

REPORT ON EXAMINATION

OF THE

FIRST MUTUAL TRANSPORTATION ASSURANCE COMPANY

AS OF

DECEMBER 31, 2015

DATE OF REPORT

APRIL 14, 2017

EXAMINER

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## Department of Financial Services

**ANDREW M. CUOMO**  
Governor

**LINDA A. LACEWELL**  
Superintendent

July 25, 2019

Honorable Linda A. Laceywell  
Superintendent  
New York State Department of Financial Services  
Albany, New York 12257

Madam:

Pursuant to the requirements of the New York Insurance Law, and in compliance with the instructions contained in Appointment Number 31556 dated December 13, 2016, attached hereto, I have made an examination into the condition and affairs of First Mutual Transportation Assurance Company as of December 31, 2015 and submit the following report thereon.

Wherever the designation “the Company” appears herein without qualification, it should be understood to indicate First Mutual Transportation Assurance Company. Wherever the designation “MTA” appears herein without qualification, it should be understood to indicate the Metropolitan Transportation Authority.

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 January 1, 2011 through December 31, 2015, and was limited in its scope to a review or audit of only those balance sheet items considered by this Department to require analysis. Transactions occurring subsequent to this period were reviewed where deemed appropriate. The examination included a review of 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 (“the 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 Law.

The report utilized work performed by the Company’s independent certified public accountant 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 pure captive insurance company on December 5, 1997 and commenced business on the same day. The Company is a wholly-owned subsidiary of the MTA and was established to maximize the flexibility and effectiveness of the MTA’s insurance program.

The Metropolitan Transportation Authority was established under the New York Public Authorities Law and is a public benefit corporation of the State of New York. The MTA’s mission is to develop and improve public transportation and to develop and implement a unified public transportation policy in the New York metropolitan area.

The MTA carries out these responsibilities directly and through its subsidiaries and affiliates, which are also public benefit corporations. In addition to the Company, the following entities are MTA subsidiaries and affiliates:

### Subsidiaries

- The Long Island Rail Road Company
- Metro-North Commuter Railroad Company
- Staten Island Rapid Transit Operating Authority
- MTA Capital Construction Company
- MTA Bus Company
- Metropolitan Suburban Bus Authority (eliminated on 12/31/11)

### Affiliates

- New York City Transit Authority and its subsidiary
- Triborough Bridge and Tunnel Authority

#### A. Articles of Incorporation

The Company is organized to transact the kinds of insurance specified in Section 1113(a) 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 Law.

#### B. By-Laws

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

#### C. Capital Structure

As a pure captive insurance company incorporated as a mutual insurer, the Company is required to possess, and thereafter maintain a total surplus as regards policyholders of not less than \$250,000 in order to be issued a license to do captive insurance business in New York State pursuant to the provisions of Section 7004(a)(2) of the Law. As of December 31, 2015, the Company's paid-in capital was \$3,000,000 and its contributed surplus was \$77,669,000.

#### D. Corporate Records

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

E. Operations

As of December 31, 2015, the Company's insurance program is as follows:

Paratransit: On March 1, 2015, the MTA renewed its one-year auto liability policy with Travelers. Effective March 1, 2015, the Company renewed a Deductible Reimbursement policy with the MTA for the auto liability on the New York City Transit Paratransit operations. The MTA is responsible for the first \$1,000,000 deductible per occurrence of each claim excluding allocated loss adjustment expenses ("ALAE") and \$126,936,000 in the aggregate. The MTA gets reimbursed from the Company for the first \$1,000,000 deductible.

Non-Revenue: On March 1, 2015, the Company renewed the MTA's non-revenue fleet deductible reimbursement policy for auto liability. The Company is responsible for the first \$500,000 per occurrence each claim, excluding ALAE and \$7,735,000 in aggregate. The MTA gets reimbursed from the Company under the deductible reimbursement policy.

General Liability Policy: The Company provided direct general liability coverage for losses of the Long Island Rail Road and the Metro-North Commuter Railroad with the limit of \$11,000,000 each occurrence with no aggregate stop loss protection. The policy is effective December 15, 2015 to December 15, 2016.

Excess Loss Fund: The Excess Loss Fund covers excess third party liability including employee liability arising out of or incidental to Agencies' operations during the period covered by this examination. The coverage contains both a retrospective and prospective basis. The retrospective portion is for occurrences that happened on or before October 31, 2003. On a prospective basis, effective October 31, 2003, the Company issued the policy indemnifying the MTA and its subsidiaries and affiliates above their specifically assigned self-insured retention with a limit of \$50,000,000 each occurrence and in the aggregate.

Effective October 31, 2015, the Company provided the MTA, its subsidiaries and affiliates with the following limits:

- 1) 25% quota share of \$100,000,000 excess of \$100,000,000 each occurrence and annual aggregate. The limit is fully reinsured by National Fire & Marine Insurance Company.
- 2) \$100,000,000 excess of \$200,000,000 each occurrence and annual aggregate. The limit is fully reinsured XL Insurance Company, Iron Starr, Westport Insurance.

- 3) \$100,000,000 excess \$300,000,000 each occurrence and annual aggregate. The limit is fully reinsured by AIG Europe.

Premise Liability: The Company provided commercial general liability for the following premises:

- 345 Madison Ave, New York,
- 341 Madison Ave, New York,
- 347 Madison Ave, New York,
- 2 Penn Plaza, New York
- 2 Broadway New York.

The coverage limit is \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The policy is effective December 7, 2015 to December 7, 2016.

Property All Risk and Terrorism coverage: Effective May 1, 2015, the Company renewed the Property All Risk program. The Company directly provided for property damage coverage to the MTA and its subsidiaries in excess of a \$25,000,000 per occurrence self-insured retention, subject to an annual aggregate of \$75,000,000. The total program, includes the perils of Earthquake, Flood and Wind, is \$800,000,000 per occurrence. The coverage is fully reinsured with various reinsurers. In the event of multiple losses during the policy year and the annual aggregate is eroded, a self-insured retention of \$7,500,000 per occurrence would apply.

The Company provides the MTA and its agencies with terrorism coverage with a limit of \$1,075,000,000 per occurrence, in excess of a \$25,000,000 self-insured retention per occurrence and \$75 million in the annual aggregate. In the event of multiple losses during the policy year and the annual aggregate is eroded, a self-insured retention of \$7,500,000 per occurrence would apply. The policy is fully reinsured with various carriers.

The Company receives reinsurance backstop protection for its terrorism risk from the Terrorism Risk Insurance Program Reauthorization Act (“TRIPRA”) and the reinsurance market. TRIPRA is a federal terrorism insurance program that was established as a temporary public/private risk sharing plan to cover losses caused by a terrorist act. Under this program the federal government assists private insurers in compensating insureds for terrorism losses caused by a “certified act of terrorism” (An act of terrorism that meets criterion detailed in the Terrorism Risk Insurance Act of 2002 and its subsequent reauthorization as TRIPRA).

Under TRIPRA the Company will be reimbursed by the federal government for 85% of its eligible terrorism losses that exceed a statutorily established deductible. Non-certified acts of terrorism are not reimbursed under this program and the Company cedes the remaining 15% of its losses to an unaffiliated reinsurer.

Builder's Risk: During the period covered by this examination, the Company issued a builder's risk policy to the MTA and its respective affiliates and subsidiaries, covering the Second Avenue Subway project for \$500,000,000 per occurrence, subject to a \$100,000 contractor's deductible. The policy covers damages to the property while under construction. Effective February 15, 2015 the policy was amended to extend it to March 30, 2017. The Company cedes 100% of \$450,000,000 per occurrence in excess of \$50,000,000 to Swiss Re. (with an aggregate of \$1,000,000,000).

Effective November 1, 2012, the Company entered into a new Builder's Risk Program ("BR") for various MTA 2012-2014 combined capital program Owner-Controlled Insurance Programs. The new BR policy issued to the MTA with limits of \$50,000,000 per occurrence with a \$25,000 contractor deductible. The Company has a reinsurance from ACE with limits of \$50,000,000 per occurrence with a \$250,000 deductible.

All Agency Protective Liability: The Company provided an All Agency Protective Liability program to the MTA and its agencies. The policy covers the agencies' liability resulting from contractors' work on capital projects. For the period of June 1, 2015 to October 30, 2015, the Company issued a policy with a limit of \$8,000,000 in excess of \$2,000,000 per occurrence with an aggregate of \$16,000,000. For the period of October 31, 2015 to June 1, 2016, the policy limit was changed to \$9,000,000 in excess of \$2,000,000 per occurrence, with an aggregate of \$18,000,000.

F. Management and Control

(i) Captive Manager

Section 7003(b)(4) of the Law provides that no captive insurer shall do any captive insurance business in this State unless it utilizes a captive manager resident in this State that is licensed as an agent or broker under the provisions of the Article 21 of the Law, or any other person approved by the Superintendent.



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

Pursuant to a management agreement, effective July 26, 2012, Marsh’s responsibility include assisting the Company in complying with the rules, regulations and requirements of the Law. It also includes maintaining true and complete books of account and records of all business conducted under this agreement.

(ii) Board of Directors

Pursuant to the Company’s by-laws, “[t]he boards of the Corporation as used herein shall consist of all of those persons who from time to time hold office as chairman or members of the Metropolitan Transportation Authority pursuant to §1263 of the Public Authorities Law of the State of New York.” All board members of the Company are also directors of the MTA. At December 31, 2015, the board of directors was comprised of the following twenty-one members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Andrew Albert New York, NY	New York City Transit Riders Council
Jonathan A. Ballan Westchester, NY	Partner, McKenna Long & Aldridge LLP
John H. Banks III Bronx, NY	Vice President, Con Edison
Robert C. Bickford Cold Spring, NY	Retired Attorney
Norman E. Brown Brooklyn, NY	New York State Council of Machinists
Allen P. Cappelli Staten Island, NY	Attorney
Fernando Ferrer Bronx, NY	Board of Trustees of City University of New York
Ira Greenberg Queens, NY	Counsel, Leavitt, Kerson & Duane

Name and ResidencePrincipal Business Affiliation

Jeffrey A. Kay  
Queens, NY

Director of Mayor's Office of Operations

Susan G. Metzger  
Warwick, NY

Orange County Planning Board

Charles G. Moerdler  
Bronx, NY

Partner,  
Strook & Strook & Lavan law firm

John J. Molloy  
Wantagh, NY

Chairman,  
H2M Labs, Inc.

Mitchell H. Pally  
Stony Brook, NY

Chief Executive Officer,  
Long Island Builders Institute

Thomas F. Prendergast  
Brewster, NY

Chairman and Chief Executive Officer,  
MTA

Lawrence Schwartz  
Long Island, NY

Chief Strategy Officer,  
OTG (an airport concessions company)

James L. Sedore, Jr  
Fishkill, NY

CPA,  
Sedore & Company, C.P.As

Vincert Tessitore Jr.  
East Islip, NY

Vice General Chairman,  
Sheet Metal Air Rail Transportation Union

Polly Trottenberg  
Brooklyn, NY

Commissioner,  
New York City Department of  
Transportation

Ed Watt  
Rockaway, NY

Transport Workers Union Local 100

Carl V. Wortendyke  
Upper Nyack, NY

Cal Mart Construction Company

Neal Zuckerman  
Garrison, NY

Managing Director,  
Boston Consulting Group – New York  
Office

In accordance with its by-laws and Section 7003(b)(2) of the Law, the board of directors met once annually. A review of the meetings minutes indicated that the meetings were well attended.

(iii) Officers

As of December 31, 2015, the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
Laureen Coyne	President
Phyllis Rachmuth	Secretary & Vice President
Patrick Kane	Vice President
Thomas F. Prendergast	Chairman & Chief Executive Officer

G. Certified Public Accountant (“CPA”)

Deloitte & Touche LLP was the Company’s independent certified public accounting firm for the entire period covered by this examination. The CPA stated that the Company’s financial statements presented fairly, in all material respects, the net position of the Company as of December 31, 2015.

3. FINANCIAL STATEMENTSA. Balance Sheet

The financial statements of the Company have been prepared in conformity with accounting principles generally accepted in the United States of America as of December 31, 2015. (dollar amounts rounded to the nearest thousandth)

Assets

Cash	\$322,085,000	
Investment	413,517,000	
Funds held by reinsurers	20,549,000	
Premiums receivable due from affiliates	35,707,000	
Reinsurance recoverable	473,924,000	
Interest income receivable	2,190,000	
Other assets	4,013,000	
Deferred acquisition costs	<u>25,000</u>	
Total assets		<u>\$1,272,010,000</u>

Liabilities

Loss and loss adjustment expenses	\$842,294,000	
Unearned premium	124,541,000	
Reinsurance payable	5,194,000	
Losses payable	141,718,000	
Due to affiliates	1,317,000	
Owner controlled insurance programs liability	13,713,000	
Accrued expenses	<u>1,064,000</u>	
Total liabilities		<u>\$1,129,841,000</u>

Capital and Surplus

Paid-in capital	\$3,000,000	
Contributed capital	77,669,000	
Unrealized gain on investments	5,329,000	
Surplus	<u>56,171,000</u>	
Total capital and surplus		<u>\$142,169,000</u>
Total liabilities, capital and surplus		<u>\$1,272,010,000</u>

B. Statement of Income

The Company's net loss for the period covered by this examination was \$(4,042,000), as detailed below:

Underwriting Income

Net premiums earned		\$433,320,000
Deductions:		
Loss and loss adjustment expenses incurred	\$445,539,000	
General and administrative expenses	38,604,000	
Underwriting expenses	<u>18,344,000</u>	
Total underwriting deductions		<u>502,487,000</u>
Net underwriting loss		\$(69,167,000)
Investment income		<u>65,125,000</u>
Net loss		<u>\$(4,042,000)</u>

C. Capital and Surplus Account

The Company's capital and surplus decreased \$4,042,000 during the period covered by this examination, detailed as follows:

Capital and surplus as of December 31, 2010			\$146,211,000
	Increase in <u>surplus</u>	Decrease in <u>surplus</u>	
Net income	\$0	\$4,042,000	
Total increases and decreases in surplus	\$0	\$4,042,000	
Net decrease in surplus			4,042,000
Capital and surplus as of December 31, 2015			<u>\$142,169,000</u>

4. LOSSES AND LOSS ADJUSTMENT EXPENSES

As of December 31, 2015, the Company reported total loss and loss adjustment expense reserves of \$842,294,000. The Company's opining actuarial firm, Milliman, Inc., noted in its Statement of Actuarial Opinion that the reserves met the relevant requirements of the Law and were computed in accordance with Standards of Practice issued by the Actuarial Standards Board (including the Casualty Actuarial Society's Statement of Principles Regarding Property and Casualty Loss and Loss Adjustment Expense Reserves). It was also noted that reasonable provisions had been made for all unpaid loss and loss expense obligations of the Company under the terms of its contracts and agreements.

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. No significant areas of non-compliance were found.

6. SUMMARY OF COMMENTS AND RECOMMENDATIONS

There are no comments or recommendations in this report.

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 \_\_\_\_\_, 2019.



*APPOINTMENT NO. 31556*

*NEW YORK STATE*

***DEPARTMENT OF FINANCIAL SERVICES***

*I, Maria T. Vullo, 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*

***First Mutual Transportation Assurance Company***

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

***COMPANY***

*with such other information as she 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 December, 2016*

***MARIA T. VULLO***  
*Superintendent of Financial Services*



By:

*Joan P. Riddell*

*Joan Riddell  
Deputy Bureau Chief*

*APPOINTMENT NO. 31556*

*NEW YORK STATE*

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*this 13th day of December, 2016*

***MARIA T. VULLO***  
*Superintendent of Financial Services*



By:

*Joan P. Riddell*

*Joan Riddell  
Deputy Bureau Chief*