

REPORT ON EXAMINATION

OF THE

PORTS INSURANCE COMPANY

AS OF

DECEMBER 31, 2007

DATE OF REPORT

MAY 29, 2009

EXAMINER

VERONICA DUNCAN BLACK

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

May 29, 2009

Honorable Eric R. Dinallo  
Superintendent of Insurance  
Albany, New York 12257

Sir:

Pursuant to the requirements of the New York Insurance Law, and in compliance with the instructions contained in Appointment Number 30289 dated January 29, 2009 attached hereto, I have made an examination into the condition and affairs of Ports Insurance Company as of December 31, 2007, and submit the following report thereon.

Wherever the designation "the Company" appears herein without qualification, it should be understood to indicate Ports Insurance Company.

Wherever the term "Department" appears herein without qualification, it should be understood to mean the New York Insurance Department.

The examination was conducted at the Company's offices located at 300 Broadhollow Road, Melville, New York 11747.

## **1. SCOPE OF EXAMINATION**

The purpose of this examination was to determine whether the Company was operating within its by-laws and was in compliance with Article 70 of the New York Insurance Law and its plan of operation as submitted to the Department.

A review was conducted of the Company's operations from December 18, 2003, its date of incorporation as a New York captive insurance company, through December 31, 2007. The review included an analysis of the Company's financial condition, the corporate records, and limited tests of the various income and disbursement items as deemed necessary. This report is submitted on an "exception" basis. Comments and recommendations are limited to those items requiring financial adjustment, procedural recommendations, or instances where the Company was not complying with the application submitted to the Department or Article 70 of the New York Insurance Law.

The report utilized work performed by the Company's independent certified public accountants ("CPA") to the extent considered appropriate.

## **2. DESCRIPTION OF COMPANY**

The Company was incorporated on December 18, 2003, and commenced operations as a captive insurance company under the laws of the State of New York on December 23, 2003. The Company is a wholly-owned subsidiary of Ports America Holdings, Inc. ("Ports America, Inc.").

On December 11, 2006, it was announced that AIG Global Investment Group ("AIGIG"), a division of American Insurance Group, would acquire P&O Ports North America (n/k/a Ports America, Inc.) and its wholly-owned subsidiaries from Dubai Ports World, a company owned by the government of Dubai in the United Arab Emirates. On March 16, 2007, the aforementioned sale was finalized when Ports America Holdings, Inc. became a wholly-owned subsidiary of AIGIG. On November 29, 2007, 100% of the economic interest in Ports America Holdings, Inc. was transferred at cost to HHH Ports America Holdings I, L.P. (74.2%) and HHH Ports America Holdings II, L.P.(25.8%), while the voting interest remained with AIGIG, through its subsidiary AIG Ports America, Inc.

Ports America, Inc. is the largest American stevedore and terminal operator with operations in 24 ports and terminals within the United States. Ports America, Inc. has operations ranging from

pure container terminals to “under the hook stevedoring.” The operations also include bulk and break-bulk facilities, world class cruise terminals, and intermodal facilities.

A. Articles of Incorporation

The purpose of the Company, as stated in its articles of incorporation, was to form a corporation for the purpose of transacting the kinds of insurance specified in Section 1113 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 New York Insurance Law.

B. By-Laws

The by-laws of the Company were reviewed, and it was determined that the Company was operating in full conformity with its by-laws in all material respects.

C. Capital Structure

The Company was incorporated as a pure captive insurance company. On December 18, 2003, the Company issued one hundred thousand shares of common stock at \$1 par value per share to its parent company in exchange for \$10 million dollars. In September 2005, the Company received an additional capital contribution of \$30 million to secure letters of credit in favor of the United States (“U.S”) Department of Labor for the authorization to write longshore workers’ compensation. In May 2006, this Department approved a return of capital of \$30 million to the Company’s former parent company, P&O Holding Company, Inc. as a result of the sale of the Company. Further in March 2007, the Company received a capital contribution of \$10 million as a backstop to support its property exposure. In October 2007, this Department approved the return of capital of \$10 million to the Company’s current parent company, Ports America, Inc. due to the reduction in the Company’s property exposure.

Further, the following statement was cited in the Company’s 2007 certified public accountant financial statements:

“Certain amounts in the prior year financial statements have been classified to conform to current year presentation.”

A review of this statement shows that the Company reclassified \$4,623,389 from surplus to contributed surplus. The accountant notes that the reclassification had no effect on the Company's total capital and surplus or stockholder's equity account.

Gross paid in and contributed surplus decreased by \$5,000,000, but was also increased by \$4,623,389 due to the reclassification of surplus during the examination period, as follows:

<u>Year</u>	<u>Description</u>		<u>Amount</u>
2003	Beginning gross paid in and contributed surplus		\$9,900,000
2005	Surplus contribution	\$30,000,000	
2007	Surplus contribution	<u>10,000,000</u>	
	Total surplus contribution		40,000,000
2006	Surplus reduction	\$(35,000,000)	
2007	Surplus reduction	<u>(10,000,000)</u>	
	Total surplus reduction		<u>(45,000,000)</u>
	Total net surplus		\$4,900,000
2007	Plus: reclassification to contributed surplus		<u>4,623,389</u>
2007	Ending gross paid in and contributed surplus		<u>\$9,523,389</u>

D. Corporate Records

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

E. Plan of Operation

The Company's plan of operation states that it will provide its parent company, Ports America, Inc., and all of its domestic subsidiaries with insurance coverages as permitted by Article 70 of the New York Insurance Law. The initial plan provided indemnification to the Company's parent company and affiliates for deductible amounts or self-insured retentions for the U.S. longshore

and harbor workers' compensation ("USL&H") lines of business. In July 2005, the Company received authorization from the U.S. Department of Labor to operate as a direct insurer under the Federal Longshore and Harbor Workers' Compensation Act. Effective October 1, 2004, the Company amended its business plan to write in both excess property Terrorism Risk Insurance Act ("TRIA") of 2002 and excess liability for TRIA to its lines of business. These coverages provide reimbursement for losses arising out terrorism acts as defined in the Terrorism Risk Insurance Act of 2002.

Effective January 1, 2005, the Company amended its business plan to include automobile and cargo/general liability deductible reimbursement insurance coverage as part of its primary casualty program. The coverages provide reimbursement of deductible amounts to underlying commercial policies. Effective October 1, 2005 and October 1, 2006, the Company also amended its business plan to write workers' compensation and property deductible reimbursement coverages, respectively, to its lines of business.

#### F. Reinsurance

##### Assumed Reinsurance

The Company participated in one assumed reinsurance agreement for the period under examination. At the inception of the Company, the parent company and its subsidiaries transferred their workers' compensation claims (for both USL&H and American Longshore Mutual Association "ALMA") for accident years 2003 and prior to the Company pursuant to an assumption arrangement. The Company received a total consideration of \$78,200,000 and assumed loss reserves of approximately \$63,000,000 million pursuant to the agreement.

##### Ceded Reinsurance

The examiner reviewed all of the ceded reinsurance contracts for the period under examination. The Company has two excess of loss reinsurance agreement in place. The first agreement provides protection to the Company's excess property and liability TRIA lines of business, and the second agreement affords protection to the Company's USL& H workers' compensation line of business. The agreements were submitted to this Department pursuant to Section 7010(c) of the New York Insurance Law.

### Excess Property and Liability TRIA

The Company provides a difference in conditions and excess terrorism coverage that affords coverage for any acts of terrorism as defined under the Terrorism Risk Insurance Act of 2002. The policy provides a liability limit of \$200 million per occurrence. Effective October 1, 2006, the Company entered into a reinsurance agreement for the protection of its excess property and liability TRIA insurance coverage. This treaty provides a reinsurance limit of \$50 million excess of deductible amounts. This treaty was renewed effective October 1, 2007.

On November 26, 2002, the Terrorism Risk Insurance Act of 2002 ("TRIA" or "the Act") was signed into law. On December 26, 2007, the President of the United States signed the Terrorism Risk Insurance Program Reauthorization Act of 2007 into law, which extended TRIA through December 31, 2014. The Act created a U.S. government facility that provides reinsurance coverage to insurers as a result of declared terrorism events. The Act established a "program trigger" that must be met before the Treasury will cover a loss. The program trigger is currently \$100 million and applies to all certified acts of terrorism. When the program is triggered, the Federal government is required to pay 85% of insured terrorism losses in excess of individual insurer trigger/deductible while the insurer pays 15%.

### USL& H Workers' Compensation

Effective October 1, 2004, the Company became a participant to its parent's underlying insurance contract that provides insurance protection to its parent company for its USL&H line of business. This coverage provides a limit of \$20 million per accident/ per occurrence/ and aggregate excess a \$1 million self-insured retention. This contract is subject to a reinsurance arrangement. The reinsurance arrangement is subject to two separate contracts that provide a total limit of \$100 million any one accident/ occurrence, combined single limit excess of the USL&H underlying limits. The terms of the agreements remained in effect through September 30, 2007. As of December 31, 2007, the Company did not have these reinsurance arrangements in place.

Effective October 1, 2007, the Company became a participant to its parent's excess of loss USL&H insurance policy that provides insurance protection to its parent company and affiliates. This policy provides a limit of \$20 million per occurrence. Pursuant to the terms of the policy, the Company is responsible for a limit of \$4 million per occurrence and \$8 million in the aggregate excess of \$1 million per occurrence without aggregate/ unlimited. This insurance policy is subject to

a broader reinsurance program that covers the parent company and affiliates up to \$200 million per occurrence.

G. Management

Captive Manager

The Company is managed by Marsh Management Services, Inc., (“Marsh”) pursuant to Section 7003(b) (4) of the New York Insurance Law. Effective December 1, 2003, the Company executed a management agreement with Marsh. The agreement requires Marsh to act as the principle representative of the Company in all communications and dealings with all regulatory authorities. Pursuant to the terms of the agreement, Marsh agrees to render services in the following areas: underwriting and policyholder services, claims services, reinsurance services, and maintaining the books and records of the Company.

Service Agreement

For the period under examination, the Company entered into a formal corporate service agreement with an affiliate. Pursuant to the terms of the agreement, the Company shall secure personnel, accounting, claims handling and other management services from its affiliate in order to conduct its business as a captive insurance company.

Board of Directors

Pursuant to the Company’s charter and by-laws, management of the Company is vested in a board of directors consisting of not less than three, but nor more than ten members. At December 31, 2007, the board of directors was comprised of the following four members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Chester P. Popowski Marietta, GA	Senior Vice President/Chief Financial Officer, Ports America, Inc.
Mark Cummings Glen Gardner, NJ	Vice President – Risk Management, Ports America, Inc.
Maureen A. Walsh New York, NY	Secretary and Treasurer, Ports Insurance Company
Laura J. Rhonemus New York, NY	Assistant Secretary, Ports Insurance Company

A review of the minutes of the board of directors' meetings held during the examination period indicate that the meetings were generally well attended and that each board member had an acceptable record of attendance.

As of December 31, 2007, the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
Chester J. Popowski	Chairman
Mark S. Cummings	President
Maureen A. Walsh	Treasurer and Secretary
Laura J. Rhonemus	Assistant Secretary

#### H. Certified Public Accountant and Actuarial Services

Pursuant to Section 7006(b) of the New York Insurance Law, every captive insurance company licensed to do a captive insurance business in the State of New York is required to file annually, on or before July first, a report of its financial condition at last year-end with an opinion of its independent certified public accountant. A review indicated that the Company filed its certified public accountant's financial statements annually on or before July 1 for all of the years under examination.

#### I. Growth of Company

The following schedule sets forth the Company's significant summary financial information for the years covered by this examination:

<u>Year</u>	<u>Net Premiums Earned</u>	<u>Net Income</u>	<u>Assets</u>	<u>Shareholders' Equity</u>
2003	\$ 0	\$ 7,360,055	\$ 82,384,095	\$17,360,055
2004	\$ 16,860,968	\$ (2,147,837)	\$ 79,392,557	\$15,212,218
2005	\$ 25,803,686	\$ (588,829)	\$125,409,656	\$44,623,389
2006	\$ 24,165,222	\$ 868,143	\$102,577,842	\$10,419,532
2007	\$ 21,885,811	\$14,666,128	\$113,841,118	\$25,157,660

### 3. FINANCIAL STATEMENTS

#### A Balance Sheet

The financial statements of the Company are presented in conformity with generally accepted accounting principles. The financial position of the Company as presented and accepted was audited by the Company's certified public accountant:

Balance Sheet  
December 31, 2007

Asset

Cash	\$29,055,611
Savings and certificate of deposit	30,000,000
Other invested assets – land and building	1,328,264
Investment income due and accrued	3,431,374
Accounts and premiums receivable	310,162
Investments in and advances to affiliates	48,447,248
Funds held by ceding reinsurers	30,000
Prepaid reinsurance premiums	84,750
Other assets – deferred premium tax	675
Prepared expenses	500
Deferred federal income tax	<u>1,152,534</u>
Total assets	<u>\$113,841,118</u>

Liabilities, Capital and SurplusLiabilities

Losses		\$70,220,859
Loss adjustment expense		12,391,916
Commissions, expenses and fees		142,835
Taxes payable		5,702,848
Unearned premium		<u>225,000</u>
Total liabilities		\$88,683,458

Capital and Surplus

Paid in capital	\$ 100,000	
Contributed surplus	9,523,389	
Surplus (accumulated earnings)	<u>15,534,271</u>	
Total capital and surplus		<u>25,157,660</u>
Total liabilities, capital and surplus		<u>\$113,841,118</u>

B. Statement of Income

Capital and surplus increased \$7,797,605 during the four-year examination period, December 31, 2003 through December 31, 2007.

Underwriting Income

Net premiums earned		\$88,715,687
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Underwriting Expense

Net losses incurred	\$73,453,054	
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Net loss adjustment expense	12,962,304	
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General and administrative	6,088,809	
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Other underwriting expense	<u>256,844</u>	
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Total underwriting expense		<u>92,761,011</u>
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Underwriting profit (loss)		\$ (4,045,324)
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Investment income (net)		17,813,077
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Other income		2,641,196
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Other expense		<u>(531,030)</u>
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Income before dividends and taxes		\$15,877,919
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Taxes		<u>3,080,314</u>
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Net income		<u>\$12,797,605</u>
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C. Capital and Surplus Account

Capital and surplus at December 31, 2003			\$17,360,055
	<u>Increase</u>	<u>Decrease</u>	
Net income	\$12,797,605		
Capital changes – paid in	40,000,000		
Surplus adjustments – paid in			
Transfer from capital stock		\$45,000,000	
Other: Reclassification to contributed surplus	4,623,389		
Reclassification from surplus	<u>0</u>	<u>4,623,389</u>	
Total increase and decrease	<u>\$57,420,994</u>	<u>\$49,623,389</u>	
Net increase in surplus			<u>7,797,605</u>
Capital and surplus, per report on examination as of December 31, 2007			<u>\$25,157,660</u>

**4. LOSSES AND LOSS ADJUSTMENT EXPENSES**

The Company reported losses and loss adjustment expenses of \$82,612,775 as of December 31, 2007. The examiner did not independently review the loss reserves but rather relied upon the opinion of the Company's actuary and its certified public accountant. The actuary has determined that the Company's reserves are within a reasonable range and believe that the Company has made a reasonable provision for its unpaid loss and loss expense obligation as of December 31, 2007. Based upon the actuarial opinion, no changes have been made to the reserves reported by the Company.

The Statement of Actuarial Opinion, which was prepared by Marsh Management Services, Inc., states that the Company's December 31, 2007 reserves:

“Are computed in accordance with commonly accepted actuarial methods and are fairly stated in accordance with sound actuarial principles. Make reasonable provision in the aggregate for all unpaid losses and loss adjustment expenses under the terms of the Company's policies. Meet the relevant requirements of the insurance laws of New York.”

During 2007, the Company changed its consulting actuary. The change in actuarial services resulted in new assumptions and actuarial methodologies. These changes were utilized to develop the Company's estimated reserves as of December 31, 2007. The Company's parent, Ports America, retained Milliman to review the reasonableness of the methodologies and assumptions employed by Marsh in its actuarial analysis of the Company's loss and loss adjustment expense as of December 31, 2007. Milliman determined that Marsh's analysis of the Company's losses and the selection of loss reserves appear to be reasonable, and that suggested modifications would not have a material impact on the Company's estimated loss reserves.

#### **5. ARTICLE 70 COMPLIANCE**

Article 70 of the New York State Insurance Law is the governing law for the formation and continued operation of Captive Insurance Companies in New York State. A review was performed to test the Company's compliance with Article 70. No material area of non-compliance with Article 70 was found during the course of this examination.

#### **6. INSURANCE PROGRAM**

The Company was licensed as a captive insurance company to facilitate the management of its parent company and its affiliates' liabilities.

For the period under examination, the Company provided its parent company and affiliates with the following insurance policies: longshore and harbor workers' compensation (USL&H) as authorized by the U.S. Department of Labor and an excess property and liability TRIA policy. These policies are described under the heading "Reinsurance", subsection F herein. The Company also provides its parent company and affiliates with a state workers' compensation deductible reimbursement policy. Under the terms of this policy, the Company agrees to provide reimbursement for all deductible amounts that are covered under the overlying commercial policy with a limit of \$500,000 per occurrence for accident date subsequent to September 30, 2005 for all claims. Further, the Company issued two other state workers' compensation insurance policies to insure joint ventures that provide the same policy limits. The workers' compensation joint venture policies were not offered after September 30, 2007.

The Company provides a cargo/general liability deductible reimbursement policy to its parent company and affiliates. This policy provides a reimbursement limit of \$100,000 per occurrence for all claims with an accident date after January 1, 1985. Effective October 1, 2007, the deductible coverage for this policy increased from \$100,000 to \$250,000. The Company also offered an auto liability deductible reimbursement policy with a limit of \$500,000 per occurrence with accident dates subsequent to September 30, 2004. Effective October 1, 2007, the reimbursement limit for this policy decreased from \$500,000 to \$100,000.

Effective October 1, 2006, the Company began to provide property deductible reimbursement coverage. Under the terms of the policy, the Company agreed to provide a limit of \$9 million excess \$1 million deductible per occurrence for all locations other than New Orleans, and a limit of \$14 million excess \$1 million deductible per occurrence, applicable at New Orleans only. Effective October 1, 2007, this coverage was not renewed.

## **7. SUMMARY OF COMMENTS AND RECOMMENDATIONS**

This report contains no recommendation.

Respectfully submitted,

\_\_\_\_\_  
/s/  
Veronica Duncan Black  
Senior Insurance Examiner

STATE OF NEW YORK     )  
                                  ) SS:  
                                  )  
COUNTY OF NEW YORK    )

VERONICA DUNCAN BLACK, being duly sworn, deposes and says that the foregoing report, subscribed by her, is true to the best of her knowledge and belief.

\_\_\_\_\_  
/s/  
Veronica Duncan Black

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

Appointment No. 30289

STATE OF NEW YORK  
INSURANCE DEPARTMENT

I, Eric R. Dinallo, Superintendent of Insurance of the State of New York,  
pursuant to the provisions of the Insurance Law, do hereby appoint:

**Veronica DuncanBlack**

*as proper person to examine into the affairs of the*

**PORTS INSURANCE COMPANY, INC**

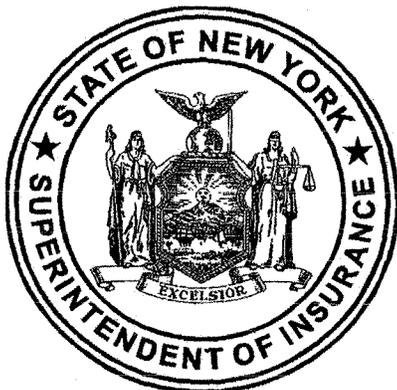
*and to make a report to me in writing of the condition of the said*

**Corporation**

*with such other information as she shall deem requisite.*

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

*this 29th day of January, 2009*



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

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ERIC R. DINALLO  
Superintendent of Insurance