

REPORT ON EXAMINATION

OF THE

WTC CAPTIVE INSURANCE COMPANY, INC.

AS OF

DECEMBER 31, 2008

DATE OF REPORT

DECEMBER 4, 2009

EXAMINER

BERNARD LOTT

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

December 4, 2009

Honorable James J. Wrynn  
Superintendent of Insurance  
Albany, New York 12257

Sir:

Pursuant to the requirements of the New York Insurance Law, and in compliance with the instructions contained in Appointment Number 30306 dated February 26, 2009 and attached hereto, I have made an examination into the condition and affairs of the WTC Captive Insurance Company, Inc. as of December 31, 2008, and submit the following report thereon.

Wherever the designation "the Company" appears herein without qualification, it should be understood to indicate the WTC Captive Insurance Company, Inc.

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

The examination was conducted primarily at the offices of Marsh Management Services Inc., the captive manager for WTC Captive Insurance Company Inc., located at 300 Broadhollow Road, Melville, NY 11747.

## **1. SCOPE OF EXAMINATION**

The purpose of this examination was to determine whether the Company was operating pursuant to the plan of operation submitted to the New York State Insurance Department, abiding by the provisions of its charter and bylaws, and was in compliance with all applicable sections of the New York Insurance Law (“Insurance Law”).

The examination covers the Company’s operations from its licensing as a New York State captive insurer on December 3, 2004 to December 31, 2008. The review included an analysis of the Company’s financial condition, a review of its corporate records, and limited tests of various income and disbursement items as deemed necessary. This report is submitted on an “exception” basis. Comments and recommendations are limited to those items requiring financial adjustment or procedural recommendations, or to instances where the Company was not conforming to the application submitted to the Department or to Article 70 of the Insurance Law.

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

## **2. DESCRIPTION OF COMPANY**

On February 20, 2003, the President of the United States signed the Consolidated Appropriations Resolution, 2003, Public Law 108-7, which gave the Federal Emergency Management Administration (“FEMA”) the authority to provide \$999.9 million in funding to establish a captive insurance company. The funds were used as the premium for a single liability policy to provide the City of New York (“City”) and its hired contractors and subcontractors (“contractors”) with coverage for claims arising from the removal of debris from the World Trade Center site after the terrorist attacks on September 11, 2001. The appropriated amount represented the maximum award for which FEMA had authority and available funding. Absent additional authority and funding from Congress, the funding was not subject to amendment to increase the amount of the award.

The WTC Captive Insurance Company, Inc. was incorporated on July 1, 2004 as a not-for-profit, pure captive insurance company pursuant to Section 7005(a)(3) of the Insurance Law, as amended by Chapter 188 of the Laws of 2003. The Company is subject at all times to the limitations on the business of pure captive insurance companies set forth in Article 70 of the Insurance Law. It was licensed and commenced operations under the laws of New York State (the “State”) on December 3, 2004.

The funds were provided to the State via a “Grant Agreement” between FEMA and the State Emergency Management Office (“SEMO”). The Grant Agreement provided for a project that consisted of the incorporation of a captive insurance company by the City. A “Sub-Grant Agreement” between SEMO and the City was executed in order to transfer the appropriated funds to the City. Similarly, an “Agreement” between the City and the WTC Captive Insurance Company, Inc. was executed in order for the Company to accept and apply the appropriated funds in compliance with the terms and conditions of the FEMA Grant Agreement and the SEMO’s Sub-Grant Agreement.

A. Articles of Incorporation

The purpose of the Company, as stated in its articles of incorporation, is to provide insurance, on an occurrence basis, in connection with events occurring on or after September 11, 2001 for liabilities incurred by the City and its contractors. More specifically, the coverage applies to liabilities related to or arising out of activities conducted at or near the World Trade Center site in response to the September 11, 2001 attacks.

B. By-Laws

The by-laws of the Company were reviewed and it appears that the Company was operating in compliance with them in all material respects.

C. Capital Structure

The Company utilizes the deposit accounting method to account for its single liability insurance policy. This method was selected because the insurer assumes no insurance risk in administering the policy. A report prepared by the Company's certified public accountant concluded that the Company serves essentially as a financial mechanism to administer the payment of claims, loss adjustment expenses and other costs in accordance with its insurance policy and various requirements outlined by FEMA, SEMO and the City.

Under deposit accounting, to the extent that risk transfer thresholds are not met, the receipt of premium is not accounted for as income but as a deposit or contribution to surplus. Loss payments are not an expense but a return of capital.

At the commencement of operations on December 3, 2004, the Company designated \$899.9 million of its appropriated funds as a "deposit liability." All claims payment activity flows through the deposit liability account and has no impact on income or expense. The deposit liability account represents the accrual for loss and loss adjustment expenses to be paid under the insurance policy. The account is decreased by loss and loss adjustment expense payments (return of capital) and is increased to the extent that additional funds are received (e.g. investment income).

The remaining \$100 million was segregated in a "residual liability" account. The residual liability account serves to satisfy the capital and surplus requirements of Section 7004 of the Insurance Law. Under Section 7004 a pure captive insurance company, is required to maintain a total surplus as regards policyholders of not less than two hundred and fifty thousand dollars. The segregation of an amount appreciably greater than the required amount was based on the Company's desire to compensate for possible fluctuations in the value of its assets/liabilities, during the course of operations, which could impair the insurer's compliance with Section 7004. The designation of funds to satisfy capital and surplus requirements, however, does not restrict future use of funds designated as residual liability for paying claims, once the deposit liability account has been exhausted.

For the years covered by this examination, the Company has maintained the \$100,000,000 residual liability while accumulating an additional \$39,746,481 in an account entitled "Accumulated Adjustments to Residual Liability."

D. Corporate Records

All corporate records reviewed that are not specifically addressed elsewhere in this report appeared to be substantially accurate and complete in all material respects.

E. Plan of Operation

As of December 31, 2008, the Company was licensed to write business only in this State. The Company is licensed to do within this State, as a pure captive insurance company, the business of the kinds of insurance authorized by Section 1113(a) and Section 1114 of the Insurance Law.

The Company's certified charter states in pertinent part that:

...the kinds of insurance businesses to be transacted by the Company are those kinds of business specified in paragraphs 13, 14, 19 and 20 of Section 1113(a) of the Insurance Law of the State of New York. . . .

These numbers correspond to the lines of business for personal injury liability, property damage liability, motor vehicle and aircraft physical damage, and marine and inland marine, respectively.

Additionally, Section 7003(a) states that:

... a pure captive insurance company formed by a city with a population of one million or more may insure or provide reinsurance for its parent, statutory subsidiaries and affiliated companies only for liability related to or arising out of activities in or near the World Trade Center site in response to the attacks of September eleventh, two thousand one.

F. Reinsurance

Article VIII, Section 6, of WTCC's by-laws state that the Company shall have the ability to reinsure some or all of its obligations by entering into indemnity or assumption reinsurance agreements or other similar agreements with the prior consent of FEMA and the Department. With regard to ceded insurance, Section 7010(c) of the Insurance Law further delineates a captive's ability to reinsure its business as follows:

Any captive insurance company may take credit for reserves on risks or portions of risks ceded to reinsurers complying with the provisions of paragraph nine of subsection (a) of section one thousand three hundred one and section one thousand three hundred eight of this chapter. Prior approval of the

superintendent shall be required for ceding or taking credit for reserves on risks or portions of risks ceded to reinsurers not complying with these sections.

As of the examination date, the Company does not have any reinsurance protection.

G. Management and Control

(i) Management Firm

Section 7003(b)(4) of the Insurance Law provides that no captive insurer can do any captive insurance business in this state unless it utilizes a captive manager resident in the State that is licensed as an agent or broker under the provisions of the Article 21 of the Insurance Law or any other person approved by the Superintendent. The Company's captive manager, Marsh Management Services, Inc. ("the Manager"), is the captive management arm of Marsh, Inc., an insurance broker licensed by the Department.

Based on a management agreement with the Company, the manager's duties include monitoring and advising the Company on all State laws, regulations and filing requirements which may be applicable to the captive insurance business. The manager assists in the maintenance of the Company's bank accounts, the preparation of its financial statements and the issuance and distribution of its liability insurance policy. The Manager agrees to act as the principal representative for the Company in communicating with the Department and other regulatory authorities in the State. Additionally, the Manager must maintain books and records in accordance with the FEMA Grant Agreement, State Sub-Grant Agreement, City-Captive Agreement and Captive Plan of Operations.

(ii) Board of Directors

Pursuant to the Company's charter and by-laws, management of the Company is vested in a board of directors consisting of five members. All directors are appointed annually by the Mayor of the City. Each director must be an employee, former employee or employee-on-leave of the City or a person experienced in the insurance, construction, financial, professional, or other business or governmental communities of the City. One of the directors must be nominated by the representatives of the contractors hired by the City.

The board is required to hold at least three regular meetings a year in addition to its annual meeting. As of December 31, 2008, the board of directors was comprised of the following five members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Jeffrey D. Friedlander Brooklyn, NY	First Assistant Corporation Counsel, New York City Law Department
Meredith J. Jones Brooklyn, NY	General Counsel and Secretary, New York City Economic Development Corporation
Mark D. Melson Glen Head, NY	Chief Commercial Officer, Bovis Lend Lease Holdings, Inc.
Mark Page Brooklyn, NY	Director of Management and Budget, The City of New York Office of Management and Budget
Robert W. Walsh Brooklyn, NY	Commissioner, New York City Department of Small Business Services

A review of the minutes of the board of directors' meetings held during the examination period indicated that the meetings were generally well attended and that each board member had an acceptable record of attendance.

(iii) Officers

As of December 31, 2008, the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
Christine LaSala	President and Chief Executive Officer
David R. Biester	Vice President, General Counsel and Secretary
James E. Schoenbeck	Chief Financial Officer and Treasurer
Franklin J. Olson	Vice President

#### H. Certified Public Accountant and Actuarial Services

The Company has been audited by Johnson Lambert & Co. LLP (“Johnson Lambert”) for each year covered by this examination. During this period, Johnson Lambert has found the Company’s financial position, as reported, to have been presented fairly in all material respects.

Milliman, Inc. (“Milliman”), an independent actuarial consulting firm, has been engaged to provide, along with other actuarial services, an assessment of the timing of payments to be made pursuant to the Company’s liability insurance policy. As of December 31, 2008, Milliman has concluded that there is insufficient information on which to base an evaluation of the Company’s loss payments and associated loss adjustment expenses.

#### I. Growth of Company

The following schedule sets forth the Company’s significant summary financial information for the years covered by this examination:

<u>Year</u>	<u>Assets</u>	<u>Deposit Liability</u>	<u>Residual Liability</u>	<u>Accumulated Adjustments to Residual Liability</u>
2004	\$1,001,366,053	\$901,625,836	\$100,000,000	\$ (1,895,294)
2005	\$1,003,923,525	\$901,402,061	\$100,000,000	\$ 2,155,761
2006	\$1,011,601,610	\$901,136,150	\$100,000,000	\$10,155,777
2007	\$1,016,643,710	\$881,929,357	\$100,000,000	\$34,360,092
2008	\$ 941,312,923	\$801,269,662	\$100,000,000	\$39,746,481

The changes in the Company’s “Accumulated Adjustments to Residual Liability” are due to the Company’s annual net income/loss. Net income/loss is derived from the net effect of the Company’s investment income, adjusted by its various expenses.

### 3. FINANCIAL STATEMENTS

#### A. Balance Sheet

The financial statements of the Company are presented in conformity with generally accepted accounting principles as set forth by the Governmental Accounting Standards Board. The financial position of the Company as presented and accepted was audited by Johnson Lambert.

#### Balance Sheet As of December 31, 2008

##### Assets

Bonds	\$753,881,706
Cash	59,866,280
Savings and deposit certificate	44,015,104
Other invested assets	78,986,702
Investment income due and accrued	4,518,693
Other assets	<u>44,438</u>
Total assets	<u>\$941,312,923</u>

##### Liabilities, Capital and Surplus

##### Liabilities

Losses	\$ 0
Loss adjustment expenses	0
Commissions, expenses and fees	296,780
Deposit liability	<u>801,269,662</u>
Total liabilities	\$801,566,442

##### Capital and Surplus

Residual liability	\$100,000,000
Accumulated adjustments to residual liability	<u>39,746,481</u>
Total capital and surplus	<u>139,746,481</u>
Total liabilities, capital and surplus	<u>\$941,312,923</u>

B. Statement of Income

Surplus regards policyholders increased \$39,746,481 during the four-year and twenty seven day period covered by this examination, December 4, 2004 through December 31, 2008, detailed as follows:

For The Period From Inception Through December 31, 2008

Underwriting income

Net premiums earned	\$	0
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Underwriting Expenses

Net losses incurred	\$	0
Net loss adjustments expenses incurred		0
Commissions and brokerage		0
Other underwriting expenses		<u>18,339,739</u>

Total underwriting expenses	<u>(18,339,739)</u>
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Underwriting profit (loss)	\$(18,339,739)
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Investment income	129,439,276
Other income	0
Other expenses	<u>(71,353,056)</u>

Income before taxes	\$39,746,481
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Taxes	<u>0</u>
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Net income	<u>\$39,746,481</u>
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C. Capital and Surplus Account

Surplus as regards policyholders as of December 4, 2004			\$100,000,000
	<u>Gains in</u>	<u>Losses in</u>	
	<u>Surplus</u>	<u>Surplus</u>	
Net income	<u>\$39,746,481</u>	<u>\$ 0</u>	
Total gains and losses	<u>\$39,746,481</u>	<u>\$ 0</u>	
Net increase (decrease) in surplus			<u>39,746,481</u>
Surplus as regards policyholders per report on examination as of December 31, 2008			<u>\$139,746,481</u>

**4. LOSSES AND LOSS ADJUSTMENT EXPENSES**

The Company does not report reserves for unpaid losses and loss adjustment expenses in its balance sheet. Under the deposit accounting model, all loss and loss adjustment expense activity is accounted for through the “deposit liability” account (See Item 2C – Capital Structure). As of December 31, 2008, the deposit liability of \$801,269,662 is the amount remaining from the original \$899,900,000 deposit liability amount, adjusted by the segregation of the residual liability, loss and loss adjustment expense payments and other expenses and additions from the inception of operations.

**5. ARTICLE 70 COMPLIANCE**

Article 70 of the Insurance Law is the governing law for the formation and continued operation of captive insurance companies in the State. A review was performed to test the Company’s compliance with Article 70. No material areas of non-compliance were found.

**6. INSURANCE PROGRAM**

The Company provides insurance protection for the City of New York and certain private contractors that worked on behalf of the City against claims arising from or related to the removal of debris from the World Trade Center site after the terrorist attacks on September 11, 2001. The liability insurance policy is the only contract that has been issued by the Company and all of the Company’s business activities relate to its obligations under the policy. The Company’s policy is an occurrence basis liability insurance policy that describes the type of coverage provided as follows:

In consideration of the Premium and any Contingent Premium and subject to all of the terms, conditions and limitations of this Policy... the Company shall pay on behalf of the Insureds all sums which Insureds become legally obligated to pay as Damages because of Claims (including Uniformed City Workers and Pre-Existing Claims) arising from or relating to Debris Removal, provided the following conditions are met:

- (i) The Claims falls within the scope of General Liability, Marine Liability, Environmental Liability, or Professional Liability; and
- (ii) The Claim arises from an Occurrence during the Exposure Period...

The effective dates of this policy are with respect to exposures occurring from September 11, 2001 (post collapse of the World Trade Center site) through August 30, 2002. This period is referred to as the exposure period. The World Trade Center site is defined in the policy as follows:

...the secured area in New York City bounded by Broadway on the east, Albany Street and Thames Street on the south, Chambers Street on the north and the Hudson River on the west; (b) the loading areas in New York City at the West Side Highway and Chambers Street, as well as Pier 92 and the Heliport at 59<sup>th</sup> Street and Hamilton Avenue; (c) the Brooklyn Marine Transfer Stations where trucks dropped off debris and debris was loaded onto barges; (d) barges in transit on the Hudson River and other waterways, together with adjacent piers, on which such barges operated; (e) trucks in transit between the World Trade Center and any location involved in the transportation of debris including such locations in Brooklyn and Staten Island/Freshkills; (f) debris loading and unloading areas, including those in Brooklyn and Staten Island/Freshkills; and (g) debris sorting/sifting areas at Staten Island/Freshkills.

Regardless of the number of insureds or the number of claims submitted, the aggregate ultimate liability covered under the policy is limited to its initial funding plus its net investment return, less its general and pre-grant expenses and the cumulative net losses and loss adjustment expenses paid.

The policy further states that the WTCC has the right and duty to defend its insureds against any suit seeking damages to which the policy may apply.

## **7. SUMMARY OF COMMENTS AND RECOMENDATION**

There were no comments or recommendations.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
Bernard Lott  
Senior Insurance Examiner

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

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

\_\_\_\_\_/s/\_\_\_\_\_  
Bernard Lott

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

Appointment No. 30306

STATE OF NEW YORK  
INSURANCE DEPARTMENT

I, Eric R. Dinallo, Superintendent of Insurance of the State of New York,  
pursuant to the provisions of the Insurance Law, do hereby appoint:

**Bernard Lott**

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

**WTC CAPTIVE INSURANCE COMPANY, INC.**

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

**Corporation**

*with such other information as she shall deem requisite.*

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

*this 26th day of February, 2009*



A handwritten signature in black ink that reads "Eric Dinallo".

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ERIC R. DINALLO  
*Superintendent of Insurance*