

REPORT ON EXAMINATION

OF

CLAM SHELL INSURANCE COMPANY, INC

AS OF

DECEMBER 31, 2012

DATE OF REPORT

EXAMINER

APRIL 4, 2016

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Acting Superintendent

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

April 4, 2016

Madam:

Pursuant to the requirements of the New York Insurance Law, and in compliance with the instructions contained in Appointment Number 31052 dated September 13, 2013, attached hereto, I have made an examination into the condition and affairs of Clam Shell Insurance Company, Inc. as of December 31, 2012, and submit the following report thereon.

Wherever the designation “the Company” appears herein without qualification, it should be understood to indicate Clam Shell Insurance Company, Inc. Wherever the designation “Parent” appears herein without qualification, it should be understood to refer to Sunbelt Holding, 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 period from the Company's inception through December 31, 2012, 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**

The Company was incorporated under the laws of New York State as a captive insurance company on July 13, 2007 and commenced business on August 30, 2007. The Company is a wholly-owned subsidiary of Sunbelt Holding, Inc.

A. **Articles of Incorporation**

The Company is organized to transact the kinds of insurance specified in Sections 1113(a) and 1114 of the New York Insurance Law, subject at all times to the limitations on the business of pure captive insurance companies set forth in Article 70 of the New York Insurance Law.

B. **By-Laws**

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

Capital Structure

As a pure captive insurance company incorporated as a stock insurer, the Company is required to maintain surplus as regards policyholders of not less than \$250,000, of which \$100,000 shall represent paid in capital pursuant to the provisions of Section 7004(a)(1) of the New York Insurance Law.

As of December 31, 2012, the Company's paid in capital was \$100,000 consisting of 1000 shares of \$100 par value per share common stock and its surplus as regards policyholders was \$3,818,076.

C. Corporate Records

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

D. Reinsurance

As of the examination date, the Company has structured its ceded reinsurance program as follows:

Coverage	Limits	Reinsurer
Domestic Property Insurance Policy	\$5,000,000 excess of \$25,000,000	Partner Re
Domestic Property Insurance Policy	\$20,000,000 excess of \$200,000,000	Ascot

Clam Shell Insurance Company, Inc. provided a Terrorism Risk Insurance policy to its parent, Sunbelt Holding, Inc., during the examination period. As of December 31, 2012, the policy provided coverage with a limit of \$300,000,000, for any one occurrence and in the aggregate, for certified acts of terrorism and \$100,000,000, for any one occurrence and in the aggregate, for non-certified acts of terrorism, excess of various deductibles. Under the Terrorism Risk Insurance Program Reauthorization Act of 2007 ("TRIPRA 2007"), the Company will be reimbursed 85% of terrorism losses exceeding a statutorily established deductible.

The Company cedes the remaining 15% of certified acts of terrorism losses to Lloyds of London excess of \$100,000 per any one occurrence. The limit of liability is \$48,200,000, any one occurrence. The Company also cedes all non-certified acts of terrorism losses to Lloyds of London excess of \$100,000 per any one occurrence. The limit of the liability is \$100,000,000 any one occurrence.

E. 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.

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

Pursuant to the Management Agreement between the Company and Marsh, under the direction and control of the Company, Marsh shall render the following services to the Company:

- Policy services
- Claims administration
- Ceding reinsurance
- Assuming reinsurance
- Advice on Insurance Programs
- Acting as principal representative of the Company regarding regulatory matters
- Other services as may from time to time be agreed upon by Marsh and the Company

(ii) Board of Directors

Pursuant to the Company's by-laws, management of the Company is vested in a board of directors consisting of not less than three nor more than ten members, of which, at least two shall at all times be residents of New York State. At December 31, 2012, the board of directors was comprised of the following five members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Charles Merinoff Haworth, NJ 07641	Chairman and Chief Executive Officer, The Charmer Sunbelt Group
Louis Noe E. Setauket, NY 11733	Risk Manager, Sunbelt Beverage Co., LLC
Richard Ostermann Syosset, NY 11791	Vice President, Finance Sunbelt Beverage Co., LLC
Eugene Luciana Darien, CT 06820	Executive Vice President, Chief Financial Officer, Sunbelt Holding, Inc.
Nisala M. Weerasooriya Lake Grove, NY 11755	Senior Vice President, Marsh Management Services Inc.

As of December 31, 2012, the Company had five board members, of which three members were residents of New York State, which is in compliance with Section 7005(g) of the New York Insurance Law.

During the period covered by this examination, the board met once each year. A review of the meeting minutes during the examination period indicated that all the board meetings were generally well attended except for Charles Merinoff who did not attend any of the meetings for which he was eligible for attend.

Subsequent to the examination date, the Company provided the minutes to the 2013 annual meeting of the sole shareholder. The meeting was held on July 12, 2013 and the minutes indicated that Charles Merinoff was no longer a director in 2013.

(iii) Officers

As of December 31, 2012, the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
Charles Merinoff	President
Louis Noe	Vice President
Nisala M. Weerasooriya	Secretary
Richard Ostermann	Vice President
Eugene Luciana	Treasurer

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

The Company was audited by the independent CPA firm Saslow Lufkin & Buggy, LLP, 10 Tower Lance, Avon, CT 06001 for the years 2007-2012. The Company’s opining actuary as of December 31, 2012 was Marsh Management Services Inc., 100 Bank Street, Suite 601, Burlington, VT 05401.

G. 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>Net Premiums Earned</u>	<u>Net Income</u>	<u>Assets</u>	<u>Shareholders' Equity</u>
2007	\$ 297,901	\$ (135,513)	\$ 1,767,950	\$1,239,487
2008	5,949,181	(645,579)	6,273,542	593,908
2009	7,940,244	(1,185,616)	10,531,261	258,292
2010	10,071,614	862,282	15,031,784	2,120,574
2011	10,067,525	445,254	18,049,446	2,565,828
2012	10,462,438	1,252,248	19,499,536	3,818,076

3. FINANCIAL STATEMENTS

With the Department's permission, the Company's financial statements have been prepared in conformity with generally accepted accounting principles, which differ from statutory accounting principles prescribed or permitted by the Department for insurance companies. The Company's independent CPA firm concluded that the following financial statements present fairly, in all material respects, the Company's financial position as of December 31, 2012.

A Balance Sheet

Assets

Cash and cash equivalents	\$ 8,704,134	
Loss escrow fund	30,000	
Notes receivable from Parent	10,000,000	
Deferred tax assets	643,683	
Prepaid expenses	72,414	
Prepaid reinsurance	45,326	
Deferred policy acquisition costs	<u>3,979</u>	
Total Assets		<u>\$19,499,536</u>

Liabilities

Unpaid losses and loss adjustment expenses	\$13,998,666	
Unearned premiums	994,687	
Losses payable	574,875	
Accrued expenses	28,900	
Federal income taxes payable	<u>84,332</u>	
Total liabilities		<u>\$15,681,460</u>

Capital and Surplus

Common stock	\$ 100,000	
Additional paid in capital	3,125,000	
Retained earnings	<u>593,076</u>	
Total capital and surplus		<u>3,818,076</u>
Total liabilities and capital surplus		<u>\$19,499,536</u>

B. Statement of Income

The Company's net income is \$593,076 as detailed below:

STATEMENT OF INCOME

Underwriting Income

Net premiums earned		\$44,788,903
Deductions:		
Net losses and net loss adjustment expense	\$41,782,833	
Premium taxes	165,213	
General and administrative expenses	2,680,713	
Underwriting expenses	<u>131,849</u>	
Total underwriting deductions		<u>\$44,760,608</u>
Net underwriting gain or (loss)		\$ 28,295
<u>Investment Income</u>		
Interest Income	\$855,432	
Investment income		<u>855,432</u>
Net income before tax		\$883,727
Federal income tax expenses		<u>290,651</u>
Net income		<u>\$593,076</u>

C. Capital and Surplus Account

The Company's capital and surplus increased \$3,818,076 during the five-year period one hundred sixty seven days as detailed below:

Capital and surplus as of July 13, 2007		\$ 0
	<u>Gains in surplus</u>	
Net income	\$ 593,076	
Issuance of common stock	100,000	
Capital contribution	<u>3,125,000</u>	
Net increase in surplus		<u>\$3,818,076</u>
Capital and surplus as of December 31, 2012		<u>\$3,818,076</u>

4. **LOSSES AND LOSS ADJUSTMENT EXPENSES**

As of December 31, 2012, the Company reported total loss and loss adjustment expense reserves of \$13,998,666. The Company's opining actuary stated the following in its Statement of Actuarial Opinion:

"In my opinion, the Company's December 31, 2012 reserves identified herein:

- Meet the relevant requirements of the insurance laws of New York;
- Are computed in accordance with commonly accepted actuarial methods and are fairly stated in accordance with sound actuarial principles;
- Make reasonable provision in the aggregate for all unpaid losses and loss adjustment expenses under the terms of the Company's policies;
- Are computed on the basis of similar general methods as used at December 31, 2011."

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**

Clam Shell Insurance Company, Inc. is a wholly owned subsidiary of Sunbelt Holding, Inc., which is ultimately owned by the Charmer Sunbelt Group. Sunbelt Holding, Inc. is an independent alcoholic beverage distributor headquartered in New York City. Sunbelt Holding, Inc. primarily operates through its majority-owned subsidiary, Sunbelt Beverage Company, LLC.

7. INSURANCE PROGRAM

As of December 31, 2012, the Company provided occurrence basis deductible reimbursement coverage for the following insurance program to its Parent, Sunbelt Holding, Inc. and a selected group of affiliates and subsidiaries:

<u>Policy coverage</u>	<u>Limits</u>
Workers' Compensation	500,000 per occurrence, inclusive of allocated loss adjustment expenses and applicable loss assessments
Automobile Liability	500,000 per occurrence, inclusive of allocated loss adjustment expenses and applicable loss assessments
Automobile Physical Damage	250,000 per vehicle, inclusive of allocated loss adjustment expenses and applicable loss assessments
General Liability	\$50,000 per occurrence, inclusive of allocated loss adjustment expenses and applicable loss assessments

During 2012, the Company provided General Liability and Auto Physical Damage risks with limits of \$300,000 per occurrence and in the aggregate, inclusive of allocated loss adjustment expenses and applicable loss assessments and retained portion of claims not covered under the policies in the table above.

Effective June 1, 2009, the Company started providing a Crime Insurance Deductible Reimbursement policy to the Parent, Sunbelt Holding, Inc. and its affiliates and subsidiaries. The Limits of the coverage is \$100,000 in excess of \$100,000 per occurrence.

8. SUMMARY OF COMMENTS AND RECOMMENDATIONS

This report contains no comments or recommendations.

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 _____, 2014.

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

Clam Shell 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.

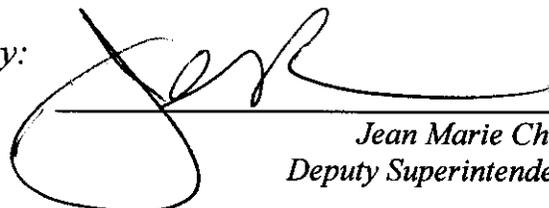
In Witness Whereof, I have hereunto subscribed by name
and affixed the official Seal of the Department
at the City of New York

this 13th day of September, 2013

BENJAMIN M. LAWSKY
Superintendent of Financial Services



By:



Jean Marie Cho
Deputy Superintendent