

REPORT ON EXAMINATION

OF THE

WTC CAPTIVE INSURANCE COMPANY, INC.

AS OF

DECEMBER 31, 2013

DATE OF REPORT

August 31, 2015

EXAMINER

WEI CAO

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Maria T. Vullo  
Superintendent

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Honorable Maria T. Vullo  
Superintendent of Financial Services  
Albany, New York 12257

August 31, 2015

Madam:

Pursuant to the requirements of the New York Insurance Law, and in compliance with the instructions contained in Appointment Number 31243 dated October 24, 2014, attached hereto, I have made an examination into the condition and affairs of WTC Captive Insurance Company, Inc. as of December 31, 2013, and submit the following report thereon.

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

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

## **1. SCOPE OF EXAMINATION**

The examination covers the Company's operations from January 1, 2009 through December 31, 2013, and was limited in its scope to a review or audit of only those balance sheet items considered by this Department that require analysis or verification. The examination included a review of income, disbursements and Company records deemed necessary to accomplish such analysis or verification. Transactions occurring subsequent to this period were reviewed where deemed appropriate. Additionally, a review was performed to determine whether the captive insurer was operating within its by-laws, conforming to its plan of operation as submitted to this Department and was in compliance with Article 70 of the New York Insurance Law ("the NYIL").

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 NYIL.

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**

On February 20, 2003, the President of the United States signed the Consolidated Appropriations Resolution, 2003, Public Law 108-7, which provided \$999.9 million to create an insurance company to cover the risks assumed by New York City and its hired contractors working without commercial insurance coverage, for claims resulting from work completed subsequent to the terrorist attacks on September 11, 2001 ("terrorist attacks").

WTC Captive Insurance Company, Inc. is a not-for-profit corporation formed in New York State with funding from the Federal Emergency Management Administration ("FEMA") in response to the terrorist attacks. The appropriated amount represented the maximum award authorized and available. Absent additional authority and funding from Congress, the amount of the award could not be increased. The Company was incorporated on July 1, 2004 and commenced operations on December 3, 2004.

The Company shall insure the City of New York and the contractors, subcontractors and consultants of any tier of the City of New York for liability arising out of activities in or near the World Trade Center site in response to the terrorist attacks.

WTC Captive Insurance Company, Inc. has no owners. New York City is the sole member of the WTC Captive, which has been formed as a Type D corporation pursuant to Section 201 of the Not-For-Profit Corporation Law and pursuant to 2003 NY Laws 188 (2003). The Mayor of New York City appoints all directors of the Company.

A. Articles of Incorporation

According to its Certificate of Incorporation, the Company was formed to provide insurance on an “occurrence basis,” for liabilities incurred by the City of New York and its affiliated companies for events occurring on or after September 11, 2001, related to activities involving the World Trade Center debris removal project. The Company is a pure captive insurance company formed by the City of New York as a Not-for-Profit corporation pursuant to Section 7005(a)(3) of the NYIL.

The Company is organized to transact those kinds of insurances specified in paragraph 13, 14, 19 and 20 of Section 1113(a) of the NYIL, subject at all times to the limitations on the business of pure captive insurance companies set forth in Article 70 of the NYIL.

B. By-Laws

The examination revealed that the Company was in compliance with its by-laws in all material respects.

C. Capital Structure

The Company received funding of \$999.9 million from FEMA. The transfer of funds to the Company was accounted for using “deposit accounting” since no insurance risk was present in the contract. The Company originally designated \$899.9 million of its funds as a “deposit liability.” The deposit liability would be reduced to the extent that loss and loss adjustment expenses are paid and increased to the extent that additional funds are received. The remaining \$100,000,000 was designated as a “residual liability” to satisfy the capital and surplus requirements of Section 7004 of the NYIL.

The residual liability, however, does not restrict future use of these funds once the deposit liability account has been exhausted.

As of December 31, 2013, the deposit liability account had been reduced to \$197,808,479. The residual liability had been maintained at \$100,000,000, while the “accumulated adjustment to residual liability” account was \$29,930,532.

D. Corporate Records

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

E. Operations

The Company issues a liability insurance policy to cover third party general liability, environmental liability, professional liability and marine liability claims arising from the debris removal work that resulted from the collapse of the World Trade Center buildings on September 11, 2001. The Captive was funded with \$999.9 million from FEMA. The Liability Insurance Policy is the only contract that has been issued by the Company. The effective date of this policy 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 Policy is an occurrence basis liability insurance policy that provides coverage on both an excess of loss and first dollar basis depending on the line of coverage.

F. Management and Control

(i) Captive Manager

Section 7003(b)(4) of the NYIL 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 NYIL, or any other person approved by the Superintendent.

During the examination period, the Company was managed by Marsh Management Services, Inc. (“Marsh”), which is authorized to act as a manager for captive insurance companies by this Department.

Pursuant to a Management Agreement, effective October 1, 2010, Marsh has the responsibility for providing the Company with underwriting, administrative and other general management and operational services for a fee. These responsibilities include assisting the Company in complying with the rules, regulations and requirements of the Captive Act and the preparation of the annual financial report required by the Department.

(ii) Board of Directors

Pursuant to the Company's by-laws, management of the Company is vested in a board of directors consisting of five members, of which at least two shall at all times be residents of New York State. As of December 31, 2013, the board of directors was comprised of the following five members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Peter Tully Lattingtown, NY	President, Tully Construction Co, Inc.
Meredith Jones Brooklyn, NY	General Council & Secretary, New York City Economic Development Corporation
Robert Walsh Brooklyn, NY	Commissioner, New York City Small Business Services
Jeffrey Friedlander Brooklyn, NY	First Assistant - Corporate Council, New York City Law Department
Mark Page Brooklyn, NY	Director of Management & Budget, New York City, Office of Management & Budget

At least two of the board members were residents of New York State as required by Section 7005(g) of the NYIL.

During the examination period, the board of directors met several times every year. A review of the meeting minutes indicated that all board members had acceptable attendance records with the exception of Robert Walsh, who did not attend any of the board's meetings. Article III Section 3(c) of the Company's by-laws state that "[t]he Mayor of New York City may appoint an alternate for each director, which alternate, upon written notice to the Secretary, may attend meetings and exercise therein all the rights, powers and privileges of the absent director..." Mr. Andrew Schwartz, acting as an alternate to Mr. Walsh, attended all the board of director's meetings during the examination period.

(iii) Officers

As of December 31, 2013, the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
Christine LaSala	President
David R. Biester	Vice President & Secretary
James E. Schoenbeck	Vice President & Treasurer

G. Certified Public Accountant (“CPA”)

The independent CPA firm Saslow Lufkin & Buggy, LLP completed an audit of the Company as of December 31, 2013. In the Company’s audited financial statement the CPA stated the following:

“In our opinion, the financial statements... present fairly, in all material respects, the financial position of WTC Captive Insurance Company, Inc. as of December 31, 2013 and 2012, and the activities and cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.”

### 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.

#### A. Balance Sheet

##### Assets

Cash	\$294,991,165	
Bond	36,809,774	
Investment income due and accrued	81,678	
Prepaid expenses	33,673	
Other assets	<u>5,081</u>	
Total Assets		<u>\$331,921,371</u>

##### Liabilities

Commissions, expenses and fees	\$105,019	
Deposit liability	197,808,479	
Debris removal settlement liability	<u>4,077,341</u>	
Total liabilities		\$201,990,839

##### Capital and Surplus

Residual liability	\$100,000,000	
Accumulated adjustments to residual liability	<u>29,930,532</u>	
Capital and surplus		<u>\$129,930,532</u>
Total liabilities and capital and surplus		<u>\$331,921,371</u>

B. Statement of Income

The Company had a net loss of \$9,815,949 for the five-year examination period as detailed below:

STATEMENT OF INCOME

Underwriting Income

Net premiums earned \$0

Deductions:

Underwriting expenses

Other expenses

Total underwriting deductions 104,496,581

Net underwriting gain or (loss) (104,496,581)

Investment Income

Net investment income 94,680,632

Investment income 94,680,632

Net loss \$(9,815,949)

C. Capital and Surplus Account

The Company's capital and surplus decreased by \$9,815,949, during the period covered by this examination, as detailed below:

Capital and surplus as per report on examination as of December 31, 2008 \$139,746,481

	<u>Gains in surplus</u>	<u>Losses in surplus</u>
Net income	<u>\$0</u>	<u>\$9,815,949</u>

Net decrease in surplus (9,815,949)

Capital and surplus as of December 31, 2013 \$129,930,532

#### **4. DEPOSIT LIABILITY**

Under the deposit accounting model, all loss and loss adjustment expense activity is accounted for through the deposit liability account. As of December 31, 2013, the deposit liability of \$197,808,479 is the result of the prior examination's ending deposit liability of \$801,269,662, adjusted by the total net activity during the period covered by the current examination.

#### **5. ARTICLE 70 COMPLIANCE**

Article 70 of the NYIL 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. There were no significant areas of non-compliance found.

#### **6. SUMMARY OF COMMENTS AND RECOMMENDATIONS**

There are no comments or recommendations in this report.

Respectfully submitted,

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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.

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Wei Cao

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

***APPOINTMENT NO. 31243***

***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*

***WTC Captive Insurance Company, Inc.***

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

***COMPANY***

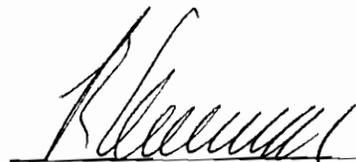
*with such other information as he shall deem requisite.*

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

*this 24th day of October, 2014*

***BENJAMIN M. LAWSKY***  
***Superintendent of Financial Services***

By:



***Rolf Kaumann***  
***Deputy Chief Examiner***

