

REPORT ON EXAMINATION

OF

GOTHAM INSURANCE COMPANY OF NEW YORK

AS OF

DECEMBER 31, 2016

DATE OF REPORT

OCTOBER 10, 2018

EXAMINER

MOSES EGBON, CFE

TABLE OF CONTENTS

| <u>ITEM</u> | | <u>PAGE NO.</u> |
|-------------|---|-----------------|
| 1. | Scope of examination | 2 |
| 2. | Description of Company | 3 |
| | A. Corporate governance | 3 |
| | B. Territory and plan of operation | 5 |
| | C. Reinsurance ceded | 6 |
| | D. Holding company system | 15 |
| | E. Significant operating ratios | 19 |
| | F. Accounts and records | 20 |
| 3. | Financial statements | 21 |
| | A. Balance sheet | 21 |
| | B. Statement of income | 23 |
| | C. Capital and surplus account | 24 |
| | D. Analysis of changes to income | 24 |
| | E. Analysis of changes to surplus | 25 |
| 4. | Losses and loss adjustment expenses | 26 |
| 5. | Subsequent events | 27 |
| 6. | Compliance with prior report on examination | 27 |
| 7. | Summary of comments and recommendations | 28 |



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

October 10, 2018

Honorable Maria T. Vullo
Superintendent
New York State Department of Financial Services
New York, New York 10004

Madam:

Pursuant to the requirements of the New York Insurance Law, and in compliance with the instructions contained in Appointment Number 31574 dated March 6, 2017, attached hereto, I have made an examination into the condition and affairs of Gotham Insurance Company as of December 31, 2016, and submit the following report thereon.

Wherever the designation “the Company” appears herein without qualification, it should be understood to indicate Gotham Insurance Company.

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

The examination was conducted at the Company’s administrative office located at 412 Mt. Kemble Avenue, Suite 300C, Morristown, NJ 07960.

SCOPE OF EXAMINATION

The Department has performed an examination of the Company, a multi-state insurer. The previous examination was conducted as of December 31, 2013. This examination covered the three-year period from January 1, 2014 through December 31, 2016. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

New York is the lead state of the ProSight Specialty Group. The examination was performed concurrently with the examinations of the following insurers: New York Marine and General Insurance Company and Southwest Marine and General Insurance Company. The other state participating in this examination was Arizona.

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 current and 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 New York Laws, statutory accounting principles, and annual statement instructions.

This examination report includes, but is not limited to, the following:

- Company history
- Management and control
- Territory and plan of operation
- Holding company description
- Reinsurance
- Loss review and analysis
- Financial statement presentation
- Significant subsequent events
- 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

Gotham Insurance Company was incorporated on October 17, 1986, under the laws of the State of New York and commenced business on February 26, 1987.

A. Corporate Governance

Pursuant to the Company's charter and by-laws, management of the Company is vested in a board of directors consisting of seven or more members. The board meets twelve times during each calendar year. At December 31, 2016, the board of directors was comprised of the following twelve members:

| <u>Name and Residence</u> | <u>Principal Business Affiliation</u> |
|------------------------------------|---|
| Anthony Arnold New York, NY | Vice President, Goldman Sachs |
| Robert Bailey Santa Rosa, CA | Vice President and Chief Underwriting Officer, New York Marine and General Insurance Company ProSight Specialty Insurance Group, Inc. |
| Joseph Beneducci Morristown, NJ | President and Chief Executive Officer, New York Marine and General Insurance Company ProSight Specialty Insurance Group, Inc. |
| Steven Carlsen Larchmont, NY | President, Shadowbrook Advising, Inc. |
| Clement Dwyer Portsmouth, NH | President, URSA Advisors, Inc. |
| Lawrence Hannon Morristown, NJ | Vice President and Chief Sales and Marketing Officer, New York Marine and General Insurance Company ProSight Specialty Insurance Group, Inc. |
| Eric Leathers New York, NY | Managing Director, TPG Capital, L.P. |
| Frank Papalia Morristown, NJ | Secretary and Chief Legal Officer, New York Marine and General Insurance Company ProSight Specialty Insurance Group, Inc. |
| Anthony Pizsel Morristown, NJ | Vice President, Chief Financial Officer and Treasurer, New York Marine and General Insurance Company ProSight Specialty Insurance Group, Inc. |

| <u>Name and Residence</u> | <u>Principal Business Affiliation</u> |
|---------------------------------|--|
| Sumit Rajpal New York, NY | Managing Director, Goldman Sachs |
| Bruce Schnitzer New York, NY | Chairman and Managing Director, Wand Partners, Inc. |
| Mark Wetzel New York, NY | Vice President, Goldman Sachs |

As of December 31, 2016, the principal officers of the Company were as follows:

| <u>Name</u> | <u>Title</u> |
|--------------------|--|
| Joseph Beneducci | President and Chief Executive Officer |
| Frank Papalia | Secretary and Chief Legal Officer |
| Anthony Pizsel | Treasurer and Chief Financial Officer |
| Robert Bailey | Vice President and Chief Underwriting Officer |
| Frank Bosse | Vice President and Chief Human Resources Officer |
| John J. Fitzgerald | Controller |
| Lawrence Hannon | Vice President and Chief Operating Officer |
| Lee Kraemer | Chief Actuarial Officer |
| Paul Kush | Vice President and Chief Claims Officer |
| Darryl Siry | Chief Digital Officer |

Conflict of Interest Acknowledgements and Disclosures

The Company indicated in the Annual Statement General Interrogatories - Part 1, question 18 that it had established procedures for disclosures to its board of directors or trustees of any material interest or affiliation on the part of any of its officers, directors, trustees or responsible employees who are in conflict or are likely to conflict with the official duties of such person. However, the Company did not maintain records of acknowledgements and disclosures regarding conflicts of interest for three directors in 2015 and for two directors in 2016.

It is recommended that the Company maintain complete records of its acknowledgements and disclosures regarding conflicts of interest and make them available for review in all future examinations.

The Company has indicated that steps have been taken to enhance its internal process regarding code of conduct acknowledgement.

B. Territory and Plan of Operation

As of December 31, 2016, the Company was licensed to write business in New York State only and was eligible to write surplus lines in the other forty-nine states, the District of Columbia, and Puerto Rico.

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 |
| 8 | Glass |
| 9 | Boiler and machinery |
| 10 | Elevator |
| 11 | Animal |
| 12 | Collision |
| 13 | Personal injury liability |
| 14 | Property damage liability |
| 15 | Workers' compensation and employers' liability |
| 16 | Fidelity and surety |
| 17 | Credit |
| 18 | Title |
| 19 | Motor vehicle and aircraft physical damage |
| 20 | Marine and inland marine |
| 21 | Marine protection and indemnity |

The Company is also licensed to transact such workers' compensation insurance as may be incident to coverages contemplated under paragraphs 20 and 21 of Section 1113(a) of the New York Insurance Law, including insurances described in the Longshore and Harbor Workers' Compensation Act (Public Law No. 803, 69 Congress as amended; 33 USC Section 901 et seq. as amended). The Company was also licensed to write Special Risks insurance pursuant to Article 63 of the New York Insurance Law.

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 \$4,200,000.

The following schedule shows the direct and assumed premiums written by the Company for the period under examination:

| <u>Calendar Year</u> | <u>Direct Premiums</u> | <u>Assumed Premiums</u> | <u>Total Gross Premiums</u> |
|----------------------|------------------------|-------------------------|-----------------------------|
| 2014 | \$62,659,775 | \$64,565,481 | \$127,225,256 |
| 2015 | \$60,121,117 | \$75,730,587 | \$135,851,704 |
| 2016 | \$46,061,166 | \$73,758,846 | \$119,820,012 |

The Company's direct business is produced through agents that are called program administrators. The Company is a pool member of the New York Marine Group specializes in the underwriting of specialty niche business through exclusive producer networks. Specialty niches include ocean marine, professional liability, media, casualty, workers' compensation, property and other specialty insurance business.

Assumed reinsurance accounted for approximately 62% of the Company's gross premium written at December 31, 2016. All of the Company's assumptions are related to an internal reinsurance pooling arrangement with the Company's affiliated property and casualty companies, further described below.

C. Reinsurance Ceded

I. Intercompany Pooling Agreement

Effective January 1, 1987, the Company had been a party to an intercompany reinsurance pooling agreement whereby the Company cedes 100% of its writings to its immediate parent, New York Marine and General Insurance Company ("NYMGIC") and then assumes 15% of the net retained business after external reinsurance. Effective December 31, 2015, the pooling agreement was amended to add Southwest to the pool. The amended participating percentages were 80% for New York Marine, 15% for Gotham and 5% for Southwest.

As of December 2016, total reinsurance recoverable due from its parent, an authorized insurer, was \$104,747,000 as reported on Schedule F, Part 3 column 15 of the annual statement. The amount represented approximately 142% of the Company's surplus as regards to its policyholders.

II. External Reinsurance Program

The Company is a named participant in the external reinsurance program of its parent and pool leader NY Marine. The external reinsurance program, at December 31, 2016, is structured as follows:

| <u>Type of treaty</u> | <u>Cession</u> |
|---|--|
| <u>Property:</u> | |
| Per Risk Excess of loss (3 layers) | |
| 1 st layer – 100% authorized, 100% placed | \$2 million excess of \$3 million each loss, each risk, subject to reinsurer's maximum liability of \$8 million as respects all losses arising out of any one loss occurrence; with Acts of Terrorism sub limits of \$8 million. |
| 2 nd layer – 95% authorized, 5% unauthorized, 80% placed | \$5 million excess of \$5 million each loss, each risk, subject to reinsurer's maximum liability of \$15 million as respects all losses arising out of any one loss occurrence; with Acts of Terrorism sub limits of \$15 million. |
| 3 rd layer – 93% authorized, 7% unauthorized, 100% placed | \$15 million excess of \$10 million each loss, each risk, subject to reinsurer's maximum liability of \$15 million as respects all losses arising out of any one loss occurrence; with Acts of Terrorism sub limits of \$15 million. |
| <u>Property Catastrophe</u> (4 layers) | |
| 1 st layer – 75% authorized, 25% unauthorized, 100% placed | \$5 million excess of \$5 million, ultimate net loss, any one loss occurrence, subject to maximum liability of \$10 million for all loss occurrences during the term of the contract; |
| 2 nd layer – 67% authorized, 33% unauthorized, 100% placed | \$10 million excess of \$10 million, ultimate net loss, any one loss occurrence, subject to maximum liability of \$20 million for all loss occurrences during the term of the contract; |
| 3 rd layer – 59% authorized, 41% unauthorized, 100% placed | \$30 million excess of \$20 million, ultimate net loss, any one loss occurrence, subject to maximum liability of \$60 million for all loss occurrences during the term of the contract; |

4th layer – 66.5% authorized, 33.5% unauthorized, 100% placed \$60 million excess of \$50 million, ultimate net loss, any one loss occurrence, subject to maximum liability of \$120 million for all loss occurrences during the term of the contract.

Property Terrorism

Excess of loss
1 layer – 100% authorized, 100% placed \$35 million excess of \$5 million, ultimate net loss, each loss occurrence, subject to maximum liability of \$70 million for all loss occurrences.

Casualty:

Excess of Loss

Section A
Supported Umbrella
100% authorized, 77.5% placed \$9 million excess of \$1 million umbrella policy limit, ultimate net loss, each loss, each policy.

Section B
Unsupported Umbrella
100% authorized, 77.5% placed \$8 million excess of \$2 million umbrella policy limit ultimate net loss, each loss, each policy

Section C
General Liability Umbrella
100% authorized, 77.5% placed \$3 million excess of \$2 million GL policy limit, ultimate net loss, each loss, each policy.

Commercial Auto

Excess of Loss
100% authorized, 100% placed \$3 million excess of \$2 million ultimate net loss each and every loss occurrence, subject to limit of \$3 million for each loss occurrence and \$18 million for all loss occurrences commencing during the term of this contract.

Film and Entertainment - Production Portfolio Package

Excess of loss (3 layers) Section A – Film Production Policies

1st layer – 77% authorized, 23% unauthorized, 100% placed \$5 million excess of \$5 million ultimate net loss for each production, subject to limit of liability of \$25 million for all loss occurrences commencing during the term of this contract under both sections A and B combined.

2nd layer – 77% authorized, 23% unauthorized, 100% placed \$10 million excess of \$10 million ultimate net loss for each production. subject to limit of liability of \$40 million for all loss occurrences commencing during the term of this contract under both sections A and B combined.

3rd layer – 77% authorized, 23% unauthorized, 100% placed \$30 million excess of \$20 million ultimate net loss for each production, subject to limit of liability of \$90 million for all loss occurrences commencing during the term of this contract.

Section B – Film Completion Bonds

1st layer – 77% authorized, 23% unauthorized, 100% placed \$5 million excess of \$5 million ultimate net loss for each production. subject to limit of liability of \$25 million for all loss occurrences commencing during the term of this contract under both sections A and B combined.

2nd layer – 77% authorized, 23% unauthorized, 100% placed \$10 million excess of \$10 million ultimate net loss for each production, subject to limit of liability of \$40 million for all loss occurrences commencing during the term of this contract.

3rd layer – 77% authorized, 23% unauthorized, 100% placed \$30 million excess of \$20 million ultimate net loss for each production, subject to limit of liability of \$90 million for all loss occurrences commencing during the term of this contract.

Automatic Facultative
Film Production

Excess of Loss

45.10% authorized, 54.90% unauthorized, 100% placed \$50 million excess of \$50 million ultimate net loss for each production.

Automatic Facultative
Film Completion Bond

Excess of Loss

41.05% authorized, 58.95%, 100% placed \$27.6 million excess of \$50 million ultimate net loss for each production.

Professional Liability

Excess of loss 1 layer

100% authorized, 100% placed \$5 million excess of \$5 million each claim made, each policy, for the ultimate loss, subject to a limit of liability of \$5 million in respect of each claim made, each policy, during the term of this contract claims arising hereunder.

Professional Employment
Organization (PEO)
Workers' Compensation

Quota share, 100% authorized, 30% placed 100% quota share, subject to a limit of liability to the reinsurer of \$2 million each loss occurrence, regardless of the number of policies or insureds involved. For Acts of Terrorism, the reinsurers limit of liability shall not exceed \$10 million in aggregate for the term of this contract.

Professional Employment
Organization (PEO)
Workers' Compensation

100% unauthorized,
20% placed

100% quota share, subject to a limit of liability to the reinsurer of \$1 million each loss occurrence, regardless of the number of policies or insureds involved. For Acts of Terrorism, the reinsurers limit of liability shall not exceed \$10 million in aggregate for the term of this contract.

Employer Liability

Quota Share
100% authorized,

50% quota share of \$5 million limit, the reinsurer shall assume the amount by which the Company ultimate net loss exceeds the policy retention, but the liability of the reinsurer shall not exceed 50% of the first \$5 million as respects each accident or disease, each policy. Regardless of the number policies involved in an occurrence coverage hereunder shall apply per policy per occurrence.

50% placed

Workers' Compensation and
Employers' Liability
Excess of loss (2 Layers)

1st layer-100% authorized,
75% placed

\$3 million excess of \$2 million, ultimate net loss for each loss occurrence; The limit of liability of the reinsurer for Acts of Terrorism losses shall be \$3 million in the aggregate for all loss occurrences commencing during the term of the contract. The reinsurer's liability shall not exceed \$12 million in respect of all loss occurrences during the term of this contract.

\$5 million excess of \$5 million ultimate net loss each loss for each loss occurrence; The limit of liability of the reinsurer for Acts of Terrorism losses shall be \$5 million in the aggregate for all loss occurrences commencing during the term of the contract. The reinsurer's liability shall not exceed \$10 million in respect of all loss occurrences during the term of this contract.

2nd layer 100% authorized,
100% placed

Workers' Compensation and
Employers' Liability
Catastrophe
Excess of Loss (2 Layers)

\$10 million excess of \$10 million ultimate net loss each for loss occurrence; Acts of Terrorism losses shall be \$10 million in the aggregate for all loss occurrences commencing during the term of the contract. The reinsurer's liability shall

| | |
|---|---|
| First layer-100% authorized, 100% placed | not exceed \$20 million in respect of all loss occurrences during the term of this contract. |
| Second layer-100% authorized, 100% placed | \$10 million excess of \$20 million ultimate net loss each for loss occurrence; Acts of Terrorism losses shall be \$10 million in the aggregate for all loss occurrences commencing during the term of the contract. The reinsurer's liability shall not exceed \$20 million in respect of all loss occurrences during the term of this contract. |
| <u>ATA Workers' Compensation</u> | 100% quota share up to a maximum of \$2 million per occurrence for loss, loss adjustment expenses, loss in excess of policy limits and extra contractual obligations |
| Quota share, 100% unauthorized, 100% placed | |
| <u>Excess Workers' Compensation and Employers' Liability</u> | |
| Excess of loss (4 layers) | \$5 million excess of \$5 million ultimate net loss each occurrence; maximum any one life accruing to the ultimate net loss is \$5 million. |
| 1 st layer – 100% authorized, 100% placed | \$20 million excess of \$10 million ultimate net loss each occurrence; Maximum any one life accruing to the ultimate net loss is \$15 million. |
| 2 nd layer – 85.98% authorized, 14.02% unauthorized, 100% placed | \$20 million excess of \$30 million ultimate net loss each occurrence; Maximum any one life accruing to the ultimate net loss is \$10 million. |
| 3 rd layer – 100% authorized | \$50 million excess of \$50 million ultimate net loss each occurrence. maximum any one life accruing to the ultimate net loss is \$10 million. |
| 4 th layer – 95.64% authorized, unauthorized 4.36%, 100% placed | |
| <u>Workers' Compensation Adverse Development Loss Cover</u> | Section A - Losses occurred on or after 1/1/2011 and on and prior to 12/31/2015, with respect to policies incepting or renewed between 1/1/2011 and 12/31/2015, classified as Primary Workers Compensation business Section B - Losses occurred on or after 1/1/2007 and on and prior to 12/31/2015, with respect to policies incepting or |

renewed between 1/1/2007 and 12/31/2015, classified as excess workers' compensation business, and written by Midlands Management Corporation, the reinsurer shall be liable for 100% subject loss, subject to an aggregate limit of Liability for all subject loss of \$100 million in excess of \$315 million.

Excess of loss -100%
authorized, 100% placed
Marine Whole Account Risk
and Occurrence

\$2.5 million excess of \$2.5 million ultimate net loss each risk, casualty, disaster, or series of losses arising out of one event;

(6 layers)
1st layer
73% authorized, 27%
unauthorized, 100% placed

\$5 million excess of \$5 million ultimate net loss each risk, casualty, disaster, or series of losses arising out of one event; The Company shall retain the first \$5 million of ultimate net loss otherwise recoverable as an aggregate deductible.

2nd layer
73% authorized, 27%
unauthorized, 100% placed

\$10 million excess of \$10 million ultimate net loss each risk, casualty, disaster, or series of losses arising out of one event;

3rd layer
73% authorized, 27%
unauthorized, 100% placed

\$20 million excess of \$20 million ultimate net loss each risk, casualty, disaster, or series of losses arising out of one event;

4th layer
73% authorized, 27%
unauthorized, 100% placed

\$30 million excess of \$40 million ultimate net loss each risk, casualty, disaster, or series of losses arising out of one event;

5th layer
73% authorized, 27%
unauthorized, 100% placed

\$10 million excess of \$70 million ultimate net loss each risk, casualty, disaster, or series of losses arising out of one event. In event of exhaustion of the underlying reinsurance, (top and drop) of \$10 million ultimate net loss each risk, casualty, disaster, or series of losses arising out of one event; excess of \$2.5 million ultimate net loss each risk, casualty, disaster, or series of losses arising out of one event;

6th layer – 100% authorized,
100% placed
Obligatory Energy -Drill Rig
Quota share

84.5% quota share of net loss on any one risk, unit, interest, or assured subject to:

A) limitation in the Gulf of Mexico of \$5 million net loss all interest combined, each unit for each loss occurrence, or a maximum limit of \$10 million of net loss all interests combined, each unit where coverage for a wind event is excluded. A maximum limit of \$12.5 million of net loss any

one wind event and a maximum limit of \$25 million net loss from all wind events during the contract period.

B) World Wide - a maximum limit of \$12.5 million of net loss any one interest for each loss occurrence, or, for all risks situated in the Bay of Campeche, Mexico a maximum limit of liability of \$7.5 million of net loss all interests combined, each unit of loss occurrence, or a maximum limit of \$37 million of net loss in all from one loss occurrence. Section A and B combined is subject to an annual aggregate limit of \$60 million of net loss for all risks attaching during the contract year.

39.65% authorized, 60.35%
unauthorized, 84.5% placed
Fidelity Bond

Quota Share

100% quota share each loss, each bond subject to a \$10 million limit.

100% authorized, 50%
placed

U.S Customs and
Miscellaneous Bonds

100% quota share each loss, each bond. Section A is for bonds with limits up to and including \$15 million

Quota Share -100%
authorized, 60% placed

100% quota share each loss, each bond. Section B is for bonds with limits exceeding \$15 million and up to and including \$20 million.

Quota Share -100%
authorized, 70 % placed
Hartford Steam Boiler
Equipment Breakdown

100% quota share of the equipment breakdown liability of the Company as respects accidents occurring. The reinsurer's liability shall not exceed \$50 million for any one accident, any one policy.

Quota Share- 100%
authorized, 100% placed
Hartford Steam Boiler
Multiple line

100% quota share of the Company's liability for losses covered under a Data Compromise Coverage Form ("DC Coverage"), under an Identity Recovery Coverage Form ("IDR Coverage") and under an EPL Coverage Form. The reinsurer's liability for DC Coverage shall not exceed \$1 million annual aggregate per policy for response expenses and \$1 million annual aggregate per policy for Defense and Liability. The Reinsurer liability for IDR Coverage shall not exceed \$15,000 annual aggregate as respects each Identity Recovery Insured. The reinsurer's liability for EPL loss

including Defense cost shall not exceed \$1 million each wrongful employment act, subject to the annual aggregate limit in the policy not to exceed \$1 million.

Quota Share-100%
authorized, 100% placed

Retroactive Adverse
Development Cover

\$100 million excess of \$315 million in aggregate. The contract has provided coverage for the Company's primary and excess workers' compensation policies written through a managing general agent and for a specific period, as described in Article 1, Section A and B of the agreement. Pursuant to the agreement, the Company will pay a premium of \$52.6 million to the reinsurer. The reinsurance premium less \$5 million shall be held in a trust account, and the balance of \$47.6 million shall be deposited into the account as security for the obligations of the parties under the reinsurance agreement.

Excess of loss
100% authorized 100%
placed

As of the examination date, losses relating to the retroactive adverse loss development contract have not yet reached the New York Marine Pool's retention limit. The agreement was accounted for by the Company as retroactive reinsurance in accordance with SSAP's 62R.

It is the Company's policy to obtain the appropriate collateral for its cessions to unauthorized reinsurers. Letters of credit obtained by the Company to take credit for cessions to unauthorized reinsurers were reviewed for compliance with Regulation 133. No exceptions were noted.

Examination review of the Schedule F data reported by the Company in its filed annual statement revealed that the Company accurately reflected its reinsurance transactions. Additionally, management has represented that all material reinsurance agreements transfer both underwriting and timing risk as set forth in SSAP 62R. Representations were supported by appropriate risk transfer analyses and an attestation from the Company's Chief Executive Officer and Chief Financial Officer pursuant to the NAIC Annual Statement Instructions. Additionally, examination review indicated that the Company was a party to a finite reinsurance agreement. All ceded reinsurance agreements were accounted for utilizing reinsurance accounting as set forth in SSAP No. 62R.

All ceded reinsurance agreements in effect as of the examination date were reviewed and found to contain the required clauses, including an insolvency clause meeting the requirements of Section 1308 of the New York Insurance Law.

Reinsurance agreements with affiliates were reviewed for compliance with Article 15 of the New York Insurance Law. It was noted that all affiliated reinsurance agreements were filed with the Department pursuant to the provisions of Section 1505(d)(2) of the New York Insurance Law.

D. Holding Company System

The Company is a member of the ProSight Specialty Group. The Company is 100% owned by New York Marine and General Insurance Company (“NYMGIC”), which is owned by ProSight Specialty Insurance Group, Inc. (“ProSight Insurance Group”), a New York corporation, which is owned by ProSight Global Inc., a Delaware corporation. In 2014, ProSight Specialty Insurance Holdings, Inc. merged into its parent, ProSight Global Inc., which is 100% owned by ProSight Global Holdings Limited (“ProSight Global”), a Bermuda corporation, which is owned by the entities as follows:

1. ProSight Investment LLC (“ProSight Investment”), a Delaware Limited Liability Company held a 43.7% interest in ProSight Global Holdings Limited.
2. ProSight Parallel Investment LLC (“ProSight Parallel Investment”), a Delaware Corporation held a 6.4% interest.
3. ProSight TPG, L.P. (“ProSight TPG”), a Delaware Limited Partnership held a 37.241%.
4. Four TPG investment vehicles, organized as Limited Partnerships in the Cayman Islands, held an approximately 11% interest.

The legal owners of ProSight Investment and ProSight Parallel Investment are various investment vehicles associated with Goldman Sachs. ProSight TPG and the four TPG investment vehicles are ultimately controlled by two individuals, David Bonderman and James Coulter. The Department has determined that the investment vehicles are passive investors which do not take an active role in the management of ProSight Global; therefore, the investment vehicles are not subject to Section 1505 of the New York Insurance Law.

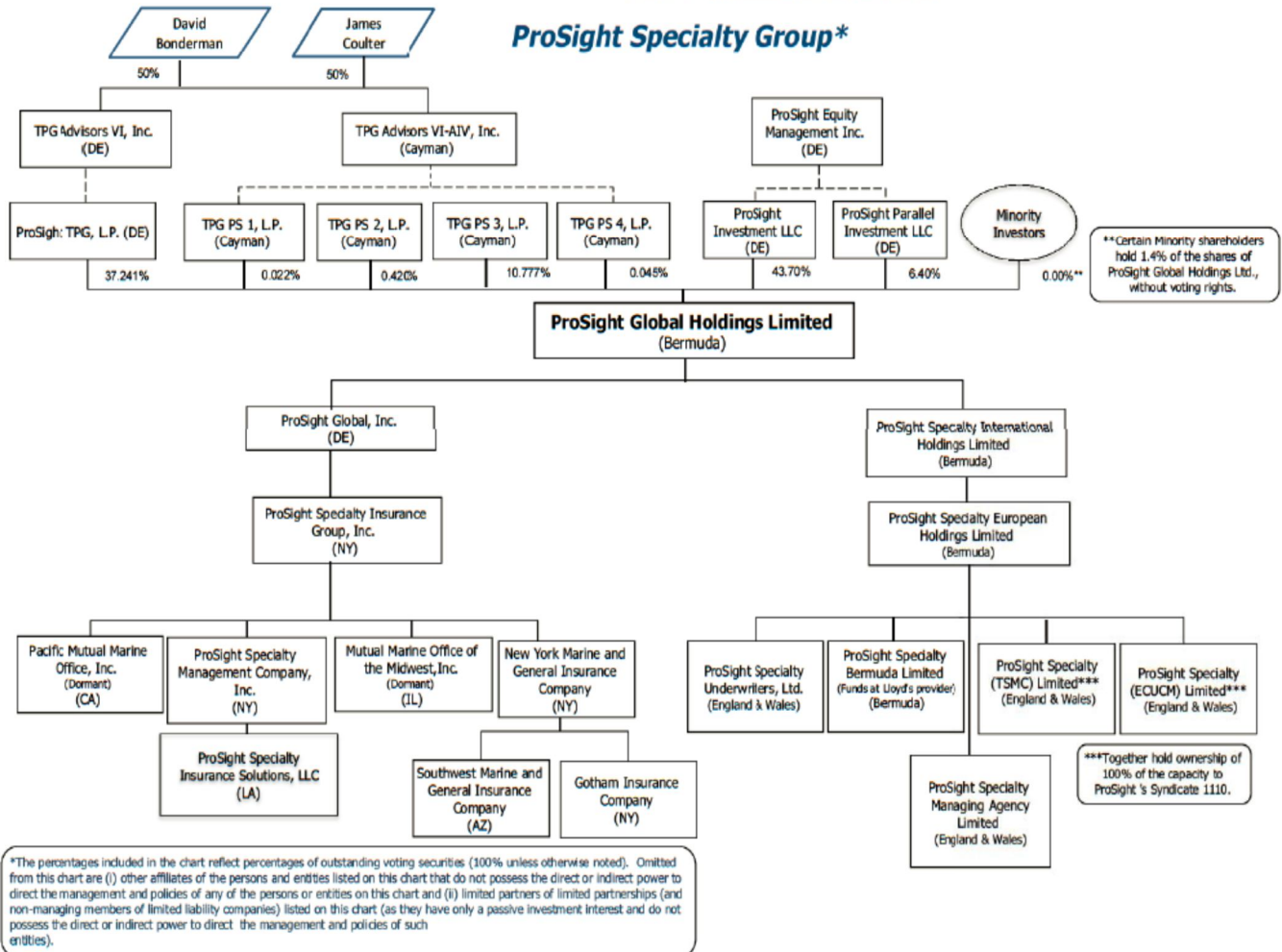
ProSight Equity Management Inc. is owned by various individuals, none of which has more than a 10% stake. The Department has deemed the ultimate controlling persons of the Company to be ProSight Equity Management Inc. as well as David Bonderman and James Coulter. This control is based on ProSight Equity Management Inc.’s approximately 50.1% ownership of ProSight Global, Inc. through the investment

vehicles and is also based on Mr. Bonderman and Mr. Coulter's approximately 48% ownership in ProSight Global, Inc. through the TPG Investment Vehicles.

The Company was previously owned by NYMGIC and ProSight Insurance Group with ownerships of 75% and 25%, respectively. Effective June 13, 2014, NYMGIC received the 25% stake as a contribution from ProSight Insurance Group; hence, the Company is now 100% owned by NYMGIC.

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 a chart of the holding company system at December 31, 2016:



In addition to the intercompany pooling arrangement previously discussed in the Reinsurance section of this report, the Company was party to the following agreements with other members of its holding company system at December 31, 2016:

Service Agreement

Effective January 15, 2011, the Company and ProSight Specialty Management Company, Inc. (“PSMC”) entered into a service agreement that provides for PSMC to supply all services and facilities necessary for the conduct of the Company’s business. The Company pays PSMC fees equal to the actual costs and expenses incurred by or on behalf of PSMC for rendering such services to the Company, including, without limitation, all reasonable employee benefits and overhead costs and expenses incurred by or on behalf of PSMC.

Effective November 20, 2014, the service agreement was amended and restated to correct the timing of the payments due to PSMC. The agreement was filed with the Department pursuant to Section 1505 of the New York Insurance Law and was non-disapproved. The Company’s expenses incurred under the service agreement were \$6,476,231 in 2014, \$9,663,074 in 2015, and \$10,400,308 in 2016.

Tax Allocation Agreement

Effective April 1, 2013, the Company entered into a tax allocation agreement with members of the ProSight Specialty Group. The agreement was filed with the Department pursuant to Section 1505 of the New York Insurance Law and was non-disapproved. The agreement was reviewed for compliance with Department Circular Letter 1979-33. No exceptions were noted.

Amended and Restated Program Management Agreement

Effective April 1, 2015, the Company entered into a program management agreement with ProSight Specialty Insurance Solutions, LLC (“PSSS”), whereby PSSS acts as a program administrator in procuring, underwriting, binding, and servicing policies of insurance. The agreement was submitted to the Department pursuant to Section 1505(d)(3) of the New York Insurance Law and was non-disapproved.

E. Significant Ratios

One of the Company's operating ratios, computed as of December 31, 2016, fell outside the benchmark ranges set forth in the Insurance Regulatory Information System of the National Association of Insurance Commissioners.

| <u>Operating Ratios</u> | <u>Result</u> |
|--|---------------|
| Net premiums written to policyholders' surplus | 109% |
| Adjusted liabilities to liquid assets | 81% |
| Two-year overall operating | 105% |

It is noted that the two-year overall operating ratio was above the usual range primarily driven by this examination change of loss and loss adjustment expense reserves.

Underwriting Ratios

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

| | <u>Amounts</u> | <u>Ratios</u> |
|--|----------------------|----------------|
| Losses and loss adjustment expenses incurred | \$146,624,667 | 72.14% |
| Other underwriting expenses incurred | 72,225,261 | 35.54 |
| Net underwriting loss | <u>(15,604,868)</u> | <u>(7.68)</u> |
| Premiums earned | <u>\$203,245,060</u> | <u>100.00%</u> |

F. Accounts and Records

Department Regulation No. 30

The Company did not maintain documentation for the basis of allocating salaries and joint costs among its affiliated entities, pursuant to Department Regulation No. 30, Part 109.2, Section (b)(1) and (2), which states:

“(b) Allocations other than direct. (1) When a direct allocation is not made, salaries, with certain exceptions hereinafter noted, shall be allocated on whichever of the following bases, or combinations thereof, are appropriate:

- Number of items or units time studies
- Overhead on other allocations
- Premiums
- Dollar volume of losses
- Other special studies

(2) The effects of the classification to each operating expense classification of all basis of allocation shall be shown on records kept in clear and legible form. Such records shall be readily available for examination.”

The Company had allocated salaries and joint costs using certain percentages that lacked supporting documentation required by Department Regulation No. 30. Therefore, it is recommended that the Company maintain documentation for the basis of allocating salaries and joint costs among affiliates, as required by Department Regulation No. 30, Part 109.2, Section (b)(1) and (2).

The Company has stated that it will maintain documentation of the methods and underlying unit populations applied to each of the expense categories involving salaries and joint costs, and it expects to complete this documentation as part of its 2018 update which will be completed in the third quarter of 2018.

3. FINANCIAL STATEMENTS

A. Balance Sheet

The following shows the assets, liabilities and surplus as regards policyholders as of December 31, 2016 as reported by the Company:

| <u>Assets</u> | <u>Assets</u> | <u>Assets Not Admitted</u> | <u>Net Admitted Assets</u> |
|---|----------------------|--------------------------------|--------------------------------|
| Bonds | \$181,274,434 | \$ 0 | \$181,274,434 |
| Cash, cash equivalents and short-term investments | 13,906,399 | | 13,906,399 |
| Other invested assets | 9,543,512 | | 9,543,512 |
| Receivables for securities | 604,251 | | 604,251 |
| Investment income due and accrued | 1,013,125 | | 1,013,125 |
| Uncollected premiums and agents' balances in the course of collection | 16,077,510 | | 16,077,510 |
| Deferred premiums, agents' balances and installments booked but deferred and not yet due | 269,454 | | 269,454 |
| Current federal and foreign income tax recoverable and interest thereon | 2,454,428 | | 2,454,428 |
| Net deferred tax asset | 4,809,374 | 1,883,627 | 2,925,747 |
| Prepaid insurance expense | <u>19,655</u> | <u>19,655</u> | <u>0</u> |
| Total assets | <u>\$229,972,142</u> | <u>\$1,903,282</u> | <u>\$228,068,860</u> |

Liabilities, surplus and other fundsLiabilities

| | |
|---|------------------|
| Losses and loss adjustment expenses | \$109,939,477 |
| Commissions payable, contingent commissions and other similar charges | 667,422 |
| Other expenses (excluding taxes, licenses and fees) | 127,516 |
| Taxes, licenses and fees (excluding federal and foreign income taxes) | 137,726 |
| Unearned premiums | 30,487,137 |
| Ceded reinsurance premiums payable (net of ceding commissions) | 6,369,404 |
| Payable to parent, subsidiaries and affiliates | 5,078,414 |
| Claims cash in transit | <u>1,373,611</u> |
| Total liabilities | \$154,180,707 |

Surplus and other funds

| | |
|--|----------------------|
| Common capital stock | \$ 5,000,000 |
| Gross paid in and contributed surplus | 20,131,019 |
| Unassigned funds (surplus) | <u>48,757,134</u> |
| Surplus as regards policyholders | <u>73,888,153</u> |
| Total liabilities, surplus and other funds | <u>\$228,068,860</u> |

Note: The Internal Revenue Service has not audited to audit tax returns covering tax years 2014 through 2016. 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. Statement of Income

The net loss for the examination period, as reported by the Company, was \$694,268 as detailed below:

Underwriting Income

| | | |
|--|-------------------|--------------------|
| Premiums earned | | \$203,245,060 |
| Deductions: | | |
| Losses and loss adjustment expenses incurred | \$140,420,667 | |
| Other underwriting expenses incurred | <u>72,225,261</u> | |
| Total underwriting deductions | | <u>212,645,928</u> |
| Net underwriting gain or (loss) | | \$ (9,400,868) |

Investment Income

| | | |
|--|--------------------|-----------|
| Net investment income earned | 12,498,872 | |
| Net realized capital gain(losses) less capital gains tax | <u>(3,226,988)</u> | |
| Net investment gain or (loss) | | 9,271,884 |

Other Income

| | | |
|--|----------------|---------------------|
| Net gain or (loss) from agents' or premium balances charged off | \$ 66,087 | |
| Aggregate write-ins for miscellaneous income | <u>190,106</u> | |
| Total other income | | <u>256,193</u> |
| Net income before dividends to policyholders, after capital gains tax and before all other federal and foreign income taxes | | \$ 127,209 |
| Dividends to policyholders | | <u>0</u> |
| Net income, after dividends to policyholders, after capital gains tax and before all other federal and foreign income taxes | | \$ 127,209 |
| Federal and foreign income taxes incurred | | <u>821,477</u> |
| Net loss | | \$ <u>(694,268)</u> |

C. Capital and Surplus

Surplus as regards policyholders increased \$1,198,533 during the three-year examination period January 1, 2013 through December 31, 2016, as reported by the Company, detailed as follows:

| | | | |
|---|-------------------------|--------------------------|----------------------|
| Surplus as regards policyholders as reported by the Company as of December 31, 2013 | | | \$ 72,689,620 |
| | <u>Gains in Surplus</u> | <u>Losses in Surplus</u> | |
| Net loss | | \$694,267 | |
| Change in net unrealized capital gains or (losses) less capital gains tax | \$ 37,426 | | |
| Change in net deferred income tax | 456,588 | | |
| Change in non-admitted assets | | 268,372 | |
| Prior period/SSAP3 adjustment | <u>1,667,158</u> | <u>0</u> | |
| Total gains and losses | <u>\$2,161,172</u> | <u>\$962,639</u> | |
| Net increase in surplus | | | <u>1,198,533</u> |
| Surplus as regards policyholders as reported by the Company as of December 31, 2016 | | | \$ <u>73,888,153</u> |

Capital paid in is \$5,000,000 consisting of 50,000 shares of \$100 par value per share common stock. Gross paid in and contributed surplus is \$20,131,019. During this examination period, gross paid in and contributed surplus did not change.

D. Analysis of Change to Income

| | | | |
|---|------------------------|------------------------|----------------------|
| Net income for the examination period, as reported by the Company | | | \$ (694,268) |
| | <u>Income Increase</u> | <u>Income Decrease</u> | |
| Change in losses and loss adjustment expenses | | \$6,204,000 | |
| Net increase (decrease) in income | | | <u>(6,204,000)</u> |
| Net gain (loss) for the examination period, after examination adjustments | | | <u>\$(6,898,268)</u> |

E. Analysis of Change to Surplus

| | | | |
|--|-----------------------------|-----------------------------|---------------------|
| Surplus as regards policyholders as reported by the Company as of December 31, 2016 | | | \$73,888,153 |
| | <u>Surplus Increase</u> | <u>Surplus Decrease</u> | |
| Change in losses and loss adjustment expenses | | \$6,204,000 | |
| Net increase (decrease) in income | | | <u>(6,204,000)</u> |
| Surplus at December 31, 2016, after examination adjustments | | | <u>\$67,684,153</u> |

4. LOSSES AND LOSS ADJUSTMENT EXPENSES

The examination liability for the captioned items of \$116,143,477 is \$6,204,000 more than \$109,939,477 reported by the Company as of December 31, 2016. The examination analysis of the loss and loss adjustment expense reserves was conducted in accordance with generally accepted actuarial principles and statutory accounting principles, including the NAIC Accounting Practices & Procedures Manual, Statement of Statutory Accounting Principle No. 55 (“SSAP No. 55”).

The reserves for the captioned items are concentrated in workers’ compensation, commercial auto liability and other liability occurrence lines of business.

The Department’s actuarial indications showed that the Company’s net carried loss and loss adjustment expense reserves were deficient by \$6.2 million, representing 8 percent of its December 31, 2016 surplus of \$73.9 million or 5.6 percent of its December 31, 2016 net carried reserves of \$109.9 million.

Section 1303 of the New York Insurance Law states:

“Every insurer shall...maintain reserves in an amount estimated in the aggregate to provide for the payment of all losses or claims incurred on or prior to the date of statement, whether reported or unreported, which are unpaid as of such date and for which such insurer may be liable, and also reserves in an amount estimated to provide for the expenses of adjustment or settlement of such losses or claims.”

Further, paragraph 10 of SSAP No. 55 states:

“The liability for claim reserves and claim liabilities, unpaid losses, and loss/claim adjustment expenses shall be based upon the estimated ultimate cost of settling the claims (including the effects of inflation and other societal and economic factors), using past experience adjusted for current trends, and any other factors that would modify past experience.”

It is recommended that the Company report its loss and loss adjustment expense reserves pursuant to the provisions of Section 1303 of the New York Insurance Law and paragraph 10 of SSAP No. 55.

By virtue of its one-year adverse runoff for accident years 2016 and prior, as reported by the Company in its filed December 31, 2017 annual statement, the Department notes that the Company has recognized \$4.396 million, or approximately 71%, of the Department’s projected loss and loss adjustment expense reserve deficiency of \$6.204 million. Therefore, the Company is not required to implement any further changes to their financial statements.

5. SUBSEQUENT EVENTS

In June 2017, the Company's affiliate, ProSight's Syndicate 1110 ("PSS") was sold. This company operated in the United Kingdom. In anticipation of the sale, the Company, its parents and affiliates agreed to terminate all quota share reinsurance agreements with PSS. All parties under these agreements then agreed to commute the reinsurance business to New York Marine for a consideration of \$249,575,256. In addition, PSS and ProSight Specialty Insurance Solutions, LLC, an affiliated agent, also agreed to terminate a Coverholder arrangement for a majority of the business written in the United States on behalf of PSS, which will continue to be written by New York Marine and General Insurance Company. The business that the agent has already written for PSS will be ceded through a whole account quota share agreement to New York marine and General Insurance Company. Both parties then further agreed that New York Marine and General Insurance Company provides an aggregate stop loss reinsurance coverage to indemnify PSS for all losses over certain aggregate amount. These transactions were filed with the Department, pursuant to Section 1505(d) of the New York Insurance Law and were non-disapproved.

6. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

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

| <u>ITEM</u> | <u>PAGE NO.</u> |
|--|-----------------|
| <p>A. <u>Reinsurance</u></p> <p style="margin-left: 40px;">i. It is recommended that the Company comply with the terms of these affiliated reinsurance agreements and have joint expenses allocated to it in accordance with the terms of the affiliated reinsurance agreement. It is noted that expenses have been allocated among the companies but not precisely in accordance with these percentages.</p> <p style="margin-left: 40px;">The Company has complied with this recommendation.</p> | <p>8</p> |
| <p>B. <u>Holding Company</u></p> | |

It is recommended that the Company comply with all terms of the Amended and Restated Service Agreement. 17

The Company has complied with this recommendation.

C. Accounts and records

It is recommended that in the future the Company properly classified its premiums receivable balances in its statutory filings 19

The Company has complied with this recommendation.

It is recommended that the Company put stronger control procedures in place in reference to reinsurance accounting function. 19

The Company has complied with this recommendation.

D. Loss and loss adjustment expenses 23

It is recommended that in accordance with the NAIC Instructions to the Annual Statement, future actuarial reports underlying the Statements of Actuarial Opinion contain both narrative and technical components in sufficient detail and include an exhibit that reconciles and maps the data used to derive the loss development factors or pool data triangles to the Annual Statement Schedule P lines of business.

The Company has complied with this recommendation.

7. SUMMARY OF COMMENTS AND RECOMMENDATIONS

| <u>ITEM</u> | <u>PAGE NO.</u> |
|---|-----------------|
| A. <u>Conflict of Interest Acknowledgements and Disclosures</u> | |
| It is recommended that the Company maintain complete records of acknowledgements and disclosures regarding its conflicts of interest and make them available for inspection in all future examinations. | 4 |
| B. <u>Accounts and Records</u> | |
| It is recommended that the Company maintain documentation for the basis of allocating salaries and joint costs among affiliates, as required by the Department Regulation No. 30, Part 109.2, Section (b)(2). | 20 |
| C. <u>Loss and Loss Adjustment Expenses</u> | |
| It is recommended that the Company address these reserving deficiencies and report its loss and loss adjustment expense reserves pursuant to the | 26 |

provisions of Section 1303 of the New York Insurance Law and paragraph 10 of SSAP No. 55.

By virtue of its one-year adverse runoff for accident years 2016 and prior, as reported by the Company in its filed December 31, 2017 annual statement, the Department notes that the Company has recognized \$4.396 million, or approximately 71%, of the Department's projected loss and loss adjustment expense reserve deficiency of \$6.204 million. Therefore, the Company is not required to implement any further changes to their financial statements.

Respectfully submitted,

Moses Egbon, CFE
Associate Insurance Examiner

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

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

Moses Egbon

Subscribed and sworn to before me

this _____ day of _____, 2018.

APPOINTMENT NO. 31574

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:

Moses Egbon

as a proper person to examine the affairs of the

Gotham Insurance Company

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

COMPANY

with such other information as he 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 March, 2017

MARIA T. VULLO
Superintendent of Financial Services



By:

Joan M. Riddell

Joan Riddell
Deputy Bureau Chief