

REPORT ON EXAMINATION

OF

AGP SERVICES CORP.

AS OF

DECEMBER 31, 2015

DATE OF REPORT

JANUARY 18, 2017

EXAMINER

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Department of Financial Services

ANDREW M. CUOMO
Governor

LINDA A. LACEWELL
Superintendent

September 14, 2019

Honorable Linda A. Lacewell
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 31542 dated October 27, 2016, attached hereto, I have made an examination into the condition and affairs of AGP Services Corp. 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 AGP Services Corp. Wherever the designation “the Parent” appears herein without qualification, it should be understood to indicate P.C. Richard & Son, Inc.

Wherever the term “Department” appears herein without qualification, it should be understood to mean the New York State Department of Financial Services.

1. SCOPE OF EXAMINATION

The examination covers the period from 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 captive insurance company on November 15, 2005 and commenced business on that day. The Company is a wholly owned subsidiary of P.C. Richard and Son, Inc. The Parent is a retailer of home appliances, televisions, consumer electronics and home office products principally in the New York metropolitan area, New Jersey, Connecticut and Northeast Philadelphia, Pennsylvania.

A. Articles of Incorporation

The Company is organized to transact the kinds of insurance specified in Section 1113(a) of the 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, 2015, the Company's paid-in capital was \$30,250,000, consisting of 100,000 shares of common stock with a par value of \$1.00 per share and an additional paid-in capital amount of \$30,150,000. The Company had accumulated earnings of \$74,556,787, for a total capital and surplus of \$104,806,787.

D. Corporate Records

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

E. Operations

During the period covered by this examination, AGP Services Corp. provided an Integrated Insurance Policy to the Parent and all its subsidiaries. The limits of insurance under the policy as of December 31, 2015 were as follows:

<u>Coverage</u>	<u>Attachment Point</u>	<u>Aggregate Limits</u>
Excess Liability:		
a. Excess Liability Umbrella	\$25,000,000	\$100,000,000
b. Employment Practices Liability	\$5,000,000	\$95,000,000
c. Director & Officers Liability	\$20,000,000	\$80,000,000
d. Excess Fiduciary Liability	\$10,000,000	\$75,000,000
e. Hacking, Malicious Mischief and Virus	\$100,000	\$75,000,000
Property/Terrorism (Non-TRIA Certified)	-	\$100,000,000
Intellectual Property/Advertising	\$100,000	\$100,000,000
Reputational Damage/Loss of Goodwill	\$100,000	\$100,000,000
Change in Technology/Inventory Loss	\$100,000	\$100,000,000
Credit risk	\$100,000	\$50,000,000
Loss of Key Customers or Suppliers	\$100,000	\$50,000,000
Re-construction of organizational record	\$100,000	\$50,000,000

It should be noted that the Parent retains the risk up to the attachment point. The excess liability coverage, including all the sub coverages, are insured on an occurrence basis. All other coverages are provided on a claims-made basis.

During the period covered by this examination, the Company was engaged in an arrangement with an affiliate, P.C. Richard Service Company (“Service Company”), where it indemnified the Service Company for expenses it incurred guaranteeing products sold by the Parent. The Company labeled this arrangement as a quota share reinsurance agreement where it was assuming 70% of the business from the Service Company. While the examination did not object to the arrangement itself, its classification as reinsurance was problematic because only authorized insurers, as defined in Section 107(a)(10) of the Law, can do an insurance business in this state. The Service Company is not an insurance company and consequently cannot operate in this manner. Further, AGP Services Corp. reported transactions related to this agreement as reinsurance in its financial statements. The above arrangement appears to be more akin to AGP Services Corp. providing coverage for the risks of the Service Company.

It is recommended that the Company amend its agreement with P.C. Richard Service Company to reflect that it is providing insurance coverage for its risks. Accordingly, AGP Services Corp. must correct any impact to its financial statements caused by the misclassification of this agreement as a reinsurance arrangement.

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 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 Aon Insurance Managers (USA) Inc. (“Aon”), which is authorized to act as a manager for captive insurance companies by the Department.

Pursuant to a management agreement, effective January 1, 2006, Aon has the responsibility for providing the Company with underwriting, 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

The Company's by-laws state that the number of directors constituting the entire board shall not be less than one nor more than three members. This, however, does not reconcile with Section 7005(g) of the Law, which states that: "[t]he board of directors of a captive insurance company incorporated in this state shall have at least three members..."

It is recommended that the Company amend its by-laws to comply with Section 7005(g) of the New York Insurance Law.

At December 31, 2015, the board of directors was comprised of the following three members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Gregg H. Richard West Islip, NY	President & Chief Executive Officer, P.C. Richard & Son, Inc.
Peter Richard Fort Salonga, NY	Vice President & Secretary, P.C. Richard & Son, Inc.
Thomas P. Pohmer Garden City, NY	Vice President & Chief Financial Officer, P.C. Richard & Son, 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, 2015, the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
Gregg H. Richard	President
Thomas P. Pohmer	Vice President
Peter C. Richard	Secretary
Kevin Hughey	Treasurer

G. Certified Public Accountant (“CPA”)

Crowe Horwath LLP. was the Company’s independent certified public accounting firm for the entire period covered by this examination. The CPA stated that the audited financial statements presented fairly, in all material respects, AGP Services Corp.’s financial position as of December 31, 2015.

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	\$71,307,607	
Note Receivable from Parent	171,939,982	
Deferred ceding commission	22,180,036	
Deferred tax asset	2,956,120	
Deferred policy acquisition costs	<u>244,980</u>	
Total assets		<u>\$268,628,725</u>

Liabilities

Unpaid losses and loss adjustment expenses	\$11,366,075	
Unearned premiums	152,373,019	
Commission, expenses and fees	54,500	
Premium tax payable	<u>28,344</u>	
Total liabilities		<u>\$163,821,938</u>

Capital and Surplus

Common stock	\$100,000	
Additional paid-in capital	30,150,000	
Surplus (accumulated earnings)	<u>74,556,787</u>	
Total capital and surplus		<u>\$104,806,787</u>
Total liabilities, capital and surplus		<u>\$268,628,725</u>

B. Statement of Income

The Company's net income for the period covered by this examination was \$121,050,756 as detailed below:

Underwriting Income

Net premiums earned		\$300,861,690
Deductions:		
Incurred losses and LAE	\$84,329,252	
Ceding commissions	38,307,014	
Premium tax expenses	738,997	
General and administrative expenses	472,263	
State assessments	<u>291,031</u>	
Total underwriting deductions		<u>124,138,557</u>
Net underwriting gain or (loss)		\$176,723,133
Investment income		<u>9,508,764</u>
Net income before tax		\$186,231,897
Federal income tax		<u>65,181,141</u>
Net income		<u>\$121,050,756</u>

C. Capital and Surplus Account

The Company's capital and surplus decreased \$3,949,244 during the period covered by this examination, detailed as follows:

Capital and surplus as of December 31, 2010			\$108,756,031
	<u>Increases in surplus</u>	<u>Decreases in surplus</u>	
Net income	\$121,050,756	\$0	
Dividends paid	<u> </u>	<u>125,000,000</u>	
Total increases/decreases in surplus	<u>\$121,050,756</u>	<u>\$125,000,000</u>	
Net decrease in surplus			<u>3,949,244</u>
Capital and surplus as of December 31, 2015			<u>\$104,806,787</u>

4. LOSSES AND LOSS ADJUSTMENT EXPENSES

As of December 31, 2015, the Company reported total loss and loss adjustment expense reserves of \$11,366,075. The Company's opining actuarial firm, Aon Global Risk Consulting, stated in its Statement of Actuarial Opinion that the booked reserves made a reasonable provision in the aggregate for the Company's unpaid loss and allocated loss expense obligations under the terms of its insurance and warranty contracts and agreements. It further stated that the analysis was conducted in accordance with commonly accepted actuarial methods and principles and was based on actuarial assumptions that are relevant to policy provisions.

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

<u>ITEM</u>		<u>PAGE NO</u>
A.	<u>Operations</u>	
	It is recommended that the Company amend its agreement with P.C. Richard Service Company to reflect that it is providing insurance coverage for its risks. Accordingly, AGP Services Corp. must correct any impact to its financial statements caused by the misclassification of this agreement as a reinsurance arrangement.	4
B.	<u>Management and Control</u>	
	It is recommended that the Company amend its by-laws to comply with Section 7005(g) of the New York Insurance Law.	5

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.

APPOINTMENT NO. 31542

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

AGP Services Corp.

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

COMPANY

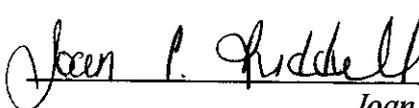
with such other information as she shall deem requisite.

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

this 27th day of October, 2016

MARIA T. VULLO
Superintendent of Financial Services

By:



Joan Riddell
Deputy Bureau Chief

