

REPORT ON EXAMINATION

OF THE

STEWART TITLE INSURANCE COMPANY

AS OF

DECEMBER 31, 2008

DATE OF REPORT

MAY 28, 2010

EXAMINER

LEON TAMBUE

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

May 28, 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 30341 dated May 19, 2009, attached hereto, I have made an examination into the condition and affairs of Stewart Title 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 Stewart Title 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 administrative office located at 300 East 42nd Street, New York, New York 10017.

1. SCOPE OF EXAMINATION

The Department has performed a risk focused examination of Stewart Title Insurance Company. The previous examination was conducted as of December 31, 2003. This examination covered the five-year period from January 1, 2004 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 provisions of Article 64 of the New York Insurance Law on October 26, 1987. It became licensed on December 2, 1987 and commenced business on the same date.

At February 3, 2006, the Company acquired a 100% interest in Monroe Title Insurance Corporation. On May 12, 2009, the Company merged with Monroe Title Insurance Corporation, with the Company as the surviving entity. The transaction was accounted for as a statutory merger.

Capital paid in is \$1,100,000, comprised of 100,000 shares of Class A common stock with a par value of \$2 per share and 90,000 shares of Class B common stock with a par value of \$10 per share. Gross paid in and contributed surplus increased by \$11,653,035 during the examination period as follows:

| <u>Year</u> | <u>Description</u> | <u>Amount</u> |
|-------------------|---|---------------------|
| January 1, 2003 | Beginning gross paid in and contributed surplus | \$12,112,500 |
| 2004 | Surplus contribution | \$ 1,653,035 |
| 2005 | Surplus contribution | <u>10,000,000</u> |
| | Total surplus contributions | <u>11,653,035</u> |
| December 31, 2008 | Ending gross paid in and contributed surplus | <u>\$23,765,535</u> |

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 seven or more than eleven members. The Board met four times during each calendar year. As of December 31, 2008, the board of directors was comprised of the following seven members:

| <u>Name and Residence</u> | <u>Principal Business Affiliation</u> |
|---|---|
| Peter C. Haeffner, Jr. Garden City, New York | Self-Employed, PHAEF LLC |
| James I. Hisiger, Esq. Armonk, NY | Partner, Latham and Watkins LLP |
| Malcolm S. Morris Houston, TX | Chairman and Co-Chief Executive Officer, Stewart Information Services Corporation; Chairman and Chief Executive Officer, Stewart Title Guaranty Company; Chairman, Stewart Title Company |
| Stewart Morris, Jr. Houston, TX | President and Co-Chief Executive Officer, Stewart Information Services Corporation; President and Chief Executive Officer, Stewart Title Company; Senior Chairman, Stewart Title Guaranty Company |
| Richard A. Nardi, Esq. Armonk, NY | Partner, Loeb & Loeb LLP |
| Michael B. Skalka Katy, TX | President, Stewart Title Guaranty Company; Chairman & Chief Executive Officer, Stewart Information International and Stewart Title Insurance Company; Chairman, STG de Mexico and Stewart Title, Ltd. |
| John F. Welling Rye, NY | President and Chief Operating Officer, Stewart Title Insurance Company |

A review of the minutes of the board of directors' meetings held during the examination period indicated that the meetings were generally well attended with the exception of James Hisiger whom attended less than 50% of the meetings he was eligible to attend.

Members of the board have a fiduciary responsibility and must evince an ongoing interest in the affairs of the insurer. It is essential that board members attend meetings consistently and set forth their views on relevant matters so that the board may reach appropriate decisions. Individuals who fail to attend at least one-half of the regular meetings do not fulfill such criteria. It is recommended that board members who are unable or unwilling to attend meetings consistently should resign or be replaced. It is noted that Mr. Hisiger was subsequently removed from the board in July, 2009.

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

| <u>Name</u> | <u>Title</u> |
|-------------------|--------------|
| John F. Welling | President |
| Julie A. Curlen | Secretary |
| Emily Thai-DeRago | Treasurer |

B. Territory and Plan of Operation

As of December 31, 2008, the Company was authorized to transact title insurance as defined in paragraph 18 of Section 1113(a) of the New York Insurance Law. The Company is a multi-state insurer as it is authorized to write title insurance business in the states of New York and California.

Based upon the line of business for which the Company is licensed, its current capital structure, and pursuant to the requirements of Article 64 of the New York Insurance Law, the Company is required to maintain a minimum surplus to policyholders in the amount of \$1,100,000.

During the examination period, the Company issued title insurance policies in New York State only. The following schedule shows the direct premiums written by the Company during the examination period:

| <u>Year</u> | <u>Direct Premiums Written</u> |
|-------------|--------------------------------|
| 2004 | \$145,935,696 |
| 2005 | \$153,156,953 |
| 2006 | \$153,902,842 |
| 2007 | \$162,251,887 |
| 2008 | \$110,026,661 |

The Company writes most of its business through title agents, who are compensated at a commission rate ranging from 80% to 85% of gross premiums written.

In addition to its primary business of issuing title insurance policies, the Company also generates revenue by performing other title related services connected with real estate transactions.

C. Reinsurance

Assumed:

The Company assumes a minimal amount of reinsurance on a facultative basis. Almost all of the business assumed is from affiliates.

Ceded:

The Company has a facultative arrangement in place with its direct parent, Stewart Title Guaranty Company, which allows the Company to cede liabilities in excess of its internally defined excess loss risk. As of December 31, 2008, excess loss was defined as exposures over twenty million dollars.

It should be noted that there have been no instances of the Company paying a loss which triggered making a claim on its ceded facultative contracts. The Company accordingly has not reported any reinsurance recoverables on paid losses or reflected any reinsurance recoverables in its known claim reserves.

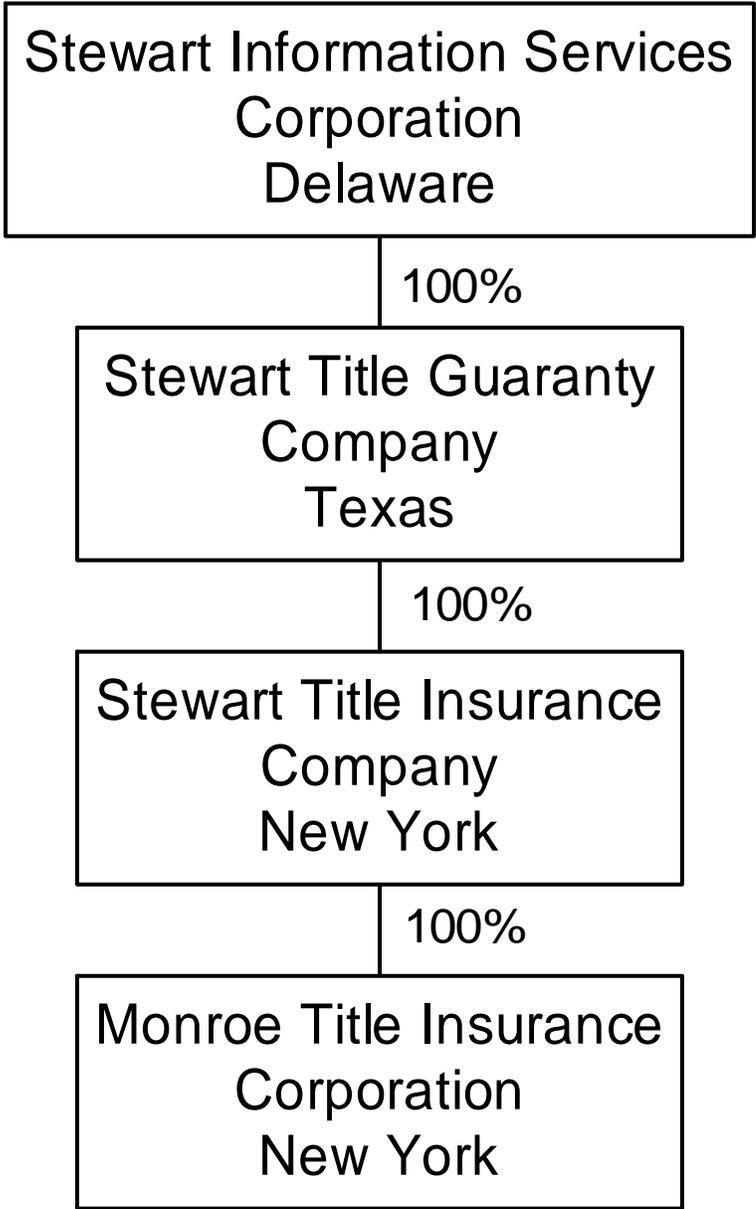
D. Holding Company System

The Company is a wholly-owned subsidiary of Stewart Title Guaranty Company, a Texas insurer, which is ultimately controlled by Stewart Information Services Corp., a Delaware holding company, which is publicly traded.

A review of the holding company registration statements filed with the 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.

On May 12, 2009, the Company merged with its wholly-owned subsidiary Monroe Title Insurance Corporation.

The following is an abbreviated chart of the holding company system as of December 31, 2008:



As of the examination date, the Company was a party to the following agreements with affiliated entities:

1. Consolidated Federal Income Tax Return Settlement Agreement

Effective January 1, 1974, the holding company entered into a consolidated federal income tax return settlement agreement. The agreement was subsequently amended on January 1, 1987. Stewart Title Insurance Company was added to the agreement upon its incorporation on October 26, 1987.

2. Audit Agreement with Stewart Title Guaranty Company

The Company has the captioned agreement in place, whereby Stewart Title Guaranty Company will periodically perform audits on the Company's agents.

3. Underwriting Agreement with Monroe Title Insurance Company

The Company entered an agreement with Monroe Title Insurance Company ("Monroe") on October 17, 2007, whereby Monroe provides title assurances to the Company and other title insurance underwriters of the Company's choosing.

This agreement subsequently ceased to exist upon merger of the Company with Monroe in 2009.

4. Facultative Reinsurance Agreements

The Company has various facultative agreements in place with affiliated entities. The agreements allow the Company to cede and assume liabilities in excess of internally defined excess loss limits defined by the ceding companies. The agreements were filed in accordance with Section 1505 of the New York Insurance Law.

E. Significant Operating Ratios

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

| | <u>Amounts</u> | <u>Ratios</u> |
|--|--------------------------|--------------------|
| Losses and loss adjustment expenses incurred | \$ 30,348,191 | 4.03% |
| Other underwriting expenses incurred | 696,363,924 | 92.37 |
| Net underwriting gain (loss) | <u>27,208,959</u> | <u>3.61</u> |
| Premiums earned | <u>\$753,921,074</u> | <u>100.00%</u> |

F. Accounts and Records

A review of the custodial agreement between the Company and its investment securities custodians indicated that the agreement did not contain the controls and safeguard provisions set forth in Section 3(III)(H) of the NAIC Financial Condition Examiners Handbook.

It is recommended that the custodial agreement between the Company and its investment securities custodian be revised to contain the safeguards and provisions stated in Section 3(III)(H) of the NAIC Financial Condition Examiners Handbook.

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> | EXAMINATION | | <u>COMPANY</u> | <u>Surplus</u> | |
|---|---------------------|------------------------------|-------------------------------|-------------------------------|-------------------------------|
| | <u>Assets</u> | Nonadmitted <u>Assets</u> | Net Admitted <u>Assets</u> | Net Admitted <u>Assets</u> | Increase <u>(Decrease)</u> |
| Bonds | \$ 52,395,340 | | \$ 52,395,340 | \$ 52,395,340 | \$ - |
| Common stocks (investment in subsidiary) | 9,623,573 | | 9,623,573 | 9,623,573 | |
| Cash, cash equivalents and short-term investments | 4,666,147 | | 4,666,147 | 4,666,147 | |
| Title plants | 1,256,600 | | 1,256,600 | 1,256,600 | |
| Investment income due and accrued | 750,926 | | 750,926 | 750,926 | |
| Uncollected premiums and agents' balances in the course of collection | 1,052,216 | 60,025 | 992,191 | 992,191 | |
| Other amounts receivable under reinsurance contracts | 75,286 | | 75,286 | 75,286 | |
| Current federal and foreign income tax recoverable and interest thereon | 1,799,721 | | 1,799,721 | 312,921 | 1,486,800 |
| Net deferred tax asset | 9,683,059 | 8,866,636 | 816,423 | 816,423 | |
| Electronic data processing equipment and software | 121,904 | | 121,904 | 121,904 | |
| Furniture and equipment, including health care delivery assets | 476,871 | 476,871 | | | |
| Receivables from parent, subsidiaries and affiliates | 2,050 | | 2,050 | 2,050 | |
| Prepays and deposits | 1,143,097 | 921,404 | 221,693 | 221,693 | |
| Agreements | 403,400 | 403,400 | | | |
| Goodwill | 13,874,367 | 13,874,367 | | | |
| Accounts receivable | <u>16,940</u> | <u>0</u> | <u>16,940</u> | <u>16,940</u> | <u>0</u> |
| Total assets | <u>\$97,341,497</u> | <u>\$24,602,703</u> | <u>\$72,738,794</u> | <u>\$71,251,994</u> | <u>\$1,486,800</u> |

| <u>Liabilities, Surplus and Other Funds</u> | <u>Examination</u> | <u>Company</u> | Surplus Increase (Decrease) |
|---|-------------------------|--------------------------|-----------------------------------|
| <u>Liabilities</u> | | | |
| Known claims reserve | \$13,087,716 | \$13,087,716 | \$ 0 |
| Statutory premium reserve | 28,687,895 | 28,687,895 | 0 |
| Other expenses (excluding taxes, licenses and fees) | 1,385,459 | 1,385,459 | 0 |
| Taxes, licenses and fees (excluding federal and foreign income taxes) | 5,842 | 5,842 | 0 |
| Payable to parent, subsidiaries and affiliates | 89,926 | 89,926 | 0 |
| Aggregate write-ins for other liabilities | <u>378,726</u> | <u>378,726</u> | <u>0</u> |
| Total liabilities | <u>\$43,635,564</u> | <u>\$43,635,564</u> | <u>\$ 0</u> |
| <u>Surplus and Other Funds</u> | | | |
| Common capital stock | \$ 1,100,000 | \$ 1,100,000 | \$ 0 |
| Gross paid in and contributed surplus | 23,765,535 | 23,765,535 | 0 |
| Unassigned funds (surplus) | <u>4,237,695</u> | <u>2,750,895</u> | <u>1,486,800</u> |
| Surplus as regards policyholders | <u>\$29,103,230</u> | <u>\$27,616,430</u> | <u>\$1,486,800</u> |
| Total Liabilities and Surplus | <u>\$72,738,794</u> | <u>\$ 71,251,994</u> | |

NOTE: The Consolidated tax filing group, to which the Company belongs, was last audited by the Internal Revenue Service for the period January 1, 2002 through December 31, 2004. The audit did not result in any changes to the Company's financials. The current examination period has not been audited and the examiner is unaware of any potential exposure of the Company to any tax assessment.

B. Operations and Investment Exhibit

Surplus as regards policyholders increased \$13,110,747 during the five-year examination period January 1, 2004 through December 31, 2008, detailed as follows:

Underwriting Income

| | | |
|--|--------------------|--------------------|
| Premiums and fees earned | | \$753,921,074 |
| Deductions: | | |
| Loss and loss adjustment expenses incurred | \$ 30,348,191 | |
| Operating expenses incurred | <u>696,363,924</u> | |
| Total underwriting deductions | | <u>726,712,115</u> |
| Net underwriting gain | | \$ 27,208,959 |

Investment Income

| | | |
|---|----------------|----------------------|
| Net investment income earned | \$12,387,745 | |
| Net realized capital gains (losses) | <u>183,906</u> | |
| Net investment gain | | <u>12,571,651</u> |
| Net income before federal income taxes | | \$ 39,780,610 |
| Federal and foreign income taxes incurred | | <u>15,337,100</u> |
| Net income | | <u>\$ 24,443,510</u> |

NOTE: There were a number of items that the Company reflected as prior period adjustments, and according ran through surplus, that have been reflected in the income statement presented herein. These included several adjustments to the Company's federal tax expense, and a reduction in investment income of \$2,396,000 based on a reclassification of a distribution from the Company's subsidiary from dividend income to return of capital.

C. Capital and Surplus Account

| | | | |
|--|-------------------------|--------------------------|---------------------|
| Surplus as regards policyholders per report on examination as of December 31, 2003 | | | \$15,992,483 |
| | <u>Gains in Surplus</u> | <u>Losses in Surplus</u> | |
| Net income | \$24,443,510 | | |
| Net unrealized capital gains | | \$ 761,342 | |
| Change in net deferred income tax | 7,235,252 | | |
| Change in non-admitted assets | | 20,379,333 | |
| Paid in capital changes | 11,653,035 | | |
| Dividends to stockholders | | 8,675,000 | |
| Prior period adjustment to 2003 expenses | <u>0</u> | <u>405,375</u> | |
| Total gains and losses | <u>\$43,331,797</u> | <u>\$30,221,050</u> | |
| Net increase (decrease) in surplus | | | <u>\$13,110,747</u> |
| Surplus as regards policyholders per report on examination as of December 31, 2008 | | | <u>\$29,103,230</u> |

4. KNOWN CLAIM RESERVES

The examination liability for the captioned items of \$13,087,716 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 Companies internal records and in its filed annual statements.

5. STATUTORY PREMIUM RESERVE

The examination reserve of \$28,687,895 is the same as the amount reported by the Company as of December 31, 2008. The reserve was calculated based on a formula pursuant to Section 6405(a) of the New York Insurance Law, which includes a provision for the application of a dollar amount for each policy written and a percentage amount of the face amount of each policy.

6. CURRENT FEDERAL INCOME TAXES RECOVERABLE

The examination asset of \$1,799,721 is \$1,486,800 greater than the \$312,921 reported by the Company in its filed 2008 annual statement. The adjustment of \$1,486,800 reflects the carry-back of the Company's 2008 federal tax loss. The Company did not include this asset in its 2008 annual

statement but rather reflected it as a prior period surplus adjustment in its 2009 annual statement. The \$1,486,800 was received by the Company on March 2, 2010.

7. MARKET CONDUCT ACTIVITIES

A general review was directed at the Company's underwriting practices. The examiner reviewed a sample of title insurance policies issued to determine if the premiums charged were in compliance with filed rates. All of the premium charges reviewed have been found to be in compliance with filed rates.

8. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

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

| <u>ITEM</u> | | <u>PAGE NO.</u> |
|-------------|--|-----------------|
| A | It is recommended that the Company file its consolidated federal income tax return settlement agreement with the Department in compliance with the provisions of Department Circular Letter No. 33 (1979). | 7 |
| | The Company has complied with this recommendation. | |
| B. | <u>Market Conduct Activities</u> | |
| | It appears that the rate manual is unclear in the mortgage refinance area. It is recommended that the Company establish procedures to ensure that the premiums charged by its agents are accurate. | 14 |
| | The Company has complied with this recommendation. | |

9. SUMMARY OF COMMENTS AND RECOMMENDATIONS

| <u>ITEM</u> | | <u>PAGE NO.</u> |
|-------------|--|-----------------|
| A | <u>Management</u> | |
| | It is recommended that board members who are unable or unwilling to attend meetings consistently should resign or be replaced. It is noted that Mr. Hisiger was subsequently removed from the board in July, 2009. | 4 |
| B | <u>Accounts and Records</u> | |
| | It is recommended that the custodial agreement between the Company and its investment securities custodian be revised to contain the safeguards and provisions stated in Section 3(III)(H) of the NAIC Financial Condition Examiners Handbook. | 9 |

Respectfully submitted,

_____/s/
Leon Tambue
Senior Insurance Examiner

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

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

_____/s/
Leon Tambue

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

Appointment No. 30341

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:

Leon Tambue

as proper person to examine into the affairs of the

STEWART TITLE INSURANCE COMPANY

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

COMPANY

with such other information as he 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 19th day of May, 2009

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

ERIC R. DINALLO
Superintendent of Insurance