

REPORT ON EXAMINATION

OF THE

TRI-STATE CONSUMER INSURANCE COMPANY

AS OF

DECEMBER 31, 2008

DATE OF REPORT

MAY 7, 2010

EXAMINER

VERONICA DUNCAN BLACK

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

May 7, 2010

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 30364 dated July 10, 2009 attached hereto, I have made an examination into the condition and affairs of Tri-State Consumer Insurance Company 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 Tri-State Consumer Insurance Company.

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

The examination was conducted at the Company's home office located at 575 Jericho Turnpike, Jericho, New York 11753.

## 1. SCOPE OF EXAMINATION

The Department has performed a single-state examination of Tri-State Consumer Insurance. The previous examination was conducted as of December 31, 2002. This examination covered the six year period from January 1, 2003 through December 31, 2008. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

This examination was conducted in accordance with the National Association of Insurance Commissioners (“NAIC”) Financial Condition Examiners Handbook (“Handbook”), which requires that we plan and perform the examination to evaluate the financial condition and identify prospective risks of the Company by obtaining information about the Company including corporate governance, identifying and assessing inherent risks within the Company and evaluating system controls and procedures used to mitigate those risks. This examination also includes assessing the principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation, management’s compliance with Statutory Accounting Principles and annual statement instructions when applicable to domestic state regulations.

All financially significant accounts and activities of the Company were considered in accordance with the risk-focused examination process. The examiners also relied upon audit work performed by the Company’s independent public accountants when appropriate.

This examination report includes a summary of significant findings for the following items as called for in the Financial Condition Examiners Handbook of the NAIC:

- Significant subsequent events
- Company history
- Corporate records
- Management and control
- Fidelity bonds and other insurance
- Pensions, stock ownership and insurance plans
- Territory and plan of operation
- Growth of Company
- Loss experience
- Reinsurance
- Accounts and records
- Statutory deposits
- Financial statements
- Summary of recommendations

A review was also made to ascertain what action was taken by the Company with regard to comments and recommendations contained in the prior report on examination.

This report on examination is confined to financial statements and comments on those matters that involve departures from laws, regulations or rules, or that are deemed to require explanation or description.

## **2. DESCRIPTION OF COMPANY**

The Company was incorporated under the laws of the State of New York on November 30, 1982. It became licensed on October 28, 1985 and commenced business on March 9, 1986. The Company is a wholly-owned subsidiary of Tri-State Consumer, Inc., a New York Corporation.

During 1990, 100% of Tri-State Consumer Inc. was transferred equally to Penny Fern Hart and Dean Evan Hart, pursuant to a trust agreement. Effective November 16, 2007, Tri-State Consumer, Inc's owners, Penny Fern Hart and Dean Evan Hart, entered into a stock purchase agreement with WBL Partners, LLC ("WBL"), Mr. Charles K. Slatery and Mr. James D. Lackie for the acquisition of Tri-State Consumer Inc. and its subsidiaries. The Department approved the subject acquisition of control on April 16, 2008. Effective April 30, 2008, pursuant to the stock purchase agreement WBL Partners, LLC, through its wholly-owned subsidiary, WT Holdings Inc., acquired all of the shares of Tri-State Consumer, Inc. Further, effective July 3, 2008, Tri-State Consumer, Inc. incorporated TSC>Direct, Inc., a New York agency, pursuant to Section 402 of the Business Corporation Law. TSC>Direct, Inc. was established to solicit business on the behalf of the Company.

The Company's paid up capital of \$1,001,000 consists of 700,000 shares of common stock at a par value of \$1.43 per share. All authorized shares are outstanding. Gross paid in and contributed surplus was \$1,347,003 and did not change during the examination period.

### **A. Management**

Pursuant to the Company's charter and by-laws, management of the Company is vested in a board of directors consisting of not less than thirteen nor more than forty members. The exact number of the board is to be determined in accordance with the provisions of the Company's by-laws. The board met approximately four times during each of the years under examination. At December 31, 2008, the board of directors was comprised of the following thirteen members:

| <u>Name and Residence</u>               | <u>Principal Business Affiliation</u>  |
|---|--|
| Robert F. Carlin II<br>Kings Park, NY   | Secretary,<br>Tri-State Consumer Insurance Company                             |
| Shepard Doninger<br>Delray Beach, FL    | President and Chief Executive Officer,<br>Black Dog Communications Group, Inc. |
| Barbara Elis<br>Syosset, NY             | Vice President,<br>Tri-State Consumer Insurance Company                        |
| Blair Farinholt<br>Atlanta, GA          | Director of Business Development,<br>Maestro Music                             |
| Penny Fern Hart<br>New York, NY         | President,<br>Tri-State Consumer Insurance Company                             |
| Ronald Fishman<br>New York, NY          | Director,<br>Wander & Cohen  |
| John Gwynn<br>Memphis, TN               | President,<br>JDG Research, LLC.   |
| James D. Lackie<br>Memphis, TN          | President and Chief Executive Officer,<br>Lackie Trading, Inc.                 |
| Milo Pinckney<br>Stone Mountain, GA     | Director,<br>Graduate Medical Consultant Group                                 |
| Stephen Roberts<br>Memphis, TN          | Director,<br>Wisteria Capital Management                                       |
| David Schwartz<br>Great Neck, NY        | Director,<br>First Capital Equities  |
| Charles K. Slatery<br>Memphis, TN       | Chairman of the Board,<br>WT Holdings Inc.                                     |
| William Van Thompson III<br>Memphis, TN | Vice President,<br>NCF Investments, LLC  |

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.

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

| <u>Name</u>         | <u>Title</u>            |
|---------------------|-------------------------|
| Penny Fern Hart     | President and Treasurer |
| Robert F. Carlin II | Secretary               |
| Barbara Elis        | Vice President          |

B. Territory and Plan of Operation

As of December 31, 2008, the Company was licensed to write business only in the State of New York.

As of the examination date, the Company was authorized to transact the kinds of insurance as defined in the following numbered paragraphs of Section 1113(a) of the New York Insurance Law:

| <u>Paragraph</u> | <u>Line of Business</u>                    |
|------------------|--|
| 4                | Fire                                       |
| 5                | Miscellaneous property                     |
| 6                | Water damage                               |
| 7                | Burglary and theft                         |
| 12               | Collision                                  |
| 13               | Personal injury liability                  |
| 14               | Property damage liability                  |
| 19               | Motor vehicle and aircraft physical damage |
| 20               | Marine and inland marine                   |

Based on the lines of business for which the Company is licensed and the Company's current capital structure, and pursuant to the requirements of Articles 13 and 41 of the New York Insurance Law, the Company is required to maintain a minimum surplus to policyholders in the amount of \$1,500,000.

The following schedule shows the direct premiums written in New York for the period under examination:

| <u>Calendar Year</u> | <u>Direct Premiums Written</u> |
|----------------------|--------------------------------|
| 2003                 | \$24,721,913                   |
| 2004                 | \$26,343,810                   |
| 2005                 | \$25,221,931                   |
| 2006                 | \$23,432,819                   |
| 2007                 | \$27,113,660                   |
| 2008                 | \$33,231,682                   |

The Company is a property and casualty insurer. The Company writes preferred private passenger automobile insurance, homeowners' multiple peril insurance and a small number of personal umbrella policies. The Company also has a small participation in underwriting pools and associations, which includes the FAIR Plan.

The Company expanded its homeowners' book of business to take advantage of a market dislocation created by larger personal line insurers. This expansion has been attributed to the direct placement of the homeowners business with the Company through captive agents of Allstate as well as placement through other Agencies. Further, the Company's premium writings are concentrated in the five boroughs of New York City, Nassau, and Suffolk counties. For the period under examination, the Company's policies were marketed exclusively through its parent company, Tri-State Consumer, Inc., until August 23, 2004. Subsequent to this date, the Company began to solicit its business on a direct basis and through a limited number of authorized agents and brokers. Effective May 1, 2009, the Company entered into an agency agreement with its affiliate, TSC>Direct Inc.; whereby, TSC>Direct Inc. agreed to solicit business on the behalf of the Company.

C. Reinsurance

Assumed

As of December 31, 2008, the Company did not participate in any type of assumed reinsurance program.

Ceded

As of December 31, 2008, the Company has structured its ceded reinsurance program to limit its maximum exposure on any one risk as follows:

Type of treatyCessionProperty / Casualty:

Multiple Line Excess of Loss

100% Authorized

Coverage A:

Limit of 75% of \$1,500,000 excess of \$300,000 ultimate net loss any one risk, each loss, subject to a limit of 75% of \$1,500,000 as respects all risks involved in any one occurrence for business classified as property.

Coverage B:

Limit of \$700,000 excess of \$300,000 ultimate net loss any one loss occurrence for business classified as casualty.

Coverage C:

Limit of 75% of \$300,000 ultimate net loss any one occurrence involving one or more classes of property business subject to coverage A and one or more of the classes of casualty business subject to coverage B.

Coverage D:

Limit of 75% of \$700,000 excess \$300,000 ultimate net loss any one occurrence, subject to a limit of 75% of \$1,400,00 as respect all occurrences commencing during any contract year for business classified as property.

Coverage E:

Limit of \$850,000 excess \$150,000 ultimate net loss any one occurrence as respect business written by Drivers Insurance Company ("Drivers").

Limit of \$700,000 excess \$300,000 ultimate net loss any one occurrence in the event that a policy or policies written by Tri-State Consumer Insurance Company or Drivers Insurance Company are involved in the same occurrence.

Personal Umbrella  
Quota share treaty

100% Authorized

95% part of 100% share of the Company net liability, subject to maximum cession of \$1,000,000 each occurrence for business classified as personal umbrella liability business.

Catastrophe Excess of Loss  
Reinsurance  
4 layers

40% Authorized  
35% Unauthorized

75% part of 100% as respect each excess layers with a limit of \$40,000,000 excess \$1,000,000 ultimate net loss any one loss occurrence for business classified as automobile physical damage (comprehensive only) and inland marine and Section I of the homeowners multiple peril business.

Homeowners  
Quota Share Treaty

100% Authorized

25% part of 100% quota share of the Company's net liability subject to specific limits as described in Article V, Section B of the treaty.

The Company's reinsurance program has changed since the last report on examination. During this examination period, the Company entered into a 25% quota share treaty for the protection of its homeowners' business. The Company added its affiliate (Drivers) as a participant to its multiple line excess of loss treaty, and has discontinued its standard quota share retrocession agreement. Effective June 1, 2008, the Company entered into a catastrophe excess of loss reinsurance treaty for the protection of its automobile physical damage and inland marine (homeowners perils) business. With respect to the captioned insurance coverage including personal umbrella insurance coverage, the Company's largest net amount retained on any property risk is 75% of \$300,000 and its net retained amount on casualty risk is \$300,000.

The examiner reviewed all of the ceded reinsurance contracts in effect at December 31, 2008. As of the examination date, the Company had both excess of loss and quota share reinsurance arrangements in place for the protection of its automobile and homeowners' business. The contracts contained the required standard clauses including insolvency clauses meeting the requirements of Section 1308 of the New York Insurance Law.

Examination review of the Schedule F data reported by the Company in its filed annual statement was found to accurately reflect its reinsurance transactions. Additionally, management has represented that all material ceded reinsurance agreements transfer both underwriting and timing risk as set forth in the NAIC Accounting Practices and Procedures Manual, Statements of Statutory Accounting Principles ("SSAP") No. 62. Representations were supported by appropriate risk transfer analysis and an attestation from the Company's chief executive officer pursuant to the NAIC Annual Statement Instructions. Additionally, the examination review indicated that the Company was not a party to any finite reinsurance agreements. All ceded reinsurance agreements were accounted for utilizing reinsurance accounting as set forth in SSAP No. 62.

#### D. Holding Company System

The Company is a member of the WT Holdings Inc. Group. The Company is 100% owned by Tri-State Consumer, Inc., which is 100% owned by WT Holdings Inc., a Memphis, Tennessee corporation, which is owned by WBL Partners, LLC and ultimately controlled by Charles Slatery and James Lackie. Effective April 30, 2008, through a stock purchase agreement, WBL acquired ownership of the Company.

A review of the holding company registration statements filed with this Department indicated that such filings were complete and were filed in a timely manner pursuant to Article 15 of the New York Insurance Law and Department Regulation 52.

The following is an abridged chart of the holding company system at December 31, 2008:



At December 31, 2008, the Company was party to the following agreements with other members of its holding company system:

Investment Advisory Agreement

Effective April 30, 2008, the Company entered into an advisory service agreement with NFC Investments, LLC (“Advisor”), whereby the Advisor agreed to provide certain advisory and/or consulting services to the Company. Pursuant to the terms of the agreement, the Advisor shall have the power to supervise and direct the investment and reinvestment of the Company’s securities portfolio (including all additions, substitutions, and alterations thereto) subject to the New York State Insurance Law and written investment guidelines adopted by the Company’s board of directors. This agreement was approved by the Department on April 18, 2008 pursuant to Section 1505 of the New York Insurance Law.

### Management Service Agreement

Effective January 1, 2002, the Company and its affiliate, Drivers Insurance Company (“Drivers”) entered into a management agreement whereby the Company agreed to manage and supervise the business of Drivers. Pursuant to the terms of the agreement, the Company agreed to furnish advice, staff and certain managerial services including: negotiating, binding and issuing contract of insurance, claim administrative, accounting and data processing services deemed necessary for the preparation of annual statements and statistical reporting on behalf of Drivers. Effective May 9, 2006, the Company and Drivers executed an addendum to the management agreement, which required a decrease to the management fee, from 14.5% to 13% of gross premium written. The addendum was approved by the Department on May 4, 2006, pursuant to Section 1505(d)(3) of the New York Insurance Law.

### Lease Agreement

Effective January 26, 2007, the Company executed a renewal lease agreement with Drivers. Under the terms of the lease agreement, the Company agreed to lease office space to Drivers for a period of five years, commencing February 1, 2007 and ending January 31, 2012. The renewal agreement contained substantially similar terms as the former agreement. The agreement requires the Company to lease space to Drivers consisting of 335 gross rentable square feet, together with a right to use the common facilities in the building. The amended lease agreement was approved by the Department on June 21, 2007, pursuant to Section 1505(d)(3) of the New York Insurance Law.

### Tax Sharing Agreement

Effective April 29, 2008, the Company, its immediate parent – Tri-State Consumer, Inc., and WT Holdings, Inc entered into a tax sharing agreement. Pursuant to the terms of the agreement, the parties agreed to file a consolidated tax return for each taxable year during which the Company or subsidiary qualified to be included in such tax return in accordance with the requirements of Department Circular Letter No. 33 (1979). Further, the agreement also required the establishment of an escrow account. A review of the tax allocation agreement indicated that the Company did not establish the required escrow account until July 16, 2010.

E. Significant Operating Ratios

The following ratios have been computed as of December 31, 2008, based upon the results of this examination:

|  |     |
|--|-----|
| Net premiums written to surplus as regards policyholders                               | 81% |
| Liabilities to liquid assets (cash and invested assets less investments in affiliates) | 71% |
| Premiums in course of collection to surplus as regards policyholders                   | 1%  |

All of the above ratios fall within the benchmark ranges set forth in the Insurance Regulatory Information System of the National Association of Insurance Commissioners.

The underwriting ratios presented below are on an earned/incurred basis and encompass the six-year period covered by this examination:

|  | <u>Amounts</u>       | <u>Ratios</u>  |
|--|----------------------|----------------|
| Losses and loss adjustment expenses incurred | \$85,730,570         | 59.28%         |
| Other underwriting expenses incurred         | 57,276,081           | 39.60          |
| Net underwriting gain                        | <u>1,616,918</u>     | <u>1.12</u>    |
| Premiums earned                              | <u>\$144,623,569</u> | <u>100.00%</u> |

F. Disaster Recovery Plan

The Company has a business continuity/disaster recovery plan, which clearly describes senior management's role and responsibilities associated with the declaration of an emergency and implementation of the business continuity and disaster recovery plan. The plan clearly identifies the general process by which the threat will be assessed and the specific individuals who are authorized to declare an emergency. However, the Company's business continuity/disaster recovery plan does not contain a list of critical computer application programs, operating systems and data files. Further, the plan does not contain a list of the supplies, which would be needed in the event of a disaster, together with names and phone numbers of the suppliers. This increases the risk that in the event of disaster, normal operational procedures will not be restored in a timely manner. It is recommended

that the Company's business continuity/disaster recovery plan contain a list of critical computer application programs, operating systems and data files. It is further recommended that the plan contain a list of supplies, which would be needed in the event of a disaster, together with names and telephone numbers of the suppliers.

G. Information Technology ("IT")

(i) Back-up Storage Facility

A review of the Company's IT off-site storage facility shows that the IT manager is responsible for maintaining the Company's back-up files at his residence. It is noted that the files and/or tapes are stored in a cabinet that is neither water-proof nor fire-proof. The examiner notes that in the event of a disaster related to a fire or water damage, the Company's back-up files would be destroyed. It is recommended that the Company find an alternative storage facility to protect its files in the event of a disaster.

(ii) Password Policy

A review of the Company's IT system shows that the system does not automatically prompt users to change their passwords at least quarterly to prevent passwords from being reused by the same individual or misused by an unauthorized user. The examiner notes that the Company's current password policy requires the IT manager to assign a password to an employee and/or user, but does not require the password to be changed. The examiner notes that the Company's current policy may increase the risk of unauthorized use, which would also increase a security risk to the Company's IT system. It is recommended that the Company establish a password policy, which would prompt users to change their passwords at least quarterly to prevent the passwords from being reused by the same individuals or misused by unauthorized users. It is further recommended that passwords be transmitted in an encrypted state across the network during the authentication and authorization process.

(iii) Premium Rate Change

During the examination period, the Company informed the Department of a programming error that affected the premium rate and/or discount rate charge for specific homeowners' endorsement and policy discounts for calendar years 2006 through 2009. This error produced an excess premium charge as well as an excess credit for certain insurance policies. The Company

explained that the error arose as a result of a deficiency in its testing procedures for new premium rate implementation. The Company informed the examiner that certain procedures would be implemented to mitigate against the risk of improper rates being established. It is recommended that the Company follow through with the implementation of its new programming procedures to ensure proper premium rate updates.

#### H. Risk Management and Internal Controls

##### (i) Premium Receivables

The Company has not written-off uncollectible receivables in a timely manner. The Company explained that all outstanding premiums receivable balances are written-off within a year to a year and a half after becoming overdue. A review of the Company's non-admitted account shows that the account included receivable balances dating back to calendar years 2005 and 2006. It was also noted that the Company did not write-off the aforementioned uncollectible balances until July 2008. The examiner informed the Company of the captioned discrepancy and noted that receivables were not being written-off in a timely manner pursuant to SSAP No. 5 of the Accounting Practices and Procedures Manual. The Company informed the examiner that going forward that it would write-off the older premium receivables twice a year instead of once a year. It is recommended that the Company comply with its new premium write-off policy pursuant to SSAP No. 5 of the Accounting Practices and Procedures Manual.

##### (ii) Claims Manual

The Company does not have formal claims manual in place for its homeowners' line of business. A review of the Company's claims manual shows that the manual refers specifically to the Company's automobile business and not its homeowners' business. The examiner recommended that the Company amends its current claims manual to incorporate additional homeowners' specific references. The Company realizes the importance of having a claims manual in place that is specific to its homeowners business and notes that it will take the examination's recommendation under advisement. It is recommended that the Company act on the examiner's recommendation and amend its claims manual to include homeowner-specific references, so that it can have the proper and the necessary procedure in place to process its homeowners' claims.

### 3. FINANCIAL STATEMENTS

#### A Balance Sheet

The following shows the assets, liabilities and surplus as regards policyholders as of December 31, 2008, as determined by this examination and as reported by the Company:

| <u>Assets</u>  | <u>Assets</u>       | <u>Assets Not Admitted</u> | <u>Net Admitted Assets</u> |
|--|---------------------|----------------------------|----------------------------|
| Bonds  | \$72,162,392        | \$ 0                       | \$72,162,392               |
| Common stocks  | 5,362,750           | 0                          | 5,362,750                  |
| Properties occupied by the company   | 2,909,485           | 0                          | 2,909,485                  |
| Cash, cash equivalents and short-term investments  | 1,649,951           | 0                          | 1,649,951                  |
| Other invested assets  | 3,529,537           | 0                          | 3,529,537                  |
| Investment income due and accrued  | 967,550             | 0                          | 967,550                    |
| Uncollected premiums and agents' balances in the course of collection                    | 405,389             | 94,760                     | 310,629                    |
| Deferred premiums, agents' balances and installments booked but deferred and not yet due | 5,222,828           | 0                          | 5,222,828                  |
| Amounts recoverable from reinsurers  | 52,676              | 0                          | 52,676                     |
| Other amounts receivable under reinsurance contracts                                     | 750,421             | 0                          | 750,421                    |
| Current federal and foreign income tax recoverable and interest thereon                  | 40,485              | 40,485                     | 0                          |
| Net deferred tax asset   | 2,133,652           | 0                          | 2,133,652                  |
| Electronic data processing equipment and software  | 1,171,834           | 1,153,966                  | 17,868                     |
| Furniture and equipment, including health care delivery assets                           | 103,205             | 103,205                    | 0                          |
| Aggregate write-ins for other than invested assets                                       | <u>47,154</u>       | <u>0</u>                   | <u>47,154</u>              |
| Total assets   | <u>\$96,509,309</u> | <u>\$1,392,416</u>         | <u>\$95,116,893</u>        |

Liabilities, Surplus and Other FundsLiabilities

|   |  |                     |
|---|--|---------------------|
| Losses  |  | \$35,205,749        |
| Loss adjustment expenses  |  | 7,995,345           |
| Commissions payable, contingent commissions and other similar charges |  | 141,594             |
| Other expenses (excluding taxes, licenses and fees)                   |  | 1,230,637           |
| Taxes, licenses and fees (excluding federal and foreign income taxes) |  | 13,745              |
| Current federal and foreign income taxes                              |  | 167,323             |
| Unearned premiums   |  | 14,746,147          |
| Advance premium   |  | 439,316             |
| Ceded reinsurance premiums payable (net of ceding commissions)        |  | 1,924,930           |
| Payable for securities  |  | 20,160              |
| Aggregate write-ins for liabilities                                   |  | <u>41,701</u>       |
| Total liabilities   |  | <u>\$61,926,647</u> |

Surplus and Other Funds

|  |                   |                     |
|--|-------------------|---------------------|
| Common capital stock                       | \$ 1,001,000      |                     |
| Gross paid in and contributed surplus      | 1,347,003         |                     |
| Unassigned funds (surplus)                 | <u>30,842,244</u> |                     |
| Surplus as regards policyholders           |                   | <u>\$33,190,247</u> |
| Total liabilities, surplus and other funds |                   | <u>\$95,116,894</u> |

NOTE: The Internal Revenue Service has completed its audits of the Company's (consolidated) Federal Income Tax returns through tax year 2005. All material adjustments, if any, made subsequent to the date of examination and arising from said audits, are reflected in the financial statements included in this report. The examiner is unaware of any potential exposure of the Company to any tax assessment and no liability has been established herein relative to such contingency.

B. Underwriting and Investment Exhibit

Surplus as regards policyholders increased \$9,263,231 during the six-year examination period January 1, 2003 through December 31, 2008, detailed as follows:

Underwriting Income

|                                      |                   |                    |
|--------------------------------------|-------------------|--------------------|
| Premiums earned                      |                   | \$144,623,569      |
| Deductions:                          |                   |                    |
| Losses incurred                      | \$62,821,917      |                    |
| Loss adjustment expenses incurred    | 22,908,653        |                    |
| Other underwriting expenses incurred | <u>57,276,081</u> |                    |
| Total underwriting deductions        |                   | <u>143,006,651</u> |
| Net underwriting gain or (loss)      |                   | \$ 1,616,918       |

Investment Income

|                               |                |            |
|-------------------------------|----------------|------------|
| Net investment income earned  | \$14,986,974   |            |
| Net realized capital gains    | <u>178,501</u> |            |
| Net investment gain or (loss) |                | 15,165,475 |

Other Income

|   |                 |                      |
|---|-----------------|----------------------|
| Net gain (loss) from agents' or premium balances charged off                            | (\$640,140)     |                      |
| Finance and service charges not included in premiums                                    | 1,857,650       |                      |
| Aggregate write-ins for miscellaneous income  | <u>(43,315)</u> |                      |
| Total other income  |                 | <u>1,174,195</u>     |
| Net income after dividends to policyholders but before federal and foreign income taxes |                 | \$ 17,956,588        |
| Federal and foreign income taxes incurred   |                 | <u>4,053,542</u>     |
| Net income  |                 | \$ <u>13,903,046</u> |

|  |                         |                          |                     |
|--|-------------------------|--------------------------|---------------------|
| Surplus as regards policyholders per report on examination as of December 31, 2002 |                         |                          | \$23,927,016        |
|  | <u>Gains in Surplus</u> | <u>Losses in Surplus</u> |                     |
| Net income   | \$13,903,046            |                          |                     |
| Net unrealized capital gains or (losses)   |                         | 2,674,791                |                     |
| Change in net deferred income tax  | 546,847                 |                          |                     |
| Change in non-admitted assets  |                         | 1,132,418                |                     |
| Change in surplus notes  |                         | 3,269,690                |                     |
| Cumulative effect of changes in accounting principles                              | 1,801,130               |                          |                     |
| Dividends to stockholders  |                         | 500,000                  |                     |
| Aggregate write-ins for gains and losses in surplus                                | <u>589,107</u>          | <u>0</u>                 |                     |
| Total gains and losses   | <u>\$16,840,130</u>     | <u>\$7,576,899</u>       |                     |
| Net increase (decrease) in surplus   |                         |                          | <u>9,263,231</u>    |
| Surplus as regards policyholders per report on examination as of December 31, 2008 |                         |                          | <u>\$33,190,247</u> |

#### **4. LOSSES AND LOSS ADJUSTMENT EXPENSES**

The examination liability for the captioned items of \$43,201,094 is the same as reported by the Company as of December 31, 2008. The examination analysis was conducted in accordance with generally accepted actuarial principles and practices and was based on statistical information contained in the Company's internal records and in its filed annual statements.

#### **5. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION**

The prior report on examination contained four recommendations as follows (page numbers refer to the prior report):

| <u>ITEM</u>                            | <u>PAGE NO.</u> |
|--|-----------------|
| A. <u>Board of Directors' Meetings</u> |                 |

|  |   |
|--|---|
| It was recommended that the board members who are unable or unwilling to attend consistently should resign or be replaced. | 5 |
|--|---|

The Company has complied with this recommendation.

| <u>ITEM</u>   | <u>PAGE NO.</u> |
|---|-----------------|
| B. <u>Holding Company System</u>  |                 |
| i.    It is recommended that in the future that the Company notify the superintendent in writing at least thirty day prior to entering into transactions that fall within Section 1505(d)(3) of the New York Insurance Law. | 11              |
|   |                 |
| The Company has complied with this recommendation.  |                 |
| ii.   It is recommended that the Company comply with provisions of Department Circular Letter No.33 (1979).   | 12              |
|   |                 |
| The Company has complied with this recommendation.  |                 |
| C. <u>Disaster Recovery Plan</u>  |                 |
| It is recommended that the Company develop a formalized disaster recovery plan to ensure that key personnel know their responsibility in the event of a disaster.   | 14              |
|   |                 |
| The Company has complied with this recommendation.  |                 |

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

| <u>ITEM</u>  | <u>PAGE NO.</u> |
|--|-----------------|
| A. <u>Disaster Recovery Plan</u>   |                 |
| It is recommended that the Company's business continuity/disaster recovery plan contain a list of critical computer application programs, operating systems and data files. It is further recommended that the plan contain a list of supplies, which would be needed in the event of a disaster together with names and telephone number of suppliers.  | 11              |
| B. <u>Information Technology</u>   |                 |
| i.    It is recommended that the Company find an alternative storage facility to protect its files in the event of a disaster.   | 12              |
| ii.   It is recommended that the Company establish a password policy, which would prompt users to change their passwords at least quarterly to prevent the passwords from being reused by the same individuals or misused by unauthorized users. It is further recommended that passwords be transmitted in an encrypted state across the network during authentication and authorization process. | 12              |

| <u>ITEM</u> |  | <u>PAGE NO.</u> |
|-------------|--|-----------------|
| iii.        | It is recommended that the Company follow-through with the implementation of its new programming procedures to ensure proper premium rate updates.   | 13              |
| C.          | <u>Risk Management and Internal Controls</u>   |                 |
| i.          | It is recommended that the Company comply with its new premium write-off policy pursuant to SSAP No. 5 of the Accounting Practices and Procedures Manual.  | 13              |
| ii.         | It is recommended that the Company act on the examiner's recommendation to amend its claims manual to include homeowners-specific references, so that it can have the proper and the necessary procedure in place to process its homeowners' claims. | 13              |

Respectfully submitted,

\_\_\_\_\_  
/s/  
Veronica Duncan-Black  
Senior Insurance Examiner

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

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

\_\_\_\_\_  
/s/

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

Appointment No. 30364

STATE OF NEW YORK  
INSURANCE DEPARTMENT

I, Kermitt J. Brooks, Acting Superintendent of Insurance of the State of New York, pursuant to the provisions of the Insurance Law, do hereby appoint:

**Veronica Duncan Black**

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

**TRI-STATE CONSUMERS INSURANCE COMPANY**

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

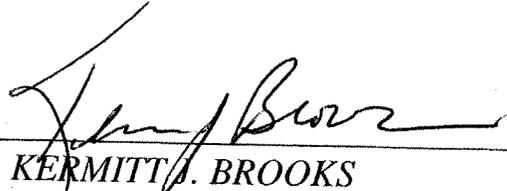
**Company**

*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 10th day of July, 2009*



  
KERMITT J. BROOKS  
Acting Superintendent of Insurance