

REPORT ON EXAMINATION

OF

CLAM SHELL INSURANCE COMPANY, INC.

AS OF

DECEMBER 31, 2017

DATE OF REPORT

FEBRUARY 1, 2019

EXAMINER

WEI CAO

TABLE OF CONTENTS

<u>ITEM NO.</u>		<u>PAGE NO.</u>
1.	Scope of examination	2
2.	Description of Company	2
	A. Articles of incorporation	2
	B. By-laws	3
	C. Capital structure	3
	D. Corporate records	3
	E. Operations	3
	F. Management and control	4
	G. Certified public accountant	5
3.	Financial statements	6
	A. Balance sheet	6
	B. Statement of income	7
	C. Capital and surplus account	8
4.	Losses and loss adjustment expenses	8
5.	Article 70 compliance	8
6.	Summary of comments and recommendations	9



Department of Financial Services

ANDREW M. CUOMO
Governor

LINDA A. LACEWELL
Superintendent

November 13, 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 (“the Law”), and in compliance with the instructions contained in Appointment Number 31845 dated December 6, 2018, attached hereto, I have made an examination into the condition and affairs of Clam Shell Insurance Company, Inc. as of December 31, 2017, 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 “the Parent” appears herein without qualification, it should be understood to be Breakthru Beverage Group, LLC.

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, 2013 through December 31, 2017 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 review 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 Department, and was in compliance with Article 70 of the Law.

Comments and recommendations are limited to 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

Clam Shell Insurance Company, Inc. 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.

As of January 1, 2016, 75% of Sunbelt Holding Inc. and 25% Wirtz Beverage Holding, LLC merged into a new company named Breakthru Beverage Group, LLC. Notwithstanding the merger, Sunbelt Holding Inc. maintains sole ownership of the Company.

A. Article 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 stock insurer, the Company is required to maintain a total 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 Law.

As of December 31, 2017, the Company's paid-in capital was \$3,225,000, consisting of 1,000 shares of common stock with a par value of \$100 per share and paid-in capital of \$3,125,000. The Company had retained earnings of \$2,177,624, for a total capital and surplus (surplus as regards policyholders) of \$5,402,624.

D. Corporate Records

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

E. Operations

As of December 31, 2017, the Company provided the following policies to the Parent, its affiliates and subsidiaries. A detailed insurance program is as follows:

<u>Coverage</u>	<u>Effective Dates</u>	<u>Limits</u>	<u>Premium</u>
Automobile Liability Deductible Reimbursement	1/30/17 - 1/30/18	\$500,000 per occurrence, inclusive of allocated loss adjustment expenses and applicable loss assessments.	\$1,657,426
General Liability Deductible Reimbursement	1/30/17 - 1/30/18	\$250,000 per occurrence, inclusive of allocated loss adjustment expenses and applicable loss assessments.	\$437,284
Employment Practices Liability and Directors & Officers Liability Deductible Reimbursement	12/1/17 - 12/1/18	\$350,000 excess of \$150,000 per occurrence without an aggregate for Directors & Officers and Class Action Employment Practices Liability and, for Employment Practices Liability matters only, the limit is \$200,000 excess of \$150,000 per occurrence without an aggregate.	\$146,050
Environmental Liability Deductible Reimbursement	4/17/17 - 4/17/18	\$50,000 per occurrence and \$200,000 aggregate.	\$20,000

<u>Coverage</u>	<u>Effective Dates</u>	<u>Limits</u>	<u>Premium</u>
Auto Physical Damage Deductible Reimbursement	1/30/17 - 1/30/18	\$300,000 per occurrence and in the aggregate with no deductible.	\$876,437
Workers' Compensation Deductible Reimbursement	1/30/17 - 1/30/18	\$750,000 per occurrence inclusive of allocated loss adjustment expenses and applicable loss assessments.	\$7,018,577
Property Insurance Deductible Reimbursement	4/1/17 - 4/1/18	\$100,000 per occurrence, inclusive of allocated loss adjustment expenses and applicable loss assessment and deductible up to \$2,500,000 per claim.	\$300,000
Crime Insurance Deductible Reimbursement	12/1/17 - 12/1/18	\$100,000 in excess of \$100,000 per occurrence.	\$28,546
Stand Alone Terrorism Deductible Reimbursement	4/1/17 - 4/1/18	\$100,000 per occurrence without an aggregate.	\$25,000
Terrorism Risk Insurance Act of 2015 Certified acts of Nuclear, Biological, Chemical or Radiological (NBCR)	4/1/17 - 4/1/18	\$10,000,000 any one Certified Act of Terrorism and in the aggregate.	<u>\$75,000</u>
Total Premium			<u>\$10,584,320</u>

During the period covered by this examination, the Company did not assume nor cede any business.

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.

As of December 31, 2017, 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, dated August 1, 2007, Marsh has the responsibility for providing the Company with policyholder, claims, and other general management and operational services for a fee. These responsibilities include assisting the Company in complying with the rules, regulations and requirements of the Law and 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, management of the Company is vested in a board of directors consisting of at least three members, two of which shall be residents of the State of New York State. At December 31, 2017, the board of directors was comprised of the following four members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Brett Giarrusso Hoboken, NJ	Manager, Risk & Insurance, Breakthru Beverage Group, LLC.
Eugene Luciana Darien, CT	Executive Vice President - Chief Financial Officer, Breakthru Beverage Group, LLC.
Richard Ostermann Syosset, NY	Vice President, Finance, Breakthru Beverage Group, LLC.
Nisala Weerasooriya Lake Grove, NY	Senior Vice President, Marsh Management Services, Inc.

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

(iii) Officers

As of December 31, 2017, the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
Eugene Luciana	President & Treasurer
Richard Ostermann	Vice President
Brett Giarrusso	Vice President
Nisala M. Weerasooriya	Secretary

G. Certified Public Accountant

Crowe LLP ("Crowe") was the Company's independent public accounting firm for the period covered by this examination. At December 31, 2017, Crowe stated that in its opinion, the Company's financial statements presented fairly, in all material respects, the financial position of Clam Shell Insurance Company, Inc.

3. FINANCIAL STATEMENTS

A. Balance Sheet

The financial statements of the Company have been prepared in conformity with accounting principles generally accepted in the United States of America.

Assets

Cash	\$11,974,652	
Notes receivable from Parent	17,291,081	
Premium receivable	67,943	
Loss escrow account	176,500	
Losses receivable	69,644	
Tax receivable	618,041	
Accrued interest receivable	2,725	
Deferred policy acquisition cost	3,976	
Deferred tax asset	456,481	
Prepaid expenses	<u>100,665</u>	
Total asset		<u>\$30,761,708</u>

Liabilities

Unpaid loss and loss adjustment expenses	\$24,324,434	
Unearned premiums	994,143	
Commission and expense fees	<u>40,507</u>	
Total liabilities		<u>\$25,359,084</u>

Capital and Surplus

Common stock	\$ 100,000	
Additional paid-in capital	3,125,000	
Retained earnings	<u>2,177,624</u>	
Total capital and surplus		<u>\$ 5,402,624</u>
Total liabilities, capital and surplus		<u>\$30,761,708</u>

B. Statement of Income

The Company's net income for the period covered by this examination was \$1,584,548 as detailed below:

Underwriting Income

Net premiums earned		\$60,471,622
Deductions:		
Loss and loss adjustment expenses	\$53,787,860	
General and administration expenses	4,658,144	
Underwriting expenses	<u>339,341</u>	
Total underwriting deductions		<u>58,785,345</u>
Net underwriting income		\$ 1,686,277
Interest Income		<u>1,143,099</u>
Net income before taxes		\$ 2,829,376
Income tax		<u>1,244,828</u>
Net income		\$ <u>1,584,548</u>

C. Capital and Surplus Account

The Company's capital and surplus increased \$1,584,548 during the period covered by this examination, detailed as follows:

Capital and surplus as of January 1, 2013			\$3,818,076
	<u>Increases in</u> <u>surplus</u>	<u>Decreases in</u> <u>surplus</u>	
Net income	\$ <u>1,584,548</u>	<u>\$0</u>	
Net increases in surplus			<u>1,584,548</u>
Capital and surplus as of December 31, 2017			<u>\$5,402,624</u>

4. LOSSES AND LOSS ADJUSTMENT EXPENSES

As of December 31, 2017, the Company reported total unpaid loss and loss adjustment expense of \$24,324,434. The Company's opining actuarial firm, Marsh Management Services Inc., stated in its Statement of Actuarial Opinion that the Company's statutory reserve met the relevant requirements of the insurance laws of New York and were computed in accordance with accepted actuarial standards and principles. It also noted that the unpaid loss and loss adjustment expense made reasonable provision in the aggregate for all unpaid loss and loss adjustment 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 _____, 2020.

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

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 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 6th day of December, 2018

MARIA T. VULLO
Superintendent of Financial Services



By:

Joan P. Riddell

Joan Riddell
Deputy Bureau Chief