate aging report of due premiums over 90 days past due. This was not in compliance with ALA CODE § 27-27-29(a) (1975), which states:

“Every domestic insurer shall have, and maintain, its principal place of business and home office in this state and shall keep therein complete records of its assets, transactions and

affairs...”

The examiner provided the Company with the listings of gross due premiums in the amount of \$382,301 over 90 days past due. Company management indicated that due to some data processing problems, the 183 policies from one of the listings were not in-force and death claims were processed. Due to the data integrity issues noted, the examiner has non-admitted the entire net due premiums of \$331,978, in accordance with the guidance provided by *SSAP No. 51, paragraph 12*, of the NAIC Accounting Practices and Procedures Manual, which states:

“Gross premiums that are due and unpaid as of the reporting date, net of loading, shall be classified as uncollected premiums. Uncollected premium balances which are less than 90 days past due meet the definition of asset, as defined in *SSAP No. 4 – Assets and Nonadmitted Assets*, and are admitted assets to the extent they conform to the requirements of this statement.”

The examiners noted that 1.) If the premiums are indeed over ninety days old, the policies should have been lapsed by the Company, 2.) The Company should also have taken down the reserve for these policies and established a reserve for the applicable non-forfeiture options, 3.) It is anticipated that there would not be a material difference between the reserve carried on an active policy and the reserve carried for the non-forfeiture option.

The examiners had established that the due and deferred premium listing had data integrity issues, which was compounded by the fact that twenty application files out of a sample of seventy-six were missing and were not available for the examiners review. **The reasons noted above contributed to the qualification of this examination report.**

The Company did not provide the reconciliation of the due and deferred premiums in a timely manner in accordance with Alabama Department of Insurance *Regulation No. 118, Section 6*, which states:

“The insurer shall provide, within ten (10) working days, any record or response requested in writing by any duly appointed deputy, assistant, employee, or examiner of the commissioner...”

The examiner requested application files for a sample of seventy-six items selected from the deferred premiums listing [eleven items were from Golden Circle Insurance Company, which was merged with the Company]. The Company could not locate twenty application files, which included all the files from Golden Circle. Hence the Company was not in compliance with ALA CODE § 27-27-29(a)(1975), which states:

"Every domestic insurer shall have, and maintain, its principal place of business and home office in this state and shall keep therein complete records of its assets, transactions and affairs in accordance with such methods and systems as are customary or suitable as to the kind, or kinds, of insurance transacted."

**Note 8 - Net Deferred tax assets**

**\$200,327**

The captioned amount is the same as reported by the Company in its 2004 Annual Statement.

The Company provided the workpapers on Net deferred tax assets; however, no work was performed on this line because the account balance per examination on significant line items namely *Aggregate reserve for life contract, and Premiums and annuity considerations received in advance* were not available to calculate the net deferred tax assets.

**Note 9 - Receivable from parent, subsidiaries and affiliates**

**\$ - 0 -**

The captioned amount is \$321,416 less than the \$321,416 reported by the Company in its 2004 Annual Statement. The Company had the following receivables from its subsidiaries:

		<b>Amount</b>
1.	BTW Broadcasting Services, Inc.	\$ 260,117
2.	New Grace Hill Cemetery	<u>61,299</u>
	<b>TOTAL</b>	<b><u>\$ 321,416</u></b>

**BTW Broadcasting Services Inc (BTWB).**

A review of the Company's accounts and records indicated that insurance and other miscellaneous expense payments are shared and apportioned to the entities within the affiliated group as if the expense had been paid solely by the incurring entity. During the years 2002 – 2004, expense payments in the amount of \$8,477 were made by the Company on behalf of BTWB, which was never paid back to the Company. It was also established that during the same period BTWB collected rent that belonged to the Company in the amount of \$251,640, which was not remitted to the Company.

Company records indicated that the \$260,117 was not collected by the Company as of January 31, 2006. Hence, the examiner has considered the receivable to be impaired in accordance with the guidance provided by *SSAP No. 5, paragraphs 6 -7*, of the

NAIC Accounting Practices and Procedures Manual, which states:

“A loss contingency or impairment of an asset is defined as an existing condition, situation, or set of circumstances involving uncertainty as to possible loss to an enterprise that will ultimately be resolved when one or more future event(s) occur or fail to occur (e.g., collection of receivables)...”

**New Grace Hill Cemeteries:**

Company records indicated that the \$61,299 amount was not collected by the Company as of January 31, 2006. In addition New Grace Hill was delinquent on a mortgage loan owed to the Company. Hence, the examiner has considered the receivable to be impaired in accordance with the guidance provided by *SSAP No. 5, paragraphs 6 -7*, of the NAIC Accounting Practices and Procedures Manual, which states:

“A loss contingency or impairment of an asset is defined as an existing condition, situation, or set of circumstances involving uncertainty as to possible loss to an enterprise that will ultimately be resolved when one or more future event(s) occur or fail to occur (e.g., collection of receivables)...”

The Company did not provide the workpapers on related party transactions in a timely manner in accordance with Alabama Department of Insurance *Regulation No. 118, Section 6*, which states:

“The insurer shall provide, within ten (10) working days, any record or response requested in writing by any duly appointed deputy, assistant, employee, or examiner of the commissioner...”

**Note 10 – Aggregate write-ins for other than invested assets      \$646,383**

The captioned amount is \$562,588 more than the \$119,795 amount reported by the Company in its 2004 Annual Statement. The amount was reclassified from *General expenses due and accrued*. [See *Note 16 – General expenses due and accrued* caption under NOTES TO FINANCIAL STATEMENTS.] The amount is admitted for the purpose of this examination, because Company management provided documentation showing that the amount was collected subsequent to the examination date.

The review of accounts and records indicated that the Company was due a reimbursement in the amount of \$526,588 from a Lloyd's Syndicate on a self funded employee health care plan. According to the insurance contract with a Lloyd's

Syndicate, the plan calls for the insurer to pay medical expenses incurred by the Company in excess of a pre-determined aggregate amount. The Company had reported the recoverable in *General expenses due or accrued* instead of *Aggregate write-ins for other than invested assets* in accordance with the NAIC Annual Statement Instructions, which states:

“other Receivables – Report any other reimbursement to the company.”

The aforementioned asset is not specifically identified as an admitted asset within the NAIC Accounting Practices and Procedures Manual. Hence, the recoverable mentioned above should be reported as nonadmitted asset for all future statutory reporting in accordance with the guidance provided by *SSAP No. 4, paragraph 3*, of the NAIC Accounting Practices and Procedures Manual, which state:

“b. Not specifically identified as an admitted asset within the Accounting Practices and Procedures Manual.

If an asset meets one of these criteria, the assets shall be reported as a nonadmitted asset and charged against the surplus...”

**Note 11 - Aggregate reserves for life contracts**

**\$53,491,606**

The captioned liability is \$2,671,210 more than the \$50,819,847 amount reported by the Company in its 2004 Annual Statement. The difference consisted of six items, which are discussed in detail below. The following schedule reflects the details of the examination changes and additional issues noted:

	<u>DESCRIPTION</u>	<u>AMOUNT</u>
1.	Golden Circle Premium Paying Policies	\$ 673,684
2.	Golden Circle Extended Term Policies	(329,147)
3.	Reserves for Life Policies with Built In Benefits	46,533
4.	Substandard Reserves	11,706
5.	Unearned premium reserves (mid-terminal reserve)	136,681
6.	Reserves on AOA plan	2,121,302
7.	Reinsurance reserve credit	10,451
8.	Merchandise Policies Subject to Class Action Settlement	-0-
9.	Asset Adequacy Analysis	-0-
	<b>TOTAL</b>	<b>\$ <u>2,671,210</u></b>

### **(1) Golden Circle Premium Paying Policies**

During the review of the reserve sample for the Golden Circle premium paying policies, the actuarial examiner for the Alabama Department of Insurance was unable to verify the Company's recorded reserve for those policies. In each instance, the recorded reserve was incorrect. The Company elected to re-calculate the reserves. The Company did not provide the examiners with the proper documentation to allow the examiners to verify the accuracy of the re-calculated reserves. The re-calculation of the reserves by the Company indicated an increase to the recorded reserves of \$673,684.

### **(2) Golden Circle Extended Term Policies**

During the review of the reserve sample for the Golden Circle extended term policies, the actuarial examiner for the Alabama Department of Insurance was unable to verify the Company's recorded reserves for those policies. In each instance, the recorded reserve was incorrect. The Company elected to re-calculate the reserves. The Company did not provide the examiners with the proper documentation to allow the examiners to verify the accuracy of the re-calculated reserves. The Company's re-calculation of the reserves indicated a decrease to the recorded reserves of (\$329,147). However, the re-calculation was based upon a revised number of policies inforce of 2,453, whereas the recorded reserve was based upon the number of policies inforce of 5,764. The Company did not provide information as to why the number of policies inforce on extended term had such a significant decrease.

### **(3) Reserves for Built In Benefits in Life Insurance Policies**

During the review of the reserve sample for the industrial life insurance policies of the Company, the actuarial examiner for the Alabama Department of Insurance was unable to determine that the Company had recorded reserves for certain benefits built into the life insurance policies, such as accidental death and waiver of premium. The Company elected to calculate reserves for those benefits and furnished the actuarial examiner with a total reserve of \$46,533.

### **(4) Substandard Reserves**

The actuarial examiner for the Alabama Department of Insurance determined that no substandard reserves had been recorded. The Company elected to calculate these reserves and furnished the actuarial examiner with a total substandard reserve of \$11,706.

## **(5) Unearned premium reserves (mid-terminal reserve)**

The Company did not record an unearned premium reserve for those policies that utilize the mid-terminal reserve basis for those premiums paid past the valuation date but prior to the anniversary date, which was in conflict with *SSAP No. 51, paragraph 24*, of the NAIC Accounting Practices and Procedures Manual, which states:

“Under the mid-terminal method, the policy reserves are calculated as the average of the terminal reserves on the previous and the next policy anniversaries. These reserves shall be accompanied by an unearned premium reserve consisting of the portion of valuation premiums paid or due covering the period from the valuation date to the next policy anniversary date.”

The Company did not provide the unearned premium reserves as requested on December 2, 2005 in a timely manner so that a sample could have been pulled and reviewed. This was in conflict with Alabama Department of Insurance *Regulation No. 118, Section 6*, which states:

“The insurer shall provide, within ten (10) working days, any record or response requested in writing by any duly appointed deputy, assistant, employee, or examiner of the commissioner...”

The Company elected to calculate reserves for unearned premiums and furnished the actuarial examiner with a total reserve of \$136,681.

## **(6) Reserves on Plan A0A**

The reserve on Plan A0A was \$2,121,302 more than the \$241,992 calculated and recorded by the Company as \$241,992. The examination actuary determined that the reserves for that plan code should be approximately \$2,363,294 at December 31, 2004.

## **(7) Reinsurance reserve credit**

The Company incorrectly included December 31, 2003 reinsurance reserve credits totaling \$10,451 at December 31, 2004. This overstatement in reserve credits caused an understatement in the Company's December 31, 2004 Aggregate reserves for life contracts.

## **(8) Merchandise Policies Subject to Class Action Settlement**

During the last examination, an adjustment was made to the merchandise policies. Because of a class action settlement, the Company was required to pay the retail value

rather than the face value for death claims on those policies subject to the class action settlement. This meant that the reserves should have been based upon a greater amount of insurance. The Company elected to request retroactive permission to revalue the reserves under ALA. CODE § 27-17-16(1975). The Commissioner of Insurance granted the Company permission to do so on December 31, 2005, and the Company revised the reserve calculation to a new interest rate and used the retail value as the amount of insurance to calculate the reserves for year ending 2004. The aforementioned statute requires that the new reserves be no less than the old reserves. There may be an adjustment to the reserves because of the recalculation of the reserves. The actuarial examiner had requested, on January 25, 2006, a clarification of the recalculated reserves from the consulting actuary, but as of January 27, 2006, the consulting actuary had not responded.

### **(9) Asset Adequacy Analysis**

The asset adequacy analysis performed by the consulting actuary of the Company was performed prior to a significant adjustment to surplus in an amended Annual Statement filed for year ending 2004. The surplus decreased from \$2,228,785 to (\$369,535). In addition, the reserve adjustments cited above would also affect the asset adequacy analysis. In addition, it appears that the asset adequacy analysis was based upon assumptions that are not representative of and do not approximate the actual mortality, lapses and investment yield of the Company over the last several years as required by the actuarial opinion and memorandum regulation. The actuarial examiner had requested, on January 18, 2006, that the consulting actuary of the Company provide a revised asset adequacy analysis that would address these issues. Because of these outstanding issues, the actuarial examiner is unable to quantify the amount of the adjustment that the revision in the asset adequacy analysis would produce. As of January 27, 2006, the Alabama Department of Insurance had not been furnished a revised asset adequacy analysis that would address these issues. These issues may cause a substantial and significant policy reserve deficiency.

The following information was not received:

- Workpapers and supporting details for Miscellaneous Reserves reported on *Exhibit 5 - Aggregate Reserve for Life Contract* in the amount of \$85,000. The actuarial examiner recalculated this reserve and determined that \$85,000 was adequate.
- For a sample of seventy-six premium payments, the Company was unable to provide ten policy applications.

- For a sample of seventy-six applications, the Company was unable to provide an explanation why thirteen policies were not on the in force valuation record at December 31, 2004.

ALA CODE § 27-27-29(a) (1975) states:

"Every domestic insurer shall have, and maintain, its principal place of business and home office in this state and shall keep therein complete records of its assets, transactions and affairs in accordance with such methods and systems as are customary or suitable as to the kind, or kinds, of insurance transacted."

This contributed to the qualification of this examination report.

The Company's independent CPAs relied upon the Company's consulting and opining actuary's reserve calculations instead of hiring an actuarial firm or qualified actuary to test the Company's reserves. According to the NAIC Annual Statement Instructions, the insurer shall require the independent certified public accountant to subject the information included in the Supplemental Schedule of Assets and Liabilities to the auditing procedures applied in the audit of the current statutory financial statements to determine whether such information is fairly stated in all material respects in relation to the basic statutory financial statements as a whole and agrees to the insurer's annual statement files with the state insurance departments and the NAIC.

**Note 12 - Aggregate reserve for accident and health contracts**

**\$11,167**

The captioned amount is the same as reported by the Company in its 2004 Annual Statement.

The Company did not record an active life reserve on the inforce Gold Shield accident and health insurance policies at December 31, 2004. The NAIC Accounting Practices and Procedures Manual SSAP No. 54 Paragraph 13 requires active life reserves regardless of whether the Company has the right to increase premiums or decline renewal of the policies. Therefore, the Company's consulting/opining actuary was requested to calculate active life reserves on those inforce policies. There should have been an adjustment for \$3,095 for these active life reserves; however, no adjustments were made to the financial statements contained within this report.

The Company did not complete the *Exhibit of Number of Policies, Contracts, Certificates, Income Payable and Account Values In Force For Accident & Health* in its entirety for the

examination period, which was not in accordance with the NAIC Annual Statement Instructions.

For a sample of thirty-two accident and health policies, the Company was unable to provide seventeen policy applications. According to a Company official, these applications could not be located at this time. ALA. CODE § 27-27-29 (1975), states:

"Every domestic insurer...shall keep therein complete records of its assets, transactions and affairs..."

This contributed to the qualification of this examination report.

The Company incorrectly reported a decrease in its aggregate reserves for accident and health contracts by \$1.1 million from 2002 to 2003 in its Analysis of Operations by Line of Business. According to a Company official, when the Company merged the Golden Circle data, the line of business allocation was corrupted. The NAIC Annual Statement Instructions states:

"It is the responsibility of each reporting entity to use only such methods that will produce a suitable and equitable distribution of receipts and expenses by lines of business."

This error did not affect the Company's 2003 balance sheet.

**Note 13 - Contract claims: Life**

**\$860,141**

The captioned amount is \$47,169 more than the \$812,972 reported by the Company in its 2004 Annual Statement.

During a review of 2005 paid industrial and ordinary life claims, it was determined that the Company paid \$69,669 for life claims received prior to 2005 and paid in 2005. The Company reported \$22,500 for industrial and ordinary life claims at December 31, 2004, which was understated by \$47,169. The \$69,669 should have been either reported as Claims Due and Unpaid or In Course of Settlement at December 31, 2004. According to the NAIC Accounting Practices and Procedures Manual- SSAP No. 55 paragraph 4, "Liabilities shall be established for any unpaid claims and unpaid losses..." Guidelines for classifying these liabilities are found in the NAIC Accounting Practices and Procedures Manual - SSAP No. 55 paragraph 6.b. I. - iv., which contains "Claim Liabilities for Life/Accident and Health Contracts: I. Due and Unpaid Claims...iv. Incurred But Not Reported Claims..." The Company was not given credit for the policy reserves set up in the December 31, 2004 Aggregate reserve for life

contracts liability for these policies; however, the Company's IBNR was not reviewed to determine if adequate.

For a sample of thirty-two claims, the Company did not provide documentation detailing whether or not one of its voided checks was reissued. This information was requested on January 9, 2006. Alabama Department of Insurance *Regulation No. 118, Section 6*, states:

"The insurer shall provide, within ten (10) working days, any record or response requested in writing by any duly appointed deputy, assistant, employee or examiner of the commissioner..."

**This contributed to the qualification of this report.**

**Note 14 - Contract claims- Accident and health **\$5,818****

The captioned amount is the same as reported by the Company in its 2004 Annual Statement.

During a review of a sample of thirty-two claims paid in January 2005 through May 2005, there were ten claims totaling \$3,094 that were incurred and received in 2004. The Company did not establish an amount for claims due and unpaid or in course of settlement at December 31, 2004 in accordance with the NAIC Annual Statement Instructions and the NAIC Accounting Practices and Procedures Manual- SSAP No. 55, paragraph 6. According to NAIC Accounting Practices and Procedures Manual- SSAP No. 55, paragraph 6,

"The following future costs relating to life and accident and health indemnity contracts... shall be considered in determining the liability for unpaid claims and claim adjustment expenses: ... b. i. Due and Unpaid Claims: Claims for which payments are due as of the statement date;... iii. Other Claims in the Course of Settlement: Liability for claims that have been reported but the reporting entity has not received all of the required information or processing has not otherwise been completed as of the statement date..."

Also, the Company was unable to provide supporting documentation for one of its accident and health claims totaling \$200, which was not in accordance with ALA. CODE §27-27-29 (1975), in pertinent part:

"Every domestic insurer shall have, and maintain, its principal place of business and home office in this state and shall keep therein complete records of its assets, transactions and affairs..."

The total accident and health claims paid for January 2005 through May 2005 was \$18,945, which was not deemed material; therefore, no changes were made to the Company's 2004 financials.

As of January 24, 2006, the examination of this liability was not completed.

**Note 15 - Premiums and annuity considerations for life and  
accident and health contracts received in advance** **\$131,596**

The captioned amount is the same as reported by the Company in its 2004 Annual Statement.

The due and deferred premiums EDP file provided by the Company to verify the due and deferred premiums included the advance premiums column. [See *Note 7 – Uncollected premiums and agents' balance in course of collection.*]

The examiners determined the Company reported premiums received on all policies instead of only those policies whose effective date was after the examination date, which was in conflict with *SSAP No. 53, paragraph 13*, of the NAIC Accounting Practices and Procedures Manual, which states:

“Advance premiums result when the policies have been processed, and the premium has been paid prior to the effective date. These advance premiums are reported as a liability in the statutory financial statement and not considered income until due.”

The examiner selected a sample of forty-five policies from the 2004 premium payment remittance and recalculated the advance premiums. The examiner found that two policies, had advance premiums that the Company did not report. Therefore, the Company was not in compliance with *SSAP No. 51, paragraph 25*, of the NAIC Accounting Practices and Procedures Manual, which states:

"Advance premiums are those premiums that have been received by the reporting entity prior to the valuation date but which are due on or after the next policy anniversary date."

On December 22, 2005, Company management was provided with the examination finding; as of January, 24, 2006, no response was received from the Company. The examiners did not receive the advance premium annual statement workpapers in a timely manner, which was in conflict with Alabama Department of Insurance *Regulation No. 118, Section 6*, which states:

“The insurer shall provide, within ten (10) working days, any record or response requested in

writing by any duly appointed deputy, assistant, employee, or examiner of the commissioner...”

**Note 16 – General expenses due or accrued**

**\$302,153**

The captioned amount is \$607,333 more than the \$(305,180) reported by the Company in its 2004 Annual Statement, and composed of the items shown in the following table:

	<u>DESCRIPTION</u>	<u>AMOUNT</u>
1.	Employees self-funded health care expenses (recoverable).	\$ 562,588
2.	2004 expenses payments	39,507
3.	2004 Legal expenses payments	5,238
		<u>\$ 607,333</u>

**Employees self-funded health care expenses (recoverable)**

The review of accounts and records indicated that the Company had recorded a \$562,588 amount recoverable from a Lloyd's Syndicate on a self-funded employee health care plan under *General expenses due or accrued*. The examiner established that this amount should have been recorded under *Aggregate write-ins for other than invested assets* in accordance with the NAIC Annual Statement Instructions.

The amount is admitted for the purpose of this examination, because Company management provided documentation showing that the amount was collected subsequent to the examination date. The amount was reclassified to *Aggregate write-ins for other than invested assets* in accordance with the guidance provided by the NAIC Annual Statement Instructions.

**2004 expenses payments**

The examiner found that the Company had under accrued expenses in the amount of \$39,507.

**2004 Legal expenses payments**

The examiner reviewed the legal expenses payments made after December 31, 2004, and identified under accrued legal expense payments by \$5,238.

**Note 17 - Taxes, licenses and fees due and accrued**

**\$24,574**

The captioned amount is the same as reported by the Company in its 2004 Annual Statement, but \$3,574 more than that determined by the examination. No changes were necessary to the financial statements for the purpose of this examination because of the misclassification error. [See *Note 18: Amounts withheld or retained by the Company as agent or trustee.*]

A review of the accounts and records indicated that the Company had inappropriately classified the \$3,574 in salaries and payroll taxes withholding in *Taxes, licenses and fees due and accrued, excluding federal income taxes*, instead of *Amounts withheld or retained by the Company as agent or trustee*, which was not in compliance with *SSAP No. 67, paragraph 8(a)* of the NAIC Accounting Practices and Procedures Manual and NAIC Annual Statement Instruction, which states:

"Include: Employees' FICA, unemployment contributions, and other withholdings, as well as amounts held in escrow for payment of taxes, insurance, etc. under F.H.A. or other mortgage loans or held for guarantee of contract performance and any other funds that the company holds in fiduciary capacity for the account of others."

**Note 18 - Amounts withheld or retained by the Company  
as agent or trustee**

**\$ 163,318**

The captioned amount is the same as reported by the Company in its 2004 Annual Statement, but \$136,154 more than that determine by the examination. No changes were made to the financial statements for the purpose of this examination because the noted issues were all misclassification error.

Amounts withheld or retained by the Company as trustees in the amount of \$3,574 was included in *Taxes, licenses and fees due or accrued, excluding federal income taxes*, which was in conflict with *SSAP No. 67, paragraph 8(a)*, of the NAIC Accounting Practices and Procedures Manual and NAIC Annual Statement Instruction. [See *Note 17 – Taxes, licenses and fees due and accrued, excluding federal income taxes.*]

A review of the accounts and records indicated the Company did not properly classify cash receipts in the amount of \$130,170, in *Remittance and items not allocated*. [See *Note 19 – Remittances and items not allocated.*] The categories of receipts included in *Remittance and items not allocated* are listed in *SSAP 67, paragraph 9*, of the NAIC Accounting Practices and Procedures Manual, which states:

"a. Premium payments received with the application for policies which have not yet been issued; b. Premium payments in an amount different than the amount billed by the reporting entity; and c. Unidentified cash receipts."

The examiners established that the Company misclassified \$5,984 due to agents in this line item, which was not in accordance with the guidance provided by the NAIC Annual Statements Instructions, which states:

"Include: Agents' Credit Balance as well as any other amounts due or contingently due to agents (but not commissions, which should be included in Line 10). Do not offset the debit balance of one agent against the credit balance of another."

**Note 19 - Remittances and items not allocated**

**\$ -0-**

The captioned amount is the same as reported by the Company in its 2004 Annual Statement, but \$130,170 less than that determined by the examination. The Company had misclassified the \$130,170 amount in *Amounts withheld or retained by the company as agent or trustee*; hence, no changes were made to the financial statements [See Note 18 - Amount withheld or retained by the company as agent or trustee].

The examiner established that the cash receipts, which cannot always be identified for a specific purpose or, for other reasons, applied to a specific account when received were not classified in accordance with *SSAP No. 67*, paragraph 9, of the NAIC Accounting Practices and Procedures Manual, which states:

"a. Premium payments received with the application for policies which have not yet been issued; b. Premium payments in an amount different than the amount billed by the reporting entity; and c. Unidentified cash receipts."

**Note 20 - Assets valuation reserve (AVR)**

**\$481,527**

The captioned amount is \$206,184 more the \$275,343 amount reported by the Company in its 2004 Annual Statement.

The invested assets categories, bonds, common stock, including affiliated companies common stock, short-term investments, mortgage loans and real estate items are subject to investment losses; and AVR is intended to offset the potential credit-related investment losses. The following examination changes contributed to the increase in AVR:

- Certificates of deposit, reported under *Cash and short-term investments*, in the

amount of \$1,529,118 were reclassified as bonds.

- *Mortgage loans* not admitted per examination was \$992,597.
- *Real Estate* not admitted per examination was \$388,714.

**Note 21 - Aggregate write-ins for liabilities**

**\$526,764**

The captioned amount is the same as reported by the Company in its 2004 Annual Statement.

The Company reported no drafts or checks that were pending escheatment to the State in *Aggregate write-ins for liabilities*, during the period covered by the examination, as required by the NAIC Annual Statement Instructions, which states:

“Include: Un-cashed drafts and checks that are pending escheatment to a state.”

Alabama Department of Insurance *Regulation No. 66, Section IV (1979)*, states:

“All unclaimed funds in the possession, or under the control of an insurer shall, at all times, be maintained as a liability on the books of the insurer...”

The examiner requested the Company to provide the unclaimed property filings for the period covered by the examination. Company management stated:

“There were no unclaimed property reports during this examination period (2000 – 2004).”

The examiners reviewed the Company’s outstanding checks listing at December 31, 2004. There were no checks that were issued and remained un-cashed for more than five years. Company management’s response to further inquiries was the following:

“The Unclaimed Property filings for the examination period cannot be located.”

ALA. CODE § 27-27-29(a)(1975) states:

"Every domestic insurer shall have, and maintain, its principal place of business and home office in this state and shall keep therein complete records of its assets, transactions and affairs in accordance with such methods and systems as are customary or suitable as to the kind, or kinds, of insurance transactions."

Company management was requested to provide copies of the cancelled checks sent

to the State Treasurer during the period covered by the examination.

**Company Management did not provide the examiners with the copies of the cancelled checks, and did not disclose the final outcome of the outstanding checks for each of the years under examination.**

ALA. CODE § 35-12-31(a)(1975) states:

"Every person holding funds or other property, tangible or intangible, presumed abandoned under this article shall report to the Treasurer with respect to the property and deliver the property to the Treasurer as hereinafter provided..."

In the event there is no unclaimed property to be reported in a reporting cycle, then the Company should complete REPORT FORM 1, from the State of Alabama's FORMS AND INSTRUCTIONS FOR REMITTING UNCLAIMED PROPERTY booklet in accordance with the aforementioned statute. The Company did not provide the examiner with this information.

The examiner found that the Company had reported a Mortgage Escrow amount of \$58,985 under *Aggregate write-ins for liabilities*. According to the NAIC Annual Statement Instructions, the Company should report amounts held in escrow for payment of taxes, insurance, etc. under *Amounts Withheld of Retained by Company as Agent or Trustee*.

**Note 22 – Unassigned funds (surplus)**

**\$(4,931,065)**

An unassigned fund (surplus), as determined by this examination is \$5,047,874 less than the \$116,809 amount reported by the Company in its 2004 Annual Statement.

The following schedule presents a reconciliation of the unassigned funds per the Company's filed statement to that developed by this examination:

<b>Unassigned funds per Company</b>		<b>\$116,809</b>
<b><u>Examination increase / (decrease) to assets:</u></b>		
• Bond	\$ 1,479,118	
• Mortgage loans on real estate	(986,459)	
• Real estate	(388,713)	
• Cash	(1,529,118)	
• Uncollected premiums and agents' balances in course of collection	(331,978)	
• Receivable from parent, subsidiaries and affiliates	(321,416)	
• Aggregate write-ins for other than invested assets	562,588	
<b><i>Total increase/(decrease) to assets</i></b>	<b><u>\$(1,515,978)</u></b>	
<b><u>Examination (increase)/decrease to liabilities:</u></b>		
• Aggregate reserve for life contracts	\$(2,671,210)	
• Contract claims: Life	(47,169)	
• General expenses due and accrued	(607,333)	
• Assets valuation reserve	(206,184)	
<b><i>Total (increase) /decrease to liability</i></b>	<b><u>\$(3,531,896)</u></b>	
<b>Net Increase / (Decrease)</b>		<b><u>\$(5,047,874)</u></b>
<b>Unassigned funds (surplus) per examination</b>		<b><u>\$(4,931,065)</u></b>

## **CONTINGENT LIABILITIES AND PENDING LITIGATION**

The review of contingent liabilities and pending litigation included an inspection of representations made by management, a review of a report to the auditing CPAs on pending litigation made by Company counsel, and a general review of the Company's records and files conducted during the examination, including a review of claims. This review did not disclose items that would have a material affect on the Company's financial position in the event of an adverse outcome.

The previous examination report noted that the Company did not reserve any funds for legal actions brought against the Company, and recommended the establishment of a reserve for expenses of litigation on lawsuits known to exist at the Annual Statement reporting date. The examiners found evidence that the Company had not fully complied with the recommendation made during the prior examination. Further information may be found in the "Note 16 - General expenses due or accrued," of the "NOTES TO FINANCIAL STATEMENTS" section of this report.

## COMPLIANCE WITH PREVIOUS RECOMMENDATION

The examiner did not complete this review.

## COMMENTS AND RECOMMENDATIONS

### Committees – Page 8

**It is recommended** that the Company's Board of Directors only appoint Board members to serve on committees of the Board of Directors in accordance with ALA. CODE § 10-2B-8.25(1975), which states:

“... a board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee may have one or more members, who serve at the pleasure of the board of directors.”

**It is recommended** that the Company keep a permanent record of all actions taken by a committee of the Board of Directors, including the appointment of investment committee members, in accordance with ALA. CODE § 10-2B-16.01(1975), which states:

“A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors... a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.”

### Conflict of Interest – Page 9

**It is recommended** that the Company not extend loans, pay fees, brokerage, or commissions to any officer or director as required by ALA. CODE § 27-27-26 (1975), which states:

"Any officer, or director, or any member of any committee... shall not borrow the funds of such insurer; shall not be pecuniarily interested in any loan ..."

**It is recommended** that the Company maintain evidence of its Conflict of interest statements signed annually by each officer, director and other key personnel according to the GENERAL INTERROGATORIES of the NAIC Annual Statement Instructions and the Company's *Conflict of Interest Policy*.

## **Business Consulting and Management Agreements – Page 13**

**It is recommended** that the Company collect fees for the services, provided to its affiliated companies, including Gaston Company (funeral directors) in accordance with the Business Consultation and Management Agreements.

**It is recommended** that the Company collect the amounts that belong to it from the affiliated companies.

## **Policy Forms and Underwriting Practices – Page 18**

**It is recommended** that the Company's renewal notice provide policyholders with written instructions on how the policy can be reinstated in accordance with the guidance provided by *Standard 6 of the Policyholder Service*, of the NAIC Market Conduct Examiners Handbook, which requires that:

"Nonforfeiture options are communicated to the policyholder and correctly applied in accordance with the policy contract."

**It is recommended** that the Company include the reason for the declination of an application or indicate in writing the specific reason for declination in accordance with the guidance provided by the NAIC Insurance Information and Privacy Protection Model Act, Section 10, which states the following:

"In the event of an adverse underwriting decision the insurance institution or agent responsible for the decision shall: Either provide the applicant, policyholder or individual proposed for coverage with the specific reason or reasons for the adverse underwriting decision in writing or advise such person that upon written request he or she may receive the specific reason or reasons in writing."

**It is recommended** that the Company maintain complete records of adverse underwriting in its files as required by ALA. CODE § 27-27-29(a) (1975), which states:

"Every domestic insurer shall have, and maintain...complete records of its assets, transactions and affairs in accordance with such methods and systems as are customary or suitable as to the kind, or kinds, of insurance transacted."

## Advertising and Marketing – Page 20

**It is recommended** that the Company include a notation indicating the manner and extent of distribution and form number of every policy advertised as required by ALA. ADMIN. CODE 482-1-132-.10, which states:

"Each insurer shall maintain at its home or principal office a complete file containing a specimen copy of every printed, published or prepared advertisement ... with a notation indicating the manner and extent of distribution and the form number of any policy advertised."

**It is recommended** that the Company prominently describe the type of policy or policies advertised in its printed brochures as required by ALA. ADMIN. CODE 482-1-132-.06, which states:

"An advertisement shall clearly and prominently describe the type of policy advertised."

## Claims Payment Practices – Page 20

**It is recommended** that the Company comply with ALA. CODE § 27-27-29 (a) (1975), which states: "Every domestic insurer shall have, and maintain...complete records of its assets, transactions and affairs in accordance with...the kind or kinds, of insurance transacted."

**It is recommended** that the Company comply with Alabama Department of Insurance *Regulation No. 118 Section 3*, which states: "all records must be maintained for not less than five (5) years."

**It is recommended** that the Company appropriately notify claimants of claims delays, investigations, and whether claim liability is being denied within sixty (60) days upon receiving proof of loss from the claimant in accordance with ALA. ADMIN. CODE 482-1-124.04 (4), which requires that: "As to life insurance claims, upon receipt of proof of loss from a claimant, the insurer shall affirm or deny liability, or inform the claimant that the claim is being investigated, within the time set forth within the life insurance policy not to exceed sixty (60) days."

**It is recommended** that the Company maintain evidence of receiving notification of a claim in its records in accordance with ALA. ADMIN. CODE 482-1-124.04 (1), which requires that: "every insurer, upon receiving notification of a claim shall, within fifteen (15) days of the notification, mail or otherwise provide necessary claim forms, instructions or reasonable assistance so the claimant can properly comply with the

insurer's reasonable requirements for filing a claim".

**It is recommended** that the Company report all resisted claims (claims that are in dispute and not resolved on the statement date) in Schedule F and Exhibit 8 in accordance with NAIC Annual Statement Instructions.

### **Policyholder Complaints – Page 22**

**It is recommended** that the Company keep complete and accurate documentation on all complaints and how those complaints are resolved as required by ALA. CODE § 27-27-29 (a) (1975), which states:

"Every domestic insurer shall have, and maintain...complete records of its assets, transactions and affairs in accordance with such methods and systems as are customary or suitable as to the kind, or kinds, of insurance transacted."

**It is recommended** that the Company maintain a complaint handling procedures manual and address in the manual the Company's responsibilities to resolve the complaint in a timely manner or respond to the complaint with ten days as required by ALDOI Bulletin dated January 31, 1963.

### **Compliance with Agents' Licensing Requirements – Page 23**

**It is recommended** that the Company keep complete records of commissions paid to producing agents' as required by ALA. CODE § 27-27-29 (a) (1975), which states:

"Every domestic insurer shall have, and maintain...complete records of its assets, transactions and affairs in accordance with such methods and systems as are customary or suitable as to the kind, or kinds, of insurance transacted."

### **Privacy Policies and Practices – Page 23**

**It is recommended** that the Company disclose in its customer service procedures its responsibility for protecting the confidentiality and security of policyholders as required by ALA. ADMIN. CODE 482-1-122.07 C(6)(2001), which states:

"(6) Confidentiality and security. A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following: (a) Describes in general terms who is authorized to have access to the information. (b) States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy."

It is recommended that the Company comply with ALA. ADMIN. CODE 482-1-126-.08 (2001), which states:

"(a) Designs its information security program to control the identified risks, commensurate with the sensitivity of the information, as well as the complexity and scope of the licensee's activities. (b) Trains staff, as appropriate, to implement the licensee's information security program."

### **ACCOUNTS AND RECORDS – Page 28**

**It is recommended** that the Company maintain adequate records and workpapers to support all accounting transactions, as required by ALA. CODE § 27-27-29(a)(1975), which states:

"Every domestic insurer shall have, and maintain, its principal place of business and home office in this state and shall keep therein complete records of its asset, transactions and affairs in accordance with such methods and systems as are customary or suitable as to the kind or kinds, of insurance transacted."

**It is recommended** that the Company provide all requested information in a timely manner in accordance with Alabama Department of Insurance *Regulation No. 118, Section 6*, which states:

"The insurer shall provide, within ten (10) working days, any record or response requested in writing by any duly appointed deputy, assistant, employee, or examiner of the commissioner..."

### **Accounts and Records - Internal audit report recommendation – Page 31**

**It is recommended** that the Company maintain complete documentation on the implementation of the recommendation made by the internal auditor in accordance with the NAIC Financial Condition Examiners Handbook and ALA. CODE § 27-27-29(a)(1975), which states:

"Every domestic insurer shall have, and maintain, its principal place of business and home office in this state and shall keep therein complete records of its asset, transactions and affairs in accordance with such methods and systems as are customary or suitable as to the kind or kinds, of insurance transacted."

### **Accounts and Records - Disaster Recovery Plan – Page 31**

**It is recommended** that the Company update and test its disaster recovery plan to

ensure its effectiveness and strength of its IS Department, and implement a current business contingency plan in order to analyze the impact of the Company's business, address all significant business activities, including financial functions, telecommunication services, data processing and network services.

**It is recommended** that the Company comply with ALA. ADMIN. CODE 482-1-126 (2001) and establish procedures for changes made to policies either electronically or verbally, document who has the authority to make changes, and provide verification with the insured after changes are made.

### **Bonds - Page 37**

**It is recommended** that the Company file a Security Acquisition Report for bonds which are not listed on the filing exempt listing in accordance with the guidance provided by PART FIVE, Section 3(b)(ii) of the NAIC Purposes and Procedures Manual of the Securities Valuation Office, which states:

“In case of an unrated municipal transaction where the bond to be filed is within one year of the date interest payments are to begin accruing; the reporting insurance company shall file a complete SAR together with a copy of the official statements for the issue...”

**It is recommended** that the Company report certificates of deposit with maturity dates of more than one year as bonds in accordance with NAIC Annual Statement Instructions and *SSAP No 26, paragraph 2*, of the NAIC Accounting Practices and Procedures Manual, which states:

"Bonds shall be defined as any securities representing a creditor relationship, whereby there is a fixed schedule for one or more future payments. This definition includes U.S. Treasury securities, U.S. government agency securities, municipal securities, corporate bonds, bank participations, convertible debt, certificates of deposit and commercial paper that have a fixed schedule of payments and a maturity date in excess of one year from the date of acquisition..."

**It is recommended** that the Company maintain all securities in the State of Alabama, in accordance with ALA. CODE § 27-27-29 (1975), which states:

“Every domestic insurer shall have, and maintain... its assets in this state...”

**It is recommended** that the Company included the “FE” SVO administrative symbol after the “1” designation for securities that met the filing exemption condition and maintain evidence to support the continued eligibility of Filing Exemption securities, in accordance with PART FOUR, Section 2(c) of the NAIC Purposes and Procedures Manual of the Securities Valuation Office, which states:

“This section sets forth filing exemptions for certain securities that are rated by an NRSRO in the equivalent of the NAIC 1 through 6 Designation categories ...The SVO does not have the responsibility for determining whether specific securities should be filing exempt...”

**It is recommended** that the Company maintain evidence that it was monitoring the loan-backed securities in its portfolio in accordance with the guidance provided by *SSAP No. 43, paragraph 10*, of the NAIC Accounting Practices and Procedures Manual, which states:

“Changes in prepayment assumptions and the resulting cash flows shall be reviewed periodically. For securities that have the potential for loss of a portion of the original investment, due to changes in interest rate or prepayments, the review shall be performed at least quarterly. For other securities, the review shall be performed at least annually.”

**It is recommended** that the Company provide all requested information within 10 working days in accordance with Alabama Department of Insurance *Regulation No. 118, Section 6*.

“The insurer shall provide, within ten (10) working days, any record or response requested in writing by any duly appointed deputy, assistant, employee, or examiner of the commissioner...”

**It is recommended** that the Company maintain complete records of its transaction confirmation (purchase and sale) at the Company’s principal place of business in accordance with ALA. CODE § 27-27-26 (1975), which states:

“Every domestic insurer shall have, and maintain, its principal place of business and home office in this state and shall keep therein complete records of its assets, transactions and affairs...”

### **Common stocks – Page 39**

**It is recommended** that the Company reflect in its Schedule D- Part 2- Section 2 the appropriate NAIC Market Indicators in accordance with the NAIC Annual Statement Instructions and the NAIC SVO Purposes and Procedures Manual.

It is noted that at the date of BTW’s Report of Examination, the known examination adjustments to ULICO’s surplus totaled \$730,773, which would also reduce BTW’s surplus accordingly. No changes were made to the financial statements contained within this report because the extent of the changes to ULICO’s surplus was yet to be determined at the date of this Examination Report.

## Mortgage loans on real estate – Page 40

**It is recommended** that the Company nonadmit loans in excess of the allowed maximum loan amounts as required by ALA. CODE § 27-41-29(1) (1975), which states:

“...Unless guaranteed or insured by the administrator of veterans affairs, the secretary of housing and urban development or by a mortgage guaranteed insurance policy issued by an insurance company licensed and authorized to do business by and in the state of Alabama, no such mortgage loan or loans when made shall exceed 75 percent of the fair value of the real estate or leasehold; except, that loans made on single family dwellings shall not exceed 80 percent of the fair value of the property...”

**It is recommended** that the Company measure impairment on its nonperforming mortgage loans based on the fair value (as determined by acceptable appraisal methodologies) of the collateral less estimated costs to obtain and sell in accordance with the NAIC Accounting Practices and Procedures Manual SSAP No. 37, paragraph 16 (cited below). After this measurement has been done, (1)if the impairment is temporary then the difference between the net value of the collateral and the recorded investment in the mortgage loan shall be recognized as an impairment by creating a valuation allowance with a corresponding charge to unrealized loss or by adjusting an existing valuation allowance for the impaired loan with a corresponding charge or credit to unrealized gain or loss or (2)if the impairment is other than temporary, a direct write down shall be recognized as a realized loss, and a new cost basis is established in accordance with the NAIC Accounting Practices and Procedures Manual SSAP No. 37, paragraph 16, which states:

“A mortgage loan shall be considered to be impaired when, based on current information and events, it is probable that a reporting entity will be unable to collect all amounts due according to the contractual terms of the mortgage agreement. According to the contractual terms means that both the contractual principal payments and contractual interest payments of the mortgage loan will be collected as scheduled in the mortgage agreement. A reporting entity shall measure impairment based on the fair value (as determined by acceptable appraisal methodologies) of the collateral less estimated costs to obtain and sell. The difference between the net value of the collateral and the recorded investment in the mortgage loan shall be recognized as an impairment by creating a valuation allowance with a corresponding charge to unrealized loss or by adjusting an existing valuation allowance for the impaired loan with a corresponding charge or credit to unrealized gain or loss. Subsequent to the initial measurement of impairment, if there is a significant change (increase or decrease) in the net value of the collateral, the reporting entity shall adjust the valuation allowance; however, the net carrying amount of the loan shall at no time exceed the recorded investment in the loan.”

**It is recommended** that the Company complete its Schedule B- Part 1 in its future

financial filings in accordance with the NAIC Annual Statement Instructions.

**Real estate – Page 43**

**It is recommended** that the Company maintain evidence of tax payments and hazard insurance for all real estate owned in accordance with ALA. CODE § 27-27-29 (1975), which states:

“Every domestic insurer...shall keep therein complete records of its assets, transactions and affairs...”

**It is recommended** that the Company not admit real property that is not interest-bearing or interest-accruing or dividend or income-paying in accordance with ALA. CODE § 27-41-4 (1975), which states:

“No investment ... shall be an eligible investment unless it is interest-bearing or interest accruing or dividend or income-paying, is not then in default, and the insurer is entitled to receive for its account and benefit the interest or income accruing thereon.”

**It is recommended** that the Company report individually each of its properties in Schedule A- Part 1 in accordance with the NAIC Annual Statement Instructions, which states:

“...The purpose of this schedule is to report individually each property owned, classified into categories that separately identify the properties occupied by the reporting entity, properties held for the production of income, and properties held for sale...”

**It is recommended** that the Company acquire and maintain appraisals not over five years old on all properties in accordance with the NAIC Accounting Practices and Procedures Manual, paragraph 12. **It is further recommended** that the Company not value its properties in an amount in excess of fair value in accordance with the NAIC Accounting Practices and Procedures Manual SSAP 40, paragraph 9, which states:

“... If the fair value of the asset is less than the carrying value, the asset shall be written down to the fair value thereby establishing a new cost basis...”

and ALA. CODE § 27-37-7 (1975), which states that a property

"shall not be valued in an amount in excess of fair value as determined by a recent appraisal."

**It is recommended** that the Company complete Column 9 and Column 10 of the Company's Schedule A- Part 1 in accordance with the NAIC Annual Statement Instructions.

**Cash and short-term investments – Page 48**

**It is recommended** that the Company maintain complete records of its transactions, including the transaction confirmations of securities purchased and sold by the Company in accordance with ALA CODE § 27-27-29(a)(1975), which states:

“Every domestic insurer shall have, and maintain, its principal place of business and home office in this state and shall keep therein complete records of its assets, transactions and affairs...”

**It is recommended** that the Company ensure the collateral pledged for the repurchase agreement equals at least 102 percent of the purchase price of the underlying security in accordance with *SSAP No. 45, paragraph 8(a)* of the NAIC Accounting Practices and Procedures Manual, which states:

“The reporting entity shall receive as collateral transferred securities having a fair value at least equal to 102 percent of the purchase price paid by the reporting entity for the securities...”

**It is recommended** that the Company report the repurchase transaction as a short-term investment as required by the NAIC Annual Statement Instructions and *SSAP No. 45, paragraph 13* of the NAIC Accounting Practices and Procedures Manual, in pertinent part:

“For the purchaser in dollar repurchase agreement, an asset is recorded for the amount of the purchase. Since the term of the agreement is limited to twelve months, it is accounted for as short-term investment.”

and *SSAP No. 2, paragraph 10*, of the NAIC Accounting Practices and Procedures Manual, which states:

“All investments with remaining maturities (or repurchase dates under repurchase agreement) of one year or less at the time of acquisition... shall be considered short-term investments. Short-term investments include, but are not limited to, bonds, commercial paper, money market instruments, repurchase agreements...”

**It is recommended** that the Company report deposits which will allow an immediate credit to the Company’s account as deposits in transit in accordance with the guidance provided by *SSAP No. 2, paragraph 2*, of the NAIC Accounting Practices and Procedures Manual, which states:

“Cash constitutes a medium of exchange that a bank or other similar financial institution will

accept for deposits and allow an immediate credit to the depositor's account."

**It is recommended** that the Company report certificates of deposit with maturity dates of more than one year as bonds and not *Schedule E – Part 1 – Cash* in accordance with the guidance provided by *SSAP No 2, paragraph 3* of the NAIC Accounting Practices and Procedures Manual, states:

"Also classified as cash for financial statement purposes, although not falling within the above definition of cash, are savings accounts and certificates of deposit in banks or other similar financial institutions with maturity dates within one year or less from the acquisition date..."

and in accordance with NAIC Annual Statement Instructions and *SSAP No 26, paragraph 2*, of the NAIC Accounting Practices and Procedures Manual, which states,

"Bonds shall be defined as any securities representing a creditor relationship, whereby there is a fixed schedule for one or more future payments. This definition includes U.S. Treasury securities, U.S. government agency securities, municipal securities, corporate bonds, bank participations, convertible debt, certificates of deposit and commercial paper that have a fixed schedule of payments and a maturity date in excess of one year from the date of acquisition..."

**It is recommended** that the Company disclose balances in *Schedule E – Part 1 – Cash* in accordance with the guidance provided by NAIC Annual Statement Instructions.

It is recommended that the Company accurately disclose the securities subject to repurchase agreement in NOTES TO FINANCIAL STATEMENT as required by *SSAP 45, paragraph 18(b)* of the NAIC Accounting Practices and Procedures Manual, which states:

"A description of the securities underlying the agreements, including book values and fair values, maturities, and weighted average interest rates for the following categories: (i) securities subject to reverse repurchase agreements; (ii) securities subject to repurchase agreements; (iii) securities subject to dollar repurchase agreements; and (iv) securities subject to dollar reverse agreements..."

**It is recommended** that the Company provide all requested information within 10 working days in accordance with Alabama Department of Insurance *Regulation No. 118, Section 6*.

"The insurer shall provide, within ten (10) working days, any record or response requested in writing by any duly appointed deputy, assistant, employee, or examiner of the commissioner..."

## Contract loans – Page 50

**It is recommended** that the Company provide all requested information, including the requested policy-by-policy listing of contract loans with cash surrender values within 10 working days in accordance with Alabama Department of Insurance *Regulation No. 118, Section 6*.

“The insurer shall provide, within ten (10) working days, any record or response requested in writing by any duly appointed deputy, assistant, employee, or examiner of the commissioner...”

**It is recommended** that the Company only lend to policyholders an amount not exceeding the CSV of the policy as in accordance with ALA CODE § 27-41-25 (1975), which states:

“A life insurer may lend to its policyholder upon the security of the policy any sum not exceeding the cash surrender value of the policy or may lend against pledge or assignment of any of its supplementary contracts...”

and in accordance with the guidance provided by *SSAP No. 49, paragraph 5*, of the NAIC Accounting Practices and Procedures Manual, which states:

“Cash surrender value shall be defined as the cash value of the basic policy plus cash value of any policy accumulations such as paid-up additions. The excess of the unpaid balance of the loan over the cash surrender value shall be evaluated for collectibility... amounts in excess of the cash surrender value shall be considered nonadmitted assets.”

## Uncollected premiums and agents' balance in course of collection – Page 51

**It is recommended** that Company maintain complete records of its due and deferred premium transactions, including aging reports, in compliance with ALA CODE § 27-27-29(a) (1975), which states:

“Every domestic insurer shall have, and maintain, its principal place of business and home office in this state and shall keep therein complete records of its assets, transactions and affairs...”

**It is recommended** that the Company maintain complete records including the application files and resolve its data integrity issues as required by the aforementioned statute [ALA CODE § 27-27-29(a) (1975)].

**It is recommended** that the Company only admit premiums, due and unpaid which are less than 90 days past due as specified by *SSAP No. 51, paragraph 12*, of the NAIC Accounting Practices and Procedures Manual, which states:

“Gross premiums that are due and unpaid as of the reporting date, net of loading, shall be classified as uncollected premiums. Uncollected premium balances which are less than 90 days past due meet the definition of asset, as defined in *SSAP No. 4 – Assets and Nonadmitted Assets*, and are admitted assets to the extent they conform to the requirements of this statement.”

**It is recommended** that the Company provide requested information including the reconciliation of the due and deferred premiums in a timely manner in accordance with Alabama Department of Insurance *Regulation No. 118, Section 6*, which states:

“The insurer shall provide, within ten (10) working days, any record or response requested in writing by any duly appointed deputy, assistant, employee, or examiner of the commissioner...”

#### **Receivable from parent, subsidiaries and affiliates – Page 53**

**It is recommended** that the Company periodically review the receivables from its affiliates in accordance with the guidance provided by *SSAP No. 5, paragraphs 6 -7*, NAIC Accounting Practices and Procedures Manual, which states:

“A loss contingency or impairment of an asset is defined as an existing condition, situation, or set of circumstances involving uncertainty as to possible loss to an enterprise that will ultimately be resolved when one or more future event(s) occur or fail to occur (e.g., collection of receivables)...”

**It is recommended** that the Company collect all money owed to it by its affiliates without delay.

**It is recommended** that the Company provide workpapers on related party transactions in a timely manner in accordance with Alabama Department of Insurance *Regulation No. 118, Section 6*, which states:

“The insurer shall provide, within ten (10) working days, any record or response requested in writing by any duly appointed deputy, assistant, employee, or examiner of the commissioner...”

#### **Aggregate write-ins for other than invested assets – Page 54**

**It is recommended** that the Company report reimbursements, which do not have a

specific Annual Statement line item, in *Aggregate write-ins for other than invested assets* in accordance with the guidance provided by the NAIC Annual Statement Instructions, which states:

“other Receivables – Report any other reimbursement to the company.”

It is recommended that the Company report those assets that are not specifically identified as admitted or nonadmitted as in accordance with the guidance provided by *SSAP No. 4, paragraph 3*, of the NAIC Accounting Practices and Procedures Manual, which state:

“b. Not specifically identified as an admitted asset within the Accounting Practices and Procedures Manual...”

### **Aggregate reserve for life contracts – Page 55**

**It is recommended** that the Company compute and record reserves for the Golden Circle premium paying policies utilizing the correct face amount, issue age, issue date, plan of insurance and proper valuation mortality table, valuation interest rate and valuation method for each of the premium-paying policies inforce.

**It is recommended** that the Company compute and record reserves for the Golden Circle extended term policies utilizing the correct cash value at time of nonforfeiture, based upon the proper remaining extended term period, utilizing the proper valuation mortality table and valuation interest rate for each of the extended term policies inforce.

**It is recommended** that the Company compute and record reserves for the built in accident and health benefits in the applicable life policies, which utilize the correct benefits, issue age, issue date, morbidity table, mortality table and valuation method.

**It is recommended** that the Company compute and record reserves for substandard policies.

**It is recommended** that the Company calculate the reserves for Plan A0A based upon the 1941 SSI Table with 3 1/2% interest and utilizing the actual face amount of the paid up insurance and the proper attained age.

**It is recommended** that the Company not overstate its reinsurance reserve credits which would understate its Aggregate reserve for life contracts in future financial filings.

**It is recommended** that the Company compute and record reserves on those merchandise policies subject to the class action settlement on the basis of the letter approved by the Alabama Commissioner of Insurance.

**It is recommended** that the Company maintain the supporting details for miscellaneous reserves reported in *Exhibit 5* in accordance with ALA CODE § 27-27-29(a) (1975), which states:

“Every domestic insurer shall have, and maintain, its principal place of business and home office in this state and shall keep therein complete records of its assets, transactions and affairs...”

**It is recommended** that the opining actuary of the Company provide a revised asset adequacy analysis based upon the amended Annual Statement as filed with the Alabama Insurance Department on June 30, 2005 and that it be based upon assumptions that accurately reflect the actual experience of the Company for mortality, lapses and investment yield.

**It is recommended** that the Company requires its CPAs to determine whether the Company's reserves are fairly stated in all material respects in accordance with the NAIC Annual Statement Instructions.

#### **Aggregate reserve for accident and health contracts – Page 59**

**It is recommended** that the Company calculate and set-up an active life reserve each year on the inforce accident and health insurance policies in accordance with the NAIC Accounting Practices and Procedures Manual SSAP No. 54, paragraph 13, which requires active life reserves regardless of whether the Company has the right to increase premiums or decline renewal of the policies.

**It is recommended** that the Company complete its *Exhibit of Number of Policies, Contracts, Certificates, Income Payable and Account Values In Force For Accident & Health* in its future financial statements in accordance with the NAIC Annual Statement Instructions.

**It is recommended** that the Company maintain all in force policy applications in accordance with ALA. CODE § 27-27-29 (1975), which states:

"Every domestic insurer...shall keep therein complete records of its assets, transactions and affairs..."

## Contract Claims- Life - Page 60

It is recommended that the Company establish adequate amounts for its Contract claims: Life in its future financial statements in accordance with the NAIC Accounting Practices and Procedures Manual- SSAP No. 55 paragraph 4. Guidelines for establishing these liabilities are found in the NAIC Accounting Practices and Procedures Manual - SSAP No. 55 paragraph 6.b. i. - i.v.

It is recommended that the Company provide responses for requested information within ten working days in accordance with Alabama Department of Insurance Regulation No. 118, Section 6.

## Contract claims- Accident and health- Page 61

It is recommended that the Company establish a due and unpaid liability and/or in course of settlement liability for its reported unpaid accident and health claims in future financial statements in accordance with the NAIC Annual Statement Instructions and SSAP No 55, paragraph 6, of the NAIC Accounting Practices and Procedures Manual, which states:

"The following future costs relating to life and accident and health indemnity contracts... shall be considered in determining the liability for unpaid claims and claim adjustment expenses: ... b. i. Due and Unpaid Claims: Claims for which payments are due as of the statement date;... iii. Other Claims in the Course of Settlement: Liability for claims that have been reported but the reporting entity has not received all of the required information or processing has not otherwise been completed as of the statement date..."

It is recommended that the Company maintain claims documentation for all claims in accordance with ALA. CODE §27-27-29 (a)(1975).

"Every domestic insurer shall have, and maintain, its principal place of business and home office in this state and shall keep therein complete records of its assets, transactions and affairs..."

## Premiums and annuity considerations for life and accident and health contracts received in advance – Page 62

It is recommended that the Company only report those premiums on policies that have been processed and the premiums have been paid prior to effective date in accordance with SSAP No. 53, paragraph 13, of the NAIC Accounting Practices and Procedures Manual, which states:

“Advance premiums result when the policies have been processed, and the premium have been paid prior to the effective date. These advance premiums are reported as a liability in the statutory financial statement and not considered income until due.”

**It is recommended** that the Company resolve its data integrity issues appropriately and report all advance premium in accordance with the guidance provided by *SSAP No. 51, paragraph 25*, of the NAIC Accounting Practices and Procedures Manual, which states:

"Advance premiums are those premiums that have been received by the reporting entity prior to the valuation date but which are due on or after the next policy anniversary date."

It is recommended that the Company provide all workpapers in a timely manner, as required by Alabama Department of Insurance *Regulation No. 118, Section 6*, which states:

“The insurer shall provide, within ten (10) working days, any record or response requested in writing by any duly appointed deputy, assistant, employee, or examiner of the commissioner...”

### **General expenses due and accrued – Page 63**

**It is recommended** that the Company record expenses due and accrued in accordance with the guidance provided by the NAIC Annual Statement Instructions.

**It is recommended** that the Company record an adequate amount to cover expenses relating to prior periods that have not yet been paid.

### **Taxes, licenses and fees due and accrued excluding federal income taxes - Page 64**

#### **Amounts withheld or retained by the Company as agents or trustee - Page 64**

**It is recommended** that the payroll taxes and other funds held by the Company in a fiduciary capacity be reported in accordance with *SSAP No. 67, paragraph 8(a)* of the NAIC Accounting Practices and Procedures Manual and NAIC Annual Statement Instruction, which states:

"Include: Employees' FICA, unemployment contributions, and other withholdings, as well as amounts held in escrow for payment of taxes, insurance, etc. under F.H.A. or other mortgage loans or held for guarantee of contract performance and any other funds that the company holds in fiduciary capacity for the account of others."

## Remittances and items not allocated – Page 65

**It is recommended** that the Company record remittances that the Company could not identify for the specific purpose or, for other reasons, cannot be applied to a specific account when received in accordance with the guidance provided by *SSAP No. 67*, paragraph 9, of the NAIC Accounting Practices and Procedures Manual, which states:

- “a. Premium payments received with the application for policies which have not yet been issued;
  - b. Premium payments in an amount different than the amount billed by the reporting entity; and c.
- Unidentified cash receipts.”

## Aggregate write-ins for liabilities – Page 66

**It is recommended** that the Company report checks that were pending escheatment in accordance with the NAIC Annual Statement Instructions, which states:

“Include: Un-cashed drafts and checks that are pending escheatment to a state.”

**It is recommended** that the Company establish and maintain a liability for unclaimed property until the appropriate time frame has elapsed to remit said funds to the State Treasurer in accordance with Alabama Department of Insurance *Regulation No. 66, Section IV (1979)*, which states:

“All unclaimed funds in the possession, or under the control of an insurer shall, at all times, be maintained as a liability on the books of the insurer...”

**It is recommended** that the Company maintain the records of the unclaimed property filings in accordance with ALA. CODE § 27-27-29(a)(1975) states:

"Every domestic insurer shall have, and maintain, its principal place of business and home office in this state and shall keep therein complete records of its assets, transactions and affairs in accordance with such methods and systems as are customary or suitable as to the kind, or kinds, of insurance transactions."

**It is recommended** that the Company file the unclaimed property report timely in accordance with ALA. CODE § 35-12-31(a)(1975), which states:

"Every person holding funds or other property, tangible or intangible, presumed abandoned under this article shall report to the Treasurer with respect to the property and deliver the property to the Treasurer as hereinafter provided..."

**It is recommended** that the Company file REPORT FORM 1, from the State of Alabama's FORMS AND INSTRUCTIONS FOR REMITTING UNCLAIMED PROPERTY booklet in the event there is no unclaimed property to be reported in a reporting cycle.

**It is recommended** that the Company include its Mortgage Escrow liability in *Amounts Withheld of Retained by Company as Agent or Trustee*, in accordance with the guidance provide by the NAIC Annual Statement Instructions.

### **SUBSEQUENT EVENTS**

On February 22, 2006, the Company agreed to a Consent Order of Rehabilitation, Permanent Injunction, Appointment of Receiver, and Other Relief. Mr. Bunny Stokes resigned as a Company Director effective February 16, 2006, as well as Mrs. Josie Skanes, SVP of Administration and Secretary, resigned effective March 6, 2006.

The examiners requested the following with regard to subsequent events on November 16, 2005:

1. the January through September 2005 cash receipts journal in electronic format with a reconciliation to the general ledger for this detail;
2. the January through September 2005 general journal entries;
3. the third 2005 quarterly financial filing;
4. a written response from the Company's officers and other executives having responsibility for financial and accounting matters for the following:
  - a) whether the interim statements have been prepared on the same basis as that used for the statements under examination;
  - b) whether any substantial contingent liabilities or commitments existed at December 31, 2004 or at November 16, 2005;
  - c) whether there was any significant change in the capital stock or debt to the date of inquiry;
  - d) the current status of items in the financial statements being reported on that were accounted for on the basis of tentative, preliminary, or inconclusive data; and,
  - e) whether any other matters had occurred that would materially affect the Company's financial statements or operations of the Company. This includes

any subsequent events of material affiliates accounted for by the equity method.

As of the date of the examination report, the Company did not provide the requested information or a response to this examination request, in accordance with Alabama Department of Insurance *Regulation No. 118, Section 6*, which states:

“The insurer shall provide, within ten (10) working days, any record or response requested in writing by any duly appointed deputy, assistant, employee or examiner of the commissioner...”

ALA. CODE § 27-27-29 (1975), states:

"Every domestic insurer shall have, and maintain, its principal place of business and home office in this state and shall keep therein complete records of its assets, transactions and affairs in accordance with such methods and systems as are customary or suitable as to the kind or kinds, of insurance transacted."

## CONCLUSION

The customary insurance examination procedures, as recommended by the National Association of Insurance Commissioners, have been followed to the extent appropriate in connection with the verification and evaluation of assets and determination of liabilities set forth in this report.

The Company did not provide all requested information to the examiners in accordance with Alabama Department of Insurance *Regulation No. 118*, which states:

“The insurer shall provide, within ten (10) working days, any record or response requested in writing by any duly appointed deputy, assistant, employee, or examiner of the commissioner...”

Details of the noted problems may be found in the MARKET CONDUCT ACTIVITIES and NOTES TO FINANCIAL STATEMENTS sections of this report, under the various captions to which they relate.

**THIS REPORT OF THE EXAMINATION IS QUALIFIED AND EXPRESSES NO OPINION ON THE ACCURACY OF THE FINANCIAL STATEMENTS OF BOOKER T. WASHINGTON INSURANCE COMPANY, INC. FURTHERMORE, DUE TO THE COMPANY'S INABILITY OR UNWILLINGNESS TO PROVIDE INFORMATION REQUESTED BY THE EXAMINERS DURING THE COURSE OF THE EXAMINATION, THE EXAMINATION WAS NOT COMPLETED. HOWEVER, BASED ON THE FINDINGS THROUGH JANUARY 24th 2006, THE EXAMINERS DETERMINED THAT THE COMPANY WAS INSOLVENT. THE REASONS FOR THE QUALIFICATION OF THE REPORT CAN BE FOUND IN VARIOUS SECTIONS AND CAPTIONS OF THE REPORT.**

In addition to the undersigned, Rhonda B. Ball, Juliette N. Glenn, Tisha Freeman, Whitney E. Smith, Travis L. Crossland, Teray Kendall, Examiners, and Harland A. Dyer ASA, MAAA, FCA, and Joseph H. Tan, FSA, MAAA, Ph.D., FLMI, Consulting Actuarial Examiner, all representing the Alabama Department of Insurance, participated in this examination of *Booker T. Washington Insurance Company, Inc.*

Respectfully submitted,



Blase Francis Abreo, CFE  
Examiner-in-Charge  
State of Alabama  
Department of Insurance