

REPORT ON EXAMINATION

OF THE

FIRST MUTUAL TRANSPORTATION ASSURANCE COMPANY

AS OF

DECEMBER 31, 2010

DATE OF REPORT

JUNE 29, 2012

EXAMINER

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawskey
Superintendent

Honorable Benjamin M. Lawskey
Superintendent of Financial Services
Albany, New York 12257

June 29, 2012

Sir:

Pursuant to the requirements of the New York Insurance Law, and in compliance with the instructions contained in Appointment Number 30827 dated February 10, 2012, attached hereto, I have made an examination into the condition and affairs of First Mutual Transportation Assurance Company as of December 31, 2010, and submit the following report thereon.

Wherever the designations “the Company” or “FMTAC” appear herein without qualifications, they should be understood to indicate First Mutual Transportation Assurance Company. Wherever the designations “Parent” or “MTA” appear herein without qualifications, they should be understood to refer to Metropolitan Transportation Authority.

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

This examination was conducted at the Office of Marsh Management Services Inc, 48 South Service Road Suite 310, Melville, NY 11747. FMTAC was managed by Marsh Management Services Inc., at December 31, 2010.

1. SCOPE OF EXAMINATION

The examination covers the period from January 1, 2004 through December 31, 2010, and was limited in its scope to a review or audit of only those balance sheet items considered by this Department to require analysis, verification or description, including invested assets, and losses and loss adjustment expense reserves. The examination included a review of income, disbursements and company records deemed necessary to accomplish such analysis or verification. Additionally, a review was performed to determine whether the captive insurer was operating within its by-laws, conforming with its plan of operation, as submitted to the New York State Department of Financial Services, and was in compliance with Article 70 of the New York Insurance Law.

Comments and recommendations are limited to those items requiring financial adjustment, procedural recommendations, or instances where the Company was not conforming to the application submitted to the Department or Article 70 of the New York Insurance Law.

The report utilized work performed by the Company's independent certified public accountants and its opining actuary to the extent considered appropriate.

2. DESCRIPTION OF COMPANY

FMTCA was incorporated under the laws of New York State as a pure captive insurance company on December 5, 1997, and commenced operations on that date. The Company is a wholly-owned subsidiary of MTA and is established to insure and reinsure the risks of the MTA.

A. Articles of Incorporation

The Company is organized to transact the kinds of insurance specified in Section 7003 of the New York Insurance Law, subject at all times to the limitation on the business of a pure captive insurance company set forth in Article 70 of the New York Insurance Law.

B. By-Laws

It appears that the Company is in compliance with its by-laws in all material respects.

C. Capital Structure

Pursuant to Section 7004(a)(2) of the New York Insurance Law, a pure captive insurance company incorporated as a mutual insurer is required to possess, and thereafter maintain, not less than \$250,000 of total surplus as regards to policyholders, in order to be issued a license to do captive insurance business in New York State. The Company was incorporated as a mutual captive insurance company. As of December 31, 2010, the paid in capital was \$3,000,000 and contributed surplus was \$77,668,919.

D. Reinsurance

Assumed

As of December 31, 2010, FMTAC is not a party to any assumed reinsurance agreement.

Ceded

As of December 31, 2010, FMTAC ceded the following business:

All Agency Property and Terrorism Coverage

For the period May 1, 2010 through May 1, 2011, FMTAC had reinsurance coverage for its property insurance program with various carriers. The Company insures property damage claims respect to the perils of flood and earthquake in excess of a \$25,000,000 per occurrence self-insured retention, subject to an annual \$75,000,000 aggregate. The total program limit has been maintained at \$1,075,000,000 for any one peril. All losses resulting from the acts of terrorism are excluded from this policy. The policy also provides extra expense and business interruption coverage.

With respect to acts of terrorism, FMTAC is reinsured by the United States Government for 85% of such “certified” losses, as covered by the Terrorism Risk Insurance Act of 2007 (“TRIA”). The remaining 15% of MTA losses would be covered under an additional policy described below. Additionally, no federal compensation will be paid unless the aggregate industry insured losses exceed \$100,000,000.

To supplement FMTAC’s reinsurance coverage through TRIA, the MTA obtained an additional commercial reinsurance policy with Lexington Insurance Company. The policy provided coverage for (1) 15% of any “certified” act of terrorism up to a maximum recovery of \$161,250,000

per occurrence and \$322,500,000 in the annual aggregate part of \$1,075,000,000 reinsured policy limit, or (2) 100% of any “certified” terrorism loss which does not reach \$100,000,000 trigger up to a maximum recovery of \$100,000,000 for any occurrence. Recovery under this policy is subject to retention of \$25,000,000 per occurrence and \$75,000,000 in the aggregate with a deductible of \$7,500,000 per occurrence remaining upon the exhaustion of the \$75,000,000 aggregate deductible.

Excess Loss Fund- Excess Liability

Excess loss fund coverage covers excess third party liability including employee liability for occurrence arising out of or incidental to Agencies’ operation for the period October 31, 2010 to October 31, 2011. The following are the coverages:

<u>Reinsurer</u>	<u>Cession</u>
XL Insurance Company Ltd.	75% of \$100,000,000 in excess of \$200,000,000.
Torus Insurance (Bermuda) Limited	25% of \$100,000,000 in excess of \$200,000,000.
Chartis Excess Limited	100% of \$100,000,000 in excess of \$300,000,000.

Builder Risk

Effective July 31, 2006, the Company entered into owner-controlled insurance program (“OCIP”) for Long Island Rail Road and Metro North Rail Road for capital projects in the 2005-2009 MTA Capital Program as follows:

<u>Reinsurer</u>	<u>Cession</u>
Zurich American Insurance Company	100% of \$50,000,000 per occurrence/\$100,000,000 aggregate subject to \$500,000,000 deductible.

East Side Access Project

Effective June 1, 2004, the Company renewed an OCIP program for the \$6,340,000 East Side Access Project. It was a ten year agreement covering from June 1, 2004 through June 1, 2014 with Zurich and Lloyds. The agreement insured third party contractors and the MTA and all its subsidiaries up to \$300,000,000 for worker’s compensation and general liability coverages. The

insurers required the Company to hold the collateral and loss funding for the first \$1,000,000 per occurrence.

<u>Reinsurer</u>	<u>Cession</u>
Lloyds Underwriters	\$50,000,000 any one occurrence excess of a Self Insured Retention of \$50,000,000 any one occurrence and \$125,000,000 in the aggregate.
Zurich American Insurance Company	\$200,000,000 excess of a Self Insured Retention of \$100,000,000 any one occurrence/aggregate \$250,000,000 and thereafter an excess of \$25,000,000 any one occurrence to apply.

Second Avenue Subway

The Company entered into an OCIP program for the Second Avenue Subway Project. This agreement covered the period from March 15, 2007 to March 15, 2015. The agreement insured workers' compensation and general liability coverages for third party contractors of the MTA and all its subsidiaries up to \$500,000,000 per occurrence subject to \$1,000,000 deductible. The program is reinsured as follows:

<u>Reinsurer</u>	<u>Cession</u>
Various	100% of \$450,000,000 per occurrence in excess of \$50,000,000 any one occurrence subject to an aggregate of \$100,000,000.

E. Corporate Records

The corporate records reviewed appear to be substantially accurate and complete in all material respects.

F. Management and Control

(i) Captive Manager

Section 7003(b)(4) of the New York Insurance Law provides that no captive insurer shall do any captive insurance business in this state unless it utilizes a captive manager resident in the State of

New York that is licensed as an agent or broker under the provisions of the Article 21 of the New York Insurance Law or any other person approved by the Superintendent.

The Company is managed by Marsh Management Services Inc licensed by the New York Department of Financial Services. Marsh Management Services Inc took over the captive management of FMTCA from Willis Management, Ltd, an insurance consultant effective August 1, 2008.

(ii) Board of Directors

The business of this Company is managed under the direction of its board of directors. Please note that all the board of directors of the Company are also the directors of the MTA. At December 31, 2010, the board of directors was comprised of the following twenty three members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Andrew Albert New York, NY	New York City Transit Riders Council
John H. Banks III Bronx, NY	Con Edison
Robert C. Bickford Cold Spring, NY	Retired
James F. Blair Ossining, NY	Permanent Citizens Advisory Committee
Norman E. Brown Brooklyn, NY	NY State Council of Machinists
Allen P. Cappelli Staten Island, NY	Attorney
Donald Cecil Harrison, NY	Cumberland Associates
Patrick J. Foye Sands Point, NY	Governor's Office
Doreen M. Frasca New York, NY	Frasca & Associates

Name and ResidencePrincipal Business Affiliation

Ira Greenberg
Queens, NY

Leavitt, Kerson & Duane

Jeffrey A. Kay
Queens, NY

Mayor's Office of Operations

Mark D. Lebow
New York, NY

Lebow & Sokolow, LLP

Susan G. Metzger
Warwick, NY

Orange County Planning Board

Charles D. Moerdler
Bronx, NY

Stroock & Stroock & Lavan

Mark Page
Brooklyn, NY

Office of Management and Budget
("OMB") of the City of New York

Mitchell H. Pally
Stony Brook, NY

Long Island Builders Institute

Andrew M. Saul
Katonah, NY

Saul Partners, L.P.

James L. Sedore, Jr.
Fishkill, NY

Various Certified Public Accounting
Firms

Nancy Shevell
New York, NY

New England Motor Freight, Inc.

Vincent Tessitore, Jr.
East Islip, NY

United Transportation Union

Jay H. Walder
New York, NY

Metropolitan Transportation Authority

Ed Watt
Rockaway, NY

Transport Workers Union Local 100

Carl V. Wortendyke
Upper Nyack, NY

Cal Mart Construction

The Company's by-laws states:

“A regular meeting of the board shall be held without other notice than these by-laws at 9:30am on the fourth Wednesday of each month except that there shall be no regular meeting in the month of August and except that in the months of November and December the regular meetings shall be held on the third Wednesday of the month.”

During the period covered by this examination, it is noted that the Company's finance committee met once each year in May. The MTA board members who are also the board directors' of FMTAC met on the fourth Wednesday of every month except August. A review of the meeting minutes indicated that the Company is in compliance with its by-laws, and all the board meetings were generally well attended.

(iii) Officers

As of December 31, 2010, the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
Jay H. Walder	Chairman and Chief Executive Officer
Andrew M. Saul	Vice Chairman
Laureen Coyne	President
Phyllis J. Rachmuth	Vice President and Secretary
Michael J. Jaszar	Vice President

G. Certified Public Accountant (“CPA”) and Actuarial Services

The Company was audited by the independent CPA firm Deloitte & Touche, Two World Financial Center, New York, NY 10281 for the years covered by this examination. The Company's opining actuary as of December 31, 2010, was Milliman Inc., One Pennsylvania Plaza, 38th Floor, New York, NY 10119.

H. Growth of Company

The following schedule sets forth a summary of the Company's significant financial information for the period covered by this examination:

<u>Year</u>	<u>New Premiums Earned</u>	<u>Net Income</u>	<u>Assets</u>	<u>Shareholders' Equity</u>
2004	\$47,425,000	\$ 8,606,000	\$333,685,000	\$ 63,889,000
2005	\$11,943,000	\$10,412,000	\$361,424,000	\$ 74,301,000
2006	\$41,898,000	\$ 9,448,000	\$443,649,000	\$ 83,749,000
2007	\$46,044,000	\$ 7,983,000	\$540,282,000	\$ 91,732,000
2008	\$72,947,000	\$ 4,610,000	\$531,762,000	\$ 96,342,000
2009	\$75,469,000	\$30,613,000	\$585,178,000	\$126,955,000
2010	\$98,583,000	\$19,256,000	\$592,659,000	\$146,211,000

3. FINANCIAL STATEMENTS

The financial statements of the Company have been prepared in conformity with accounting principles generally accepted in the United States of America that differ from statutory accounting practices prescribed or permitted for insurance companies by the New York State Department of Financial Services. The Company's independent accounting firm concluded that the following financial statements, present fairly, in all material respects, the financial position First Mutual Transportation Assurance Company as of December 31, 2010.

A Balance Sheet

BALANCE SHEET AS OF DECEMBER 31, 2010

Assets

Bonds	\$341,747,000
Stocks	16,036,000
Cash	99,401,000
Deposits with reinsurer	37,665,000
Accounts and premium receivable	64,859,000
Investment income due and accrued	2,947,000
Other assets	896,000
Reinsurance recoverables	<u>29,108,000</u>
Total assets	<u>\$592,659,000</u>

Liabilities, Surplus and Other FundsLiabilities

Losses and Loss Adjustment Expenses		\$294,414,000
Unearned premiums		118,783,000
Commission, expenses and fees		1,599,000
Amounts due to affiliates		125,000
Deferred loss & safety incentive payable		<u>31,527,000</u>
Total liabilities		\$446,448,000

Surplus and Other Funds

Paid in capital (par value)	\$3,000,000	
Unrealized gain(loss)on investment	9,325,000	
Contributed surplus	77,669,000	
Surplus (accumulated earnings)	<u>56,217,000</u>	
Total capital and surplus		<u>146,211,000</u>
Total liabilities, surplus and other funds		<u>\$592,659,000</u>

B. Statement of Income

The Company's capital and surplus increased \$90,928,000 during the seven-year period detailed as follows:

STATEMENT OF INCOME

Underwriting Income

Net premiums earned		\$394,309,000
Deductions:		
Net losses and net loss adjustment expense incurred	\$350,174,000	
Underwriting expenses	28,703,000	
General and administrative expenses	29,671,000	
Management fee	<u>900,000</u>	
Total operating deductions		<u>409,448,000</u>
Net operating loss		\$ (15,139,000)

Investment Income

Net investment income earned	\$96,748,000	
Net unrealized gains on investments	<u>9,319,000</u>	
Total investment income		<u>106,067,000</u>
Net income		<u>\$90,928,000</u>

C. Capital and Surplus Account

Capital and surplus as of December 31, 2003		\$55,283,000
	<u>Gain in Surplus</u>	
Net income	<u>\$90,928,000</u>	
Total gains and losses	<u>\$90,928,000</u>	
Net increase in surplus		<u>90,928,000</u>
Capital and surplus per report on examination as of December 31, 2010		<u>\$146,211,000</u>

4. LOSSES AND LOSS ADJUSTMENT EXPENSES

As of December 31, 2010, the Company reported a liability for unpaid loss and loss adjustment expenses of \$294,414,000. The Company's opening actuary states the following in its "Statement of Actuarial Opinion":

"In my opinion, the amounts of Loss and Loss Adjustment Expenses of \$294,414,000:

- Meet the requirements of the captive insurance laws of the State of New York
- Are consistent with reserves computed in accordance with the Standards of Practice issued by the Actuarial Standards Board (including the Casualty Actuarial Society's Statement of Principles Regarding Property and Casualty Loss and Loss Adjustment Expense Reserves); and
- Make a reasonable provision for all unpaid loss and loss adjustment expense obligations of the Company under the terms of its contracts and agreements."

5. ARTICLE 70 COMPLIANCE

Article 70 of the New York State Insurance Law is the governing section of the law for the formation and continued operation of captive insurers in New York State. A review was performed to test the Company's compliance with all applicable parts of Article 70 of the New York Insurance Law. No significant areas of non-compliance were found.

6. **ORGANIZATIONAL STRUCTURE**

The Metropolitan Transportation Authority was established under the New York Public Authorities Law and is a public benefit corporation of the State of New York. The mission of MTA is to continue, develop and improve public transportation and to develop and implement a unified public transportation policy in the New York metropolitan area.

MTA carries out these responsibilities directly and through its subsidiaries and affiliates, which are also public benefit corporations. The following entities are subsidiaries of MTA:

- The Long Island Rail Road Company
- Metro-North Commuter Railroad Company
- Staten Island Rapid Transit Operating Authority
- Metropolitan Suburban Bus Authority
- First Mutual Transportation Assurance Company
- MTA Bus Company
- MTA Capital Construction Company

The following entities are affiliates of MTA:

- New York City Transit Authority and its subsidiary, the Manhattan and Bronx Surface Transit Operating Authority
- Tri-borough Bridge and Tunnel Authority

7. **INSURANCE PROGRAM**

As of December 31, 2010, First Mutual Transportation Assurance Company provides the following lines of coverage to the MTA and its agencies:

- Commercial Liability
- Auto Liability- Paratransit
- Stations Liability
- Force Liability
- All Agency Protective Liability
- Excess Loss Fund
- Non-Revenue
- Property and Terrorism Insurance
- Owner Controlled Insurance Programs

Commercial Liability Policy-Premises Liability

Effective December 7, 2010, FMTAC issued a premises liability policy which covers liability arising out of the ownership, maintenance and use of various MTA locations: 341/345/347 Madison Ave and 2 Penn Plaza, NYC and 2 Broadway, NYC. The limit of insurance for each occurrence was \$1,000,000 with the general aggregate limit of \$2,000,000.

Auto Liability- Paratransit

Effective March 1, 2010, the Company renewed its one year paratransit auto deductible reimbursement policy, covering third party liability arising out of the use of wheelchair life-equipped vans and sedans. The Company is responsible for the first \$1,000,000 per occurrence bodily injury and property damage combined single limit including allocated loss adjustment expenses and \$111,379,656 in the aggregate.

Stations Liability

The Company renewed its direct station liability insurance effective December 15, 2010, for the first \$9,000,000 per occurrence losses for Long Island Rail Road Company and Metro-North Commuter Railroad Company with no aggregate stop loss protection. The insurance policy covered third party liability, bodily injury and property damage and personal injury at passenger stations, included moving train hazards while confined to station area, included elevators, escalators, platforms, appurtenances, land, approaches and parking lot.

Force Liability

The Company renewed its direct force liability policy effective December 15, 2010, for one year for Long Island Rail Road Company and Metro-North Commuter Railroad Company with no aggregate stop loss protection. The single limit of the insurance is \$9,000,000. The policy covered third party liability, physical damage and medical payments on force account work reimbursed by others.

All Agency Protective Liability

The Company issued a policy to cover MTA's all agency protective liability program ("AAPL"), which is designed to protect the MTA and its agencies against potential liability arising from independent contractors working on capital, maintenance and operating projects. The net retention to the Company is \$2,000,000. The Company also issued a policy for \$6,000,000 excess of \$2,000,000 per occurrence with a \$12,000,000 annual aggregate. Effective June 1, 2010, the Company extended its current AAPL for an additional six months to January 1, 2011.

Excess Loss Fund

Effective October 31, 2010, the Company issued excess loss fund program indemnifying the MTA, its subsidiaries and affiliates above their specifically assigned self-insured retention with a limit of \$50,000,000 per occurrence with \$50,000,000 annual aggregate. The program covered excess third party liability including employee liability for occurrences arising out of or incidental to agencies' operations.

Non-Revenue

Effective March 1, 2010, the Company renewed a deductible reimbursement policy, insuring the auto liability for the MTA and some of its agencies for the non-revenue automobiles including non-owned hired automobiles. The Company is responsible for the first \$500,000 per occurrence bodily injury and property damage combined single limit including allocated loss adjustment expenses and \$10,441,621 in the aggregate.

Property and Terrorism Coverage

The property and terrorism coverage is detailed in the Section of Reinsurance.

Owned-Controlled Insurance Programs

The MTA purchased owner controller insurance program ("OCIP") under which coverage is provided on a group basis for certain agency projects including builder risk, east side access project and second avenue subway project. The OCIP is detailed in the Section of Reinsurance.

8. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION**ITEM****PAGE NO.**

It is recommended that the Company either amend its by-laws or comply with them and have regular monthly meetings.

7

The Company has complied with this recommendation.

9. SUMMARY OF COMMENTS AND RECOMMENDATIONS

There are no comments or recommendations in this report.

Respectfully submitted,

_____/s/
Wei Cao
Senior Insurance Examiner

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

WEI CAO, being duly sworn, deposes and says that the foregoing report, subscribed by her, is true to the best of her knowledge and belief.

_____/s/
Wei Cao

Subscribed and sworn to before me
this _____ day of _____, 2012.

APPOINTMENT NO. 30827

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, BENJAMIN M. LAWSKY, Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:

Wei Cao

as a proper person to examine the affairs of the
FIRST MUTUAL TRANSPORTATION ASSURANCE COMPANY
and to make a report to me in writing of the condition of said
COMPANY

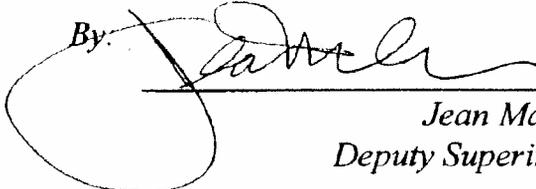
with such other information as he shall deem requisite.

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

this 10th day of February, 2012

BENJAMIN M. LAWSKY
Superintendent of Financial Services

By:



Jean Marie Cho
Deputy Superintendent

