

REPORT ON EXAMINATION

OF THE

AMERICAN STEAMSHIP OWNERS MUTUAL
PROTECTION AND INDEMNITY ASSOCIATION, INC

AS OF

DECEMBER 31, 2005

DATE OF REPORT

JUNE 24, 2008

EXAMINER

MARIBEL C. NUNEZ, CPCU

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

June 24, 2008

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 22454 dated February 22, 2006, attached hereto, I have made an examination into the condition and affairs of the American Steamship Owners Mutual Protection and Indemnity Association, Inc. as of December 31, 2005, and submit the following report thereon.

Wherever the designation “the Association” appears herein without qualification, it should be understood to indicate the American Steamship Owners Mutual Protection and Indemnity Association, Inc.

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 Association’s home office located at 1 Battery Park Plaza, New York, New York 10004.

This examination has determined that as of December 31, 2005, the Association’s liabilities exceeded its assets in the amount of \$36,219,080, and its Department mandated minimum required surplus of \$7,500,000 was impaired in the amount of \$43,719,080. It is noted that the Association is a not for profit, assessable, mutual indemnity insurer, which allow it to assess its members additional sums if the premiums charged and interest earned on capital are not sufficient to cover the actual losses. Additionally, under the contracts issued by the Association to its members, each member agrees that it has a liability for the payment of its proportionate share of any deficiency.

Subsequent to the examination date, the Association levied assessments against the holders of assessable policies in effect in insurance years 2005 and prior in the amount of \$39,275,944, of which \$35,331,106 was subsequently collected. The \$35,331,106 collected is \$25,115,210 more than the \$10,215,896 examination admitted asset for Future assessments up to the difference in ultimate and present value of losses.

Additionally, the examination surplus includes the disallowance of approximately \$7.7 million of uncollected premiums and agents' balances in the course of collection, which includes \$1.0 million due from members that filed for bankruptcy and \$6.7 million representing installments more than 90 days past due. It is noted that the Association took credit for these amounts by offsetting amounts owed by the Association to the members, based on its by-laws and rules of the Association, which state "the Association shall be entitled to set off any amount due to a Member against any amount due to such Member from the Association." While there is no provision in the Insurance Law or Statements of Statutory Accounting Principals which would allow for such offsets, the Department notes that the structure of the Association is unique in that losses are paid by the members and reimbursed by the Association.

1. SCOPE OF EXAMINATION

The previous examination was conducted as of December 31, 2001. This examination covered the four-year period from January 1, 2002 through December 31, 2005. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

The examination comprised a verification of assets and liabilities as of December 31, 2005. The examination included a review of income, disbursements and company records deemed necessary to accomplish such analysis or verification and utilized, to the extent considered appropriate, work performed by the Association's independent certified public accountants ("CPA"). A review was also made of the following items as called for in the Examiners Handbook of the National Association of Insurance Commissioners ("NAIC"):

- History of Association
- Management and control
- Corporate records
- Fidelity bond and other insurance
- Territory and plan of operation
- Growth of Association
- Business in force by states

Loss experience
Reinsurance
Accounts and records
Financial statements

A review was also made to ascertain what action was taken by the Association 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, which involve departures from laws, regulations or rules, or which are deemed to require explanation or description.

2. DESCRIPTION OF ASSOCIATION

American Steamship Owners Mutual Protection and Indemnity Association, Inc. was incorporated under the laws of the State of New York on February 14, 1917. It became licensed and commenced business on February 20, 1917.

The Association is a mutual protection and indemnity insurance club and is a member of the International Group of Protection and Indemnity Clubs (“International Group” or “Pool”), a collection of thirteen mutual insurance associations which together provide protection and indemnity insurance for approximately 90% of all world shipping. The Association operates as a mutual marine insurance company and, as such, all policyholders are members. Initially, all policies issued were assessable, which required that such policyholders be subject to a contingent liability or assessment, without limit, for their proportionate share of any deficiency or impairment as provided by law and fixed in accordance with the by-laws of the Association. In 1996, the Association commenced issuing policies that were non-assessable. As of the examination date, assessable policies comprised the majority of the business in effect.

A. Management

Pursuant to the Association’s charter and by-laws, management of the Association is vested in a board of directors consisting of not less than thirteen or more than twenty-five members. The board met five times during 2002 through 2004 calendar year and four times during 2005. At December 31, 2005, the board of directors was comprised of the following twenty-one members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Vassilios Bacolitsas Athens, Greece	Director, Sea Pioneer Shipping Corp.
Lawrence J. Bowles New York, NY	Counsel, Nourse & Bowles, LLP.
Calvin W.S. Cheng New York, NY	Chairman, Eastmark Associates, Inc
Keith Denholm Great World City, Singapore	Commercial Director, Pacific Carriers Limited
Kenneth T. Engstrom Miami, FL	Executive Vice-President, International Shipping Partners
Samuel A. Giberga Covington, LA	Director, Hornbeck Offshore Operators, LLC
George D. Gourdomichalis Piraeus, Greece	President, Free Bulkers S.A
Robert A. Guthans Mobile, AL	Retired, R G Company, LLC
Chih Chien Hsu Taipei, Taiwan	Managing Director, Eddie Steamship Co.
Markos K. Marinakis New York, NY	President, Marinakis Chartering Incorporated
Hariklia N. Moundreas Piraeus, Greece	Director, Good Faith Shipping Company S.A
Michael L. Murley Kilgore, TX	Risk Manager, Martin Resource Management Corp.
Martin C. Recchuite Calabasas, CA	Assistant Treasurer, Atlantic Richfield Co.
Victor S. Restis Athens, Greece	Director, Enterprises Shipping & Trading S.A
Paul Sa New York, NY	Managing Director, Stanships, Inc.
Steven T. Scalzo Seattle, WA	Chief Operating Officer Marine Resources Group, Inc.

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
James P. Sweeney Stamford, CT	Vice President, Operations, Penn Maritime, Inc.
George Vakirtzis Piraeus, Greece	General Manager, Chief Financial Officer, Polembros Shipping Limited
Jonathan C. Wales East Boston, MA	Chief Financial Officer, Reinauer Transportation Company
J. Arnorld Witte Hillside, NJ	President – Chief Executive Officer, Donjon Marine Co., Inc.
Servet Yardimci Istanbul, Turkey	Vice Chairman, Moliva Shipping Incorporated

A review of the minutes of the board of directors' meetings held during the examination period indicated that the meetings were generally well attended with the exception of Hariklia N. Moundreas, Servet Yardimci and Victor S. Restis, each of whom attended less than 50% of the meetings for which they were eligible to attend.

Members of the board have a fiduciary responsibility and must evince an ongoing interest in the affairs of the insurer. It is essential that board members attend meetings consistently and set forth their views on relevant matters so that the board may reach appropriate decisions. Individuals who fail to attend at least one-half of the regular meetings do not fulfill such criteria.

It is recommended that board members who are unable or unwilling to attend meetings consistently should resign or be replaced. It is noted that Victor Restis was replaced by Katia Restis in 2006.

A review of the minutes of the board of directors revealed that each member of the board of directors was not furnished a copy of the prior report on examination pursuant to Section 312(b) of the New York Insurance Law.

It is recommended that the Association present the report on examination to its board of directors and each such member shall sign a statement, which shall be retained in the insurer's files confirming that such member has received and read such report pursuant to Section 312(b) of the New York Insurance Law.

The Association is managed by Shipowners Claims Bureau Inc. (“SCB”), whereby SCB provides administrative, underwriting, accounting and claims processing services to the Association for an annual fee. On December 28, 2001, the Association purchased the outstanding capital stock of SCB from Marsh USA, Inc. for consideration of \$1,500,000 (\$750,000 payable upon execution and the remainder payable on December 28, 2002). On the date of purchase, SCB contributed the net book value of its fixed asset (\$750,000) to the Association as a return of capital. Also, on December 28, 2001, the Association sold its interest in SCB to Eagle Ocean Management, LLC (“EOM”). The shareholders of EOM consist exclusively of members of SCB’s management staff. No gain or loss was reported as a result of these transactions. However, the Association maintained a promissory note receivable from EOM totaling \$253,431 in satisfaction of the sale price during 2005. This note receivable was completely fulfilled during the last quarter of 2006.

As of December 31, 2005, the principal officers of the Association were as follows:

<u>Name</u>	<u>Title</u>
Joseph E. M. Hughes	Chairman/CEO – SCB, Inc., Managers & Secretary
Vincent Solarino	President/COO – SCB, Inc., Managers

B. Territory and Plan of Operation

As of December 31, 2005, the Association was licensed to write business in New York State only. As of the examination date, the Association was authorized to transact the kind of insurance as defined in the following numbered paragraph of Section 1113(a) of the New York Insurance Law:

<u>Paragraph</u>	<u>Line of Business</u>
21	Marine protection and indemnity

Based on the line of business for which the Association is licensed and pursuant to the requirements of Articles 13 and 41 of the New York Insurance Law and in recognition of the Association’s unusual nature and its special form of operation, the Department has specified \$7,500,000 as the minimum surplus to be maintained by the Association.

The Association provides liability coverage to domestic and international ship-owners, operators and charters, which is marketed predominately through brokers. Prior to the period under

review, most of the Association's business derived from domestic members. However, during the years under examination, business from international members had increased to account for more than 70% of the Association's written tonnage.

The Association reported all premiums as being written in New York State in Schedule T of its annual statement. However, the NAIC annual statement instructions for Schedule T provides that all United States business must be allocated by state on its corresponding line number and premiums written outside the United States should be reported on line 57 (Aggregate alien and other) of Schedule T.

It is recommended that the Association report its premiums written outside the United States in line 57 of Schedule T according to the NAIC annual statement instructions.

Operations are focused on small to medium-sized shipping interests and in the United States market, roughly half of the premium volume is attributed to tug and barge operations and coastal trade.

C. Reinsurance

Assumed

The Association is a direct writer and is not a party to any assumed reinsurance agreement.

International Group of Protection and Indemnity Clubs

Effective December 1997, the Association was accepted into the International Group, a consortium of approximately thirteen assessable mutual protection and indemnity associations that purchase excess of loss reinsurance protection for marine risks as a pool. In accordance with the terms of the agreement between the International Group and its members, the Pool self-insures itself amongst its members. The amount each member must contribute to the Pool losses is determined by the amount of tonnage each member writes in relation to the gross tonnage written. Each member is responsible for its proportional share of losses.

On February 20, 2005, the International Group incorporated Hydra Insurance Company Limited ("Hydra") as a Class 2, exempted insurer under the Bermuda Insurance Act 1978 and as a segregated account company under the Bermuda Segregated Accounts Companies Act 2000. Hydra has thirteen cells, one for each club of the International Group and was formed to reinsure its

exposure to claims in the upper layer of the Pool reinsurance agreement. Each Club owns approximately 7.6923% of Hydra general cell and 100% of its individual Hydra cell.

A review of the Association underwriting results revealed that it reported premiums and losses assumed from the Pool net of premiums and losses ceded to the Pool. The NAIC Accounting Practices and Procedures Manual, Statements of Statutory Accounting Principles (“SSAP”) No. 63 (Underwriting Pools and Associations Including Intercompany Pools), paragraph 8 states in part:

“Underwriting results shall be accounted for on a gross basis whereby the participant’s portion of premiums, losses, expenses, and other operations of the pools are recorded separately in the financial statements rather than netted against each other. Premiums and losses shall be recorded as direct, assumed, and/or ceded as applicable...A reporting entity who is a member of a pool shall record its participation in the pool as assumed business as in any other reinsurance agreement.”

It is recommended that the Association account for premiums and losses assumed from and ceded to the Pool on a gross basis, rather than netted against each other, pursuant to the provisions of SSAP No. 63, paragraph 8.

Additionally, the Association reduced its provision for unauthorized reinsurance for one reinsurer by including assumed losses recoverable from that reinsurer as an “other allowable offset item” in column 10 of Schedule F – Part 5 in its 2005 annual statement.

The amount of the offset was not material and no examination change is included herein; however, it is recommended that the Association not include assumed reinsurance losses as an offset to its provision for unauthorized reinsurance in Schedule F, Part 5 of its annual statement.

Ceded

A review of the ceded reinsurance contracts in effect during the examination period revealed that for each contract that was bound by the reinsurance intermediary, only cover notes could be provided as evidence of coverage. No other evidence was provided to ensure that the assuming insurer had agreed to assume the risk. Additionally, no written evidence was provided to manifest the reinsurance intermediary’s authority to bind insurance between the assuming insurer or for the ceding insurer pursuant to Part 32.1 of Department Regulation 98.

It is recommended that the Association comply with Department Regulation 98 and have its reinsurance intermediary procure written evidence from the assuming insurers that they agree to the risk or that the reinsurance intermediary has the authority to bind coverage for the assuming insurer.

It was further noted that since the Association did not receive finalized signed reinsurance contracts from its reinsurance intermediaries within nine months of the annual statement as of date, pursuant to paragraph 23 of SSAP 62, it should be required to account for such reinsurance as retroactive reinsurance agreements.

It is recommended that the Association obtain finalized reinsurance contracts in accordance with the guidelines set forth in SSAP No. 62, paragraph 23.

It is recommended that where the Association does not receive finalized signed reinsurance contracts from its reinsurance intermediaries within nine months of the annual statement as of date, that it should treat such agreements as retroactive reinsurance agreements.

A review was made of the ceded reinsurance cover notes in effect during the examination period. This review revealed that several cover notes did not contain the required standard clauses, including insolvency clauses needed to meet the requirements of Section 1308(a)(2)(A)(i) and (ii) of the New York Insurance Law.

It is recommended that the Association amend its reinsurance agreements to include an insolvency clause meeting the requirement of Section 1308(a)(2)(A)(i) and (ii) of the New York Insurance Law.

The Association has structured its ceded reinsurance program to limit its maximum exposure to any one risk as follows:

<u>Type of Contract</u>	<u>Cession</u>
Layer One 80% Authorized 20% Unauthorized	\$4,000,000 excess \$2,000,000, ultimate net loss any one vessel, any one accident or occurrence excess of \$8,000,000 in the aggregate otherwise recoverable hereon.
Pool – Hydra	
First Layer	\$24,000,000 excess \$6,000,000.
Second Layer	\$20,000,000 excess \$30,000,000 of the first general excess contract of losses in the aggregate.

Type of ContractCession

Pool – General Excess Contract

First Layer
 5.8% Authorized
 94.2% Unauthorized

\$500,000,000 excess \$50,000,000 of any one vessel arising out of any event.

Oil Pollution Risk

\$500,000,000 excess \$50,000,000 as a separate limit for oil pollution risk for any one vessel, any one event.

Charterers' entries

\$300,000,000 excess \$50,000,000 any one vessel arising out of any one event as original.

The first layer of this contract is placed at only 75% with the remaining 25% being covered by HYDRA) and all other layers at 100%.

Second Layer
 4% Authorized
 96% Unauthorized

\$500,000,000 excess of \$500,000,000 any one vessel arising out of any one event.

\$500,000,000 excess \$500,000,000 as a separate limit for oil pollution risk for any one vessel, any one event.

Third Layer
 15.2% Authorized
 84.8% Unauthorized

\$1,000,000,000 excess \$500,000,000 any one vessel, any one event related to P & I claims other than oil pollution claims.

Fourth Layer
 100% Unauthorized

\$1,500,000,000 excess \$500,000,000 any one vessel, any one event related to P & I claims other than oil pollution claims.

Return Premium Protection
 15% Authorized
 85% Unauthorized

First excess of amount insured: \$14,500,000
 Second excess of amount insured: \$5,000,000.

To indemnify the assured for their loss of return premium under the International Group Pooling Agreement 1st and 2nd general excess reinsurance.

Salvors Liability
 100% Unauthorized

\$375,000 excess \$100,000,000 any one salvage operation.

To cover Salvors legal liability for oil pollution during work of the nature of salvage but only to pay claims. Excluding liability arising from the

Type of ContractCession

War Risk

18.1% Authorized
81.9% Unauthorized

use of Salvors vessels covered by the vessels entry in a P & I Association.

To indemnify the assured for P & I risks, for which cover is excluded from vessel's entry solely by reason of the War Exclusion Clause.

First Layer

\$200,000,000 excess \$50,000 any one vessel, any one occurrence.

Second Layer

\$200,000,000 excess \$200,050,000 of any one vessel, any one occurrence.

Third Layer

\$100,000,000 excess \$400,050,000 any one vessel, any one occurrence.

Liability under the Paperless Trading Endorsement of the 2005 International Group Pooling Agreement.

To indemnify the assured in respect of liabilities, costs or expenses that would be recoverable under a standard poolable entry in an International Group P & I Association.

3.6% Authorized
96.4% Unauthorized

\$50,000,000 any one accident or occurrence or series or accidents or occurrences arising out of one event.

Charterers Co-assured

7% Authorized
93% Unauthorized

To pay claims, including all legal costs and expenses borne by the reassured consequent upon indemnifying their members for liabilities and expenses incurred as Charterers Co-assured under and owner entry for amounts in excess of the total limit of liability.

\$50,000,000 any one event, or each cargo voyage, each vessel as original.

Non-Poolable

100% Unauthorized

Section i: (A): P & I for extended Non-Poolable Tug and Barge coverage

\$24,000,000 excess \$1,000,000 any one accident or occurrence.

Section i (B): P & I for Non-Poolable risks including Shipowners and/ or Carriers liability to cargo by way of deviation from the bill of lading or breach of contract. (First Layer for Non-Poolable risks: Parts A & B of Section i)

\$24,750,000 excess \$250,000 any one accident or occurrence but never to exceed \$24,750,000 any one accident or occurrence.

Type of ContractCession

Section ii: Charterers Liability for P & I including liability to cargo.

\$24,750,000 excess \$250,000 any one accident or occurrence combined single limit, which in turn excess of original deductibles. This limit also applies to Section iii below.

Section iii: Charterers Liability for damage to hull. (First Layer of Charterers Liability: Sections ii & iii)

Section iv: Charterers Freight.

\$5,000,000 excess \$250,000 any one accident or occurrence, which in turn excess of original deductibles.

Section v: Charterers Bunkers

\$1,000,000 any one accident or occurrence excess of original deductibles.

Section vi: Freight, Demurrage and Defence

\$1,500,000 excess \$500,000 any one claim and in the aggregate, which in turn excess original deductibles.

Section vii: Excess P & I for Non-Poolable risks. (Second Layer of Non-Poolable section)

\$75,000,000 excess \$25,000,000 any one accident or occurrence being as per Section i A and B

Section viii: Excess Charterers Liability for P & I, including liability to cargo, and damage to hull if required. (Second Layer of Charterers Liability)

\$75,000,000 any one accident or occurrence combined single limit excess of \$25,000,000 any one accident or occurrence combined single limit being as per Sections i & ii).

The Association utilizes unauthorized reinsurers to a greater degree than authorized reinsurers. Its retention level has increased since the last examination from \$500,000 in 2001 to \$2,000,000 in 2005.

Unauthorized Reinsurance

Letters of credits obtained by the Association to take credit for cessions to unauthorized reinsurers were reviewed for compliance with Department Regulations 133. No exceptions were noted in the letters of credit reviewed.

However, it was noted that the Association could not produce a few of the letters of credit utilized by it to take credit for reinsurance recoverable balances due from unauthorized reinsurers. The amounts were not material; therefore, no examination change was made. However, it is recommended that the Association retain all letters of credit that are being used by it to take credit for reinsurance recoverable balances due from unauthorized reinsurers.

The Association also reduces its provision for reinsurance pursuant to the provisions of Department Regulation 20, which allows companies to take credit for cessions to an assuming insurer not authorized in this state, provided that certain criteria are met.

Upon review, it was noted that the Association did not maintain the documentation required by Part 125.4(e)(2)(v) of Department Regulation 20, which states, in part:

“credit claimed for reinsurance recoverable under this subdivision is to be supported by proper and appropriate records maintained by the ceding company both as to the solvency of the assuming insurer and the record on which the review was based, and a record of the amount of reinsurance ceded subject to examination at any reasonable time by any person appointed to do so by the superintendent;”

The amount of credit taken by the Association pursuant to Department Regulation 20 for cessions to unauthorized reinsurers was not material; therefore, no examination change will be made. However, it is recommended that the Association maintain all of the required documentation pursuant to the provisions of Department Regulation 20 to take credit for cessions to unauthorized reinsurers.

A review of the Schedule F contained in the Association's 2006 annual statement revealed that reinsurance transactions were accurately reported. Management represented that all material ceded reinsurance agreements transfer both underwriting and timing risk as set forth in SSAP No. 62. Representations were supported by an attestation from the Association's chief executive officer pursuant to Department Circular Letter No. 8 (2005). Additionally, examination review indicated that the Association was not a party to any finite reinsurance agreements.

D. Abandoned Property Law

Section 1316 of the New York Abandoned Property Law provides that amounts payable to a resident of this state from a policy of insurance, if unclaimed for three years, shall be deemed to be abandoned property. Such abandoned property shall be reported to the comptroller on or before the

first day of April each year. Such filing is required of all insurers regardless of whether or not they have any abandoned property to report.

The Association's abandoned property reports for the period of this examination were all filed on a timely basis pursuant to the provisions of Section 1316 of the New York Abandoned Property Law, except the report for the year ended 2004.

It is recommended that the Association file its abandoned property reports on a timely basis pursuant to the provisions of Section 1316 of the New York Abandoned Property Law.

E. Significant Operating Ratios

The following ratios have been computed as of December 31, 2005, based upon the results of this examination:

Net premium written to surplus as regards policyholders	999%
Liabilities to liquid assets (cash and invested assets less investments in affiliates)	150%
Premiums in course of collection to surplus as regards policyholders	999%

All of the above ratios fall outside the benchmark ranges set forth in NAIC's Insurance Regulatory Information System ("IRIS"). Relative to the first and third ratios, the unusual values are due to the fact that the examination determined the Association's unassigned funds to be negative. Relative to the second ratio, the unusual value was due to an underwriting loss of \$87.5 million.

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

	<u>Amounts</u>	<u>Ratios</u>
Losses and loss adjustment expenses incurred	\$413,989,780	100.14%
Other underwriting expenses incurred	70,085,799	16.95
Net underwriting loss	<u>(70,666,963)</u>	<u>(17.09)</u>
Premiums earned	<u>\$413,408,616</u>	<u>100.00%</u>

F. Accounts and Records

I. Directors and Officers Policy – Regulation 110 Compliance

A review of the Association's directors and officers policy revealed that it does not contain a coinsurance percentage. According to Department Regulation 110, Part 72.4, based on the Association's admitted assets as of December 31, 2005, the directors and officers policy should carry a coinsurance percentage of .5%.

It is recommended that the Association comply with Department Regulation 110, Part 72.4 and add a coinsurance of .5% to its directors and officers policy.

II. CPA Contract

A review of the CPA contract for the last year under review revealed that it did not contain a provision which requires the accountant to notify the superintendent if the accountant has determined that the insurer has materially misstated its financial condition as reported to the superintendent or that the insurer does not meet minimum capital or surplus to policyholder requirements pursuant to Section 307(b)(1) of the New York State Insurance Law and Part 89.2 of Department Regulation 118.

It is recommended that the Association comply with Section 307(b)(1) of the New York Insurance Law and Part 89.2 of Department Regulation 118 regarding its CPA contract by including a provision which requires the accountant to notify the superintendent if the accountant has determined that the insurer has materially misstated its filed financial condition.

III. Fidelity Insurance

The Association has only one employee and it has been managed by Shipowners Claims Bureau under a management agreement. Neither the Association nor Shipowners Claims Bureau has fidelity insurance to safeguard the assets of the Association.

It is recommended that either the Association or Shipowners Claims Bureau obtain fidelity insurance to properly safeguard the Association's assets.

IV. Reinsurance Recoverable

A review of the provision for authorized reinsurance reported in Schedule F, Part 7 of the filed annual statement revealed that the Association was carrying reinsurance recoverable balances that had been outstanding since the prior examination period. Such overdue balances are not available for the payment of losses and claims and therefore do not meet the criteria to be considered as admitted assets pursuant to the provisions of Section 1301(a)(22) of the New York Insurance Law and paragraph 2 of SSAP No. 20. Further, paragraph 56 of SSAP No. 62 requires that recoverables deemed uncollectible shall be offset against the accounts, exhibits and schedules in which they were originally recorded. The recoverable admitted as authorized reinsurance was not material; therefore, no examination change will be made.

It is recommended that the Association comply with Section 1301(a)(22) of the New York Insurance Law and SSAP No. 20, paragraph 2 and non-admit those recoverable that are not available for payment of losses and claims.

It is recommended that the Association offset any recoverables deemed uncollectible against the accounts, exhibits and schedules in which they were originally recorded, pursuant to the provisions of paragraph 56 of SSAP No. 62.

V. Paid Loss in Suspense

It was noted during the period under review that the Association reported the depreciated value of painted art as an admitted asset under the caption "Paid loss in suspense" on Page 2 of its filed statutory annual statement. However, such tangible personal property is not allowed as an admitted asset under Section 1302(a)(5) of the New York Insurance Law. The amount was not material; therefore, no examination change will be made.

It is recommended that the Association comply with Section 1302(a)(5) of the New York Insurance Law and not report tangible personal property as admitted assets.

VI. Conflict of Interest Statement

A review of the declaration regarding conflict of interest for the years under review revealed that several board members did not sign the declaration regarding conflict of interest.

It is recommended that each director of the Association sign a conflict of interest statement annually and disclose any conflict.

3. FINANCIAL STATEMENTS

A Balance Sheet

The following shows the assets, liabilities and surplus as regards policyholders as of December 31, 2005 as determined by this examination and as reported by the Association:

<u>Assets</u>	<u>Examination</u>		<u>Association</u>		<u>Surplus Increase (Decrease)</u>
	<u>Assets</u>	<u>Assets Not Admitted</u>	<u>Net Admitted Assets</u>	<u>Net Admitted Assets</u>	
Bonds	\$133,479,785	\$ 0	\$133,479,785	\$133,479,785	\$ 0
Preferred stocks	217,451	0	217,451	217,451	0
Common stocks	49,572,205	0	49,572,205	49,572,205	0
Cash, cash equivalents and short-term investments	10,309,040	0	10,309,040	10,309,040	0
Receivable for securities	603,029	0	603,029	603,029	0
Investment income due and accrued	1,910,190	0	1,910,190	1,910,190	0
Uncollected premiums and agents' balances in the course of collection	34,958,265	10,077,291	24,880,974	32,545,658	(7,664,684)
Amounts recoverable from reinsurers	6,913,320	0	6,913,320	6,913,320	0
Current federal and foreign income tax recoverable and interest thereon	2,306	0	2,306	2,306	0
Electronic data processing equipment and software	163,793	0	163,793	163,793	0
Paid loss in suspense	595,720	432,553	163,167	163,167	0
Prepaid expenses	277,499	277,499		0	
Future assessments up to difference in ultimate & present value of losses	18,234,890	8,018,994	10,215,896	18,234,890	(8,018,994)
New York state income tax & payroll taxes receivable	(408)	0	(408)	(408)	0
Total assets	<u>\$257,237,085</u>	<u>\$18,806,337</u>	<u>\$238,430,748</u>	<u>\$254,114,426</u>	<u>\$(15,683,678)</u>

Liabilities, Surplus and Other Funds

<u>Liabilities</u>	<u>Examination</u>	<u>Association</u>	Surplus Increase (Decrease)
Losses and loss adjustment expenses	\$245,576,987	\$216,653,987	\$(28,923,000)
Other expenses (excluding taxes, licenses and fees)	221,369	221,369	
Taxes, licenses and fees (excluding federal and foreign income taxes)	250	250	
Unearned premiums	18,211,984	18,211,984	
Ceded reinsurance premiums payable (net of ceding commissions)	2,045,512	2,045,512	
Amounts withheld or retained by company for account of others	5,312,478	5,312,478	
Provision for reinsurance	2,834,021	2,834,021	
Payable for securities	<u>447,227</u>	<u>447,227</u>	<u>0</u>
Total liabilities	<u>\$274,649,828</u>	<u>\$245,726,828</u>	<u>\$(28,923,000)</u>
 <u>Surplus and Other Funds</u>			
Unassigned funds (surplus)	<u>\$(36,219,080)</u>	<u>\$8,387,598</u>	<u>\$(44,606,678)</u>
 Total liabilities, surplus and other funds	 <u>\$238,430,748</u>	 <u>\$254,114,426</u>	

NOTE: The Internal Revenue Service has not yet begun to audit tax returns covering tax years 2002 through 2005. The examiner is unaware of any potential exposure of the Association to any tax assessment and no liability has been established herein relative to such contingency.

This examination has determined that as of December 31, 2005, the Association's liabilities exceeded its assets in the amount of \$36,219,080, and its Department mandated minimum required surplus of \$7,500,000 was impaired in the amount of \$43,719,080. It is noted that the Association is a not for profit, assessable, mutual indemnity insurer, which allow it to assess its members additional sums if the premiums charged and interest earned on capital are not sufficient to cover the actual losses. Additionally, under the contracts issued by the Association to its members, each member agrees that it has a liability for the payment of its proportionate share of any deficiency.

B. Underwriting and Investment Exhibit

Surplus as regards policyholders decreased \$67,579,439 during the four-year examination period January 1, 2002 through December 31, 2005, detailed as follows:

Underwriting Income

Premiums earned		\$413,408,616
Deductions:		
Losses and loss adjustment expenses incurred	\$394,912,780	
Other underwriting expenses incurred	<u>70,085,799</u>	
Total underwriting deductions		<u>464,998,579</u>
Net underwriting gain or (loss)		\$(51,589,963)

Investment Income

Net investment income earned	\$8,767,011	
Net realized capital gain	<u>2,257,256</u>	
Net investment gain or (loss)		11,024,267

Other Income

Net gain or (loss) from agents' or premium balances charged off	<u>\$(8,005,141)</u>	
Total other income		<u>\$(8,005,141)</u>
Net income after dividends to policyholders but before federal and foreign income taxes		\$(48,570,837)
Federal and foreign income taxes incurred		<u>178,800</u>
Net Income		<u>\$(48,749,637)</u>

C. Capital and Surplus Account

Surplus as regards policyholders per report on examination as of December 31, 2001			\$12,283,359
	<u>Gains in Surplus</u>	<u>Losses in Surplus</u>	
Net income		\$48,749,637	
Net unrealized capital gains or (losses)	\$4,500,356		
Change in nonadmitted assets		15,541,778	
Change in provision for reinsurance	1,280,392		
Aggregate write-ins for gains and losses in surplus	<u>10,008,228</u>	_____	
Total gains and losses	<u>\$15,788,976</u>	<u>\$64,291,415</u>	
Net increase (decrease) in surplus			<u>(48,502,439)</u>
Surplus as regards policyholders per report on examination as of December 31, 2005			<u>\$(36,219,080)</u>

4. UNCOLLECTED PREMIUMS AND AGENTS' BALANCES IN THE COURSE OF COLLECTION

The examination admitted asset for the captioned item of \$24,880,974 is \$7,664,684 less than the \$32,545,658 reported by the Association in its 2005 annual statement. A review of this item indicated that the Association was reducing its not admitted asset for installments more than 90 days due by losses payable to members. This accounting treatment is in violation of the provisions of Part 110.1(a) of Department Regulation 13-A. Additionally, the Association admitted Uncollected premiums, agents' balances in the course of collection were more than ninety days overdue in violation of the provisions of paragraph 10 of SSAP No. 6.

It is recommended that the Association comply with SSAP No. 6 and Department Regulation 13-A, when determining the non-admitted portion of Uncollected premiums, agents' balances in the course of collection.

Additionally, a review of subsequent collections revealed that the Association had not collected \$1,020,025 from three members that filed for bankruptcy. SSAP No. 6 which requires that the company periodically evaluate its receivables to determine the probability of impairment. If such is probable, SSAP No. 6 requires that any uncollectible receivable shall be written off and charged to income in the period the determination is made.

It is recommended that the Association comply with SSAP 6, paragraph 10 and write off any receivable deemed uncollectible.

5. FUTURE ASSESSMENTS UP TO DIFFERENCE IN ULTIMATE AND PRESENT VALUE OF LOSSES

The examination admitted value for the captioned asset of \$10,215,896 is \$8,018,994 less than the \$18,234,890 reported by the Association as of December 31, 2005. The factor it uses to discount the reserve associated with the asset future assessment recoverable is 4.64%, which is derived from the usual investment yield prescribed in the NAIC's Insurance Regulatory information System ("IRIS") adjusted to include realized gains and losses (grossed up for Federal income tax effect due to the Association special tax treatment under Internal Revenue Code Section 526), and the change of unrealized capital gains and losses. According to the IRIS report for 2005, the Association's actual investment yield was 2.3%. It is the Department's opinion that the Association

should use a discount factor based on the actual yield of 2.3% instead of the prescribed yield of 4.64%. The examination change reflects the difference between the two discount factors.

The Department allows the Association to take credit for the captioned asset based on the determination that if there are sufficient invested assets to cover the present value of losses, the difference between the actual loss amount and the present value, would be allowed as an admitted asset.

The allowance of this asset is based on the understanding that:

1. the Association's policies allows them to assess their members if additional funds are needed to cover outstanding losses and;
2. the Association is under no legal obligation to pay the losses on any policy on which the member has defaulted on premium or assessment payments.

The Department requires the Association to submit quarterly verification of the interest rate used in the calculation of the captioned asset. In addition, the Department requests that the Association submit verification of the methodology and data used in the calculation of this asset. Subsequent to, and during the examination period, the Association failed to provide the Department with any of the above information.

It is recommended that the Association submit the documentation agreed upon with the Department on a timely basis. A similar recommendation was included in the prior report.

6. LOSSES AND LOSS ADJUSTMENT EXPENSES

The examination liability for the captioned items of \$245,576,987 is \$28,923,000 more than the \$216,653,987 reported by the Association as of December 31, 2005. The examination analysis was conducted in accordance with generally accepted actuarial principles and practices and was based on statistical information contained in the Association's internal records and in its filed annual statements.

7. EXPOSURE TO ASBESTOS AND ENVIRONMENTAL CLAIMS

Since the early 1980's, the Association has had a discretionary practice of indemnifying former Members for asbestos-related and other occupational disease claims arising from occurrences related to pre-1989 years (the "Closed Claim Years"). Such payments on Closed Claim Years are not subject to assessment on the former Members.

In February 2002, a former Member commenced legal action against the Association for increased coverage claiming that asbestos-related claims should be subject to only one deductible per insurance policy year, rather than one deductible per claim.

In June 2004, the Association filed a Declaratory Judgment Action in Federal Court against all of its pre-1989 members seeking to terminate its prior practice of indemnifying the former Members for asbestos-related and other occupational disease claims arising from occurrences related to the Closed Claim Years. The basis for the complaint was that the former Members were never assessed to cover what were then unknown claims; therefore, the costs of the Closed Year Claims were being improperly shifted to the Association's current members, without their consent and in violation of the principles of mutuality. As of the date of this report, the Action had not been settled.

8. CONCLUSION

This examination has determined that as of December 31, 2005, the Association's liabilities exceeded its assets in the amount of \$36,219,080, and its Department mandated minimum required surplus of \$7,500,000 was impaired in the amount of \$43,719,080. It is noted that the Association is a not for profit, assessable, mutual indemnity insurer, which allow it to assess its members additional sums if the premiums charged and interest earned on capital are not sufficient to cover the actual losses. Additionally, under the contracts issued by the Association to its members, each member agrees that it has a liability for the payment of its proportionate share of any deficiency.

Subsequent to the examination date, the Association levied assessments against the holders of assessable policies in effect in insurance years 2005 and prior in the amount of \$39,275,944, of which \$35,331,106 was subsequently collected. The \$35,331,106 collected is \$25,115,210 more than the \$10,215,896 examination admitted asset for Future assessments up to the difference in ultimate and present value of losses.

Additionally, the examination surplus includes the disallowance of approximately \$7.7 million of uncollected premiums and agents' balances in the course of collection, which includes \$1.0 million due from members that filed for bankruptcy and \$6.7 million representing installments more than 90 days past due. It is noted that the Association took credit for these amounts by offsetting amounts owed by the Association to the members, based on its by-laws and rules of the Association, which state "the Association shall be entitled to set off any amount due to a Member against any amount due to such Member from the Association." While there is no provision in the Insurance Law or Statements of Statutory Accounting Principals which would allow for such offsets, the Department notes that the structure of the Association is unique in that losses are paid by the members and reimbursed by the Association.

9. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

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

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Reinsurance</u>	
i. It was recommended that the Association adhere to the provisions of Paragraph 8 of SSAP 63 and incorporate all of its pool business as if it were any other reinsurance arrangement.	7
The Association has not complied with this recommendation. A similar comment is made in this report.	
ii. It was also recommended that the Association not include assumed reinsurance losses as an offset to reinsurance recoverable in Schedule F, Part 5, Column 6.	7
The Association has not complied with this recommendation. A similar comment is made in this report.	
iii. It was recommended that the Association make a conscientious effort to obtain finalized contracts in accordance with the guidelines set forth in SSAP No. 62 of the National Association of Insurance Commissioners Accounting Practices and Procedures Manual.	8
The Association has not complied with this recommendation. A similar comment is made in this report.	
iv. It was also recommended that if the Association does not obtain signed finalized contracts within nine months after commencement of the policy period that the Association treat the reinsurance arrangement as a retroactive reinsurance.	8
The Association has not complied with this recommendation. A similar comment is made in this report.	
v. It was recommended that all reinsurance contracts contain the insolvency clauses meeting the requirements of Section 1308 of the New York Insurance Law.	9
The Association has not complied with this recommendation. A similar comment is made in this report.	

ITEMPAGE NO.

- vi. It was recommended that the Association submit for approval to the superintendent the trust agreement that is being held in a foreign bank. 11
- This recommendation is not longer applicable since the trust agreement was terminated in 2003.
- vii. It was recommended that the Association obtain all letters of credit or trust agreements that are held by the broker to receive the proper credit due the Association. 12
- The Association has not complied with this recommendation. A similar comment is made in this report.
- B. Accounts and Records
- (1) Custodian Agreement
- It was recommended that the Association obtain a formal custodian agreement from Deutsch Bank in conformity with Part 1-Section IV (J) of the NAIC Financial Condition Examiners Handbook. 12
- The Association has complied with this recommendation.
- (2) Premiums and Agents' Balances in Course of Collection
- It was recommended that the Association follow the instructions in SSAP No. 6 of the NAIC Accounting Practices and Procedures Manual, as well as Section 1301 of the New York Insurance Law and Part 110.1 of Department Regulation 13A, when determining the non-admitted portion of the Agents' balances and uncollected premiums account. 13
- The Association complied with the part of the recommendation corresponding to Section 1301 of the New York Insurance Law. However, it did not comply with the rest of the recommendation and a similar recommendation is made in this report.
- (3) Regulation 20 Credit
- It was recommended that the Association comply with the provisions of Part 125.4 of Department Regulation 20 in future statement filings with this Department and limit any credit to 10% of its reported surplus to policyholders. 14
- The Association complied with the part of the recommendation relating to the 10% credit limit. However, it did not comply with the other requirements of Department Regulation 20.

ITEMPAGE NO.C. Future Assessments Up to Difference in Ultimate and Present Value of Losses

It was recommended that the Association submit the documentation agreed upon with the Department on a timely basis. 20

The Association has not complied with this recommendation. A similar comment is made in this report.

D. Loss and Loss Adjustment Expenses

- i. It was recommended that the Association include its share of the reserves associated with its participation in this pool under the captions “Losses” and “Loss adjustment expenses” on line 1 and 3 of page 3 in its filed annual statement, pursuant to the provisions of SSAP 63. 21

The Association has complied with this recommendation.

- ii. It was recommended that the statement of actuarial opinion include the reserves associated with the Pool. 22

The Association has complied with this recommendation.

- iii. It was recommended that the Association comply with the annual statement instructions when completing Schedule P. 22

The Association has complied with this recommendation.

10. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Conclusion</u>	
<p>This examination has determined that as of December 31, 2005, the Association's liabilities exceeded its assets in the amount of \$36,219,080, and its Department mandated minimum required surplus of \$7,500,000 was impaired in the amount of \$43,719,080. It is noted that the Association is a not for profit, assessable, mutual indemnity insurer, which allow it to assess its members additional sums if the premiums charged and interest earned on capital are not sufficient to cover the actual losses. Additionally, under the contracts issued by the Association to its members, each member agrees that it has a liability for the payment of its proportionate share of any deficiency.</p>	1, 18, 23
B. <u>Management</u>	
<p>i. It is recommended that board members who are unable or unwilling to attend meetings consistently should resign or be replaced.</p>	5
<p>ii. It is recommended that the Association furnish each member of its board of directors with the report on examination and each such member sign a statement, which shall be retained in the Association's files, confirming that such member has received and read such report, pursuant to the provisions of Section 312(b) of the New York Insurance Law.</p>	5
C. <u>Territory and Plan of Operation</u>	
<p>It is recommended that in the Association report its premiums written outside the United States in line 57 of Schedule T according to the NAIC annual statement instructions.</p>	7
D. <u>Reinsurance</u>	
<p>i. It is recommended that the Association account for premiums and losses assumed from and ceded to the Pool on a gross basis, rather than netted against each other, pursuant to the provisions of SSAP No. 63, paragraph 8.</p>	8
<p>ii. It is recommended that the Association not include assumed reinsurance losses as an offset to its provision for unauthorized reinsurance in Schedule F, Part 5 of its annual statement.</p>	8
<p>iii. It is recommended that the Association comply with Department Regulation 98 and have its reinsurance intermediary procure written evidence from the assuming insurers that they agree to the risk or that the reinsurance intermediary has the authority to bind coverage for the assuming insurer.</p>	9

<u>ITEM</u>	<u>PAGE NO.</u>
iv. It is recommended that the Association obtain finalized reinsurance contracts in accordance with the guidelines set forth in SSAP No. 62, paragraph 23.	9
v. It is also recommended that where the Association does not receive finalized signed reinsurance contracts from its reinsurance intermediaries within nine months of the annual statement as of date, that it should treat such arrangements as retroactive reinsurance agreements.	9
vi. It is recommended that the Association amend its reinsurance agreements to include the insolvency clause meeting the requirement of Section 1308(a)(2)(A)(i) and (ii) of the New York Insurance Law. A similar recommendation was made in the prior report on examination.	9
vii. It is recommended that the Association retain all letters of credit that are being used by it to take credit for reinsurance recoverable balances due from unauthorized reinsurers.	13
viii. It is recommended that the Association maintain all of the required documentation pursuant to the provisions of Department Regulation 20 to take credit for cessions to unauthorized reinsurers.	13
E. <u>Abandoned Property Report</u>	
It is recommended that the Association file its abandoned property reports on a timely basis pursuant to the provisions of Section 1316 of the New York Abandoned Property Law.	14
F. <u>Accounts and Records</u>	
i. <u>Directors and Officer Policy</u>	
It is recommended that the Association comply with Department Regulation 110, Part 72.4 and add a coinsurance of .5% to its directors and officers policy.	15
ii. <u>CPA Contract</u>	
It is recommended that the Association comply with Section 307(b)(1) of the New York Insurance Law and Part 89.2 of Department Regulation 118 regarding its CPA contract by including a provision which requires the accountant to notify the superintendent if the accountant has determined that the insurer has materially misstated its filed financial condition.	15
iii. <u>Fidelity Insurance</u>	
It is recommended that either the Association or Shipowners Claims Bureau obtain fidelity insurance to properly safeguard the Association's assets.	15

ITEMPAGE NO.

- iv. Reinsurance Recoverable
- a. It is recommended that the Association comply with Section 1301(a)(22) of the Insurance Law and SSAP No. 20, paragraph 2 and non-admit those recoverable that are not available for payment of losses and claims. 16
- b. It is recommended that the Association offset any recoverable deemed uncollectible against the accounts, exhibits and schedules in which they were originally recorded, pursuant to the provisions of paragraph 56 of SSAP No. 62. 16
- v. Admitted Assets
- It is recommended that the Association comply with Section 1302(a)(5) of the New York Insurance Law and does not report tangible fixture as admitted assets. 16
- vi. Conflict of Interest Statement
- It is recommended that each director of the Association sign a conflict of interest statement annually and disclose any conflict. 16
- G. Uncollected Premiums and Agents' Balances in the Course of Collection
- i. It is recommended that the Association comply with SSAP No. 6 and Department Regulation 13-A, when determining the non-admitted portion of uncollected premiums and agents' balances in the course of collection. 21
- ii. It is recommended that the Association comply with SSAP 6, paragraph 10 and write off any receivable deemed uncollectible. 21
- H. Future Assessments Up to Difference in Ultimate and Present Value of Losses
- It is recommended that the Association submit the documentation agreed upon with the Department on a timely basis. 22

Appointment No 22454

STATE OF NEW YORK
INSURANCE DEPARTMENT

I, HOWARD MILLS, Superintendent of Insurance of the State of New York,
pursuant to the provisions of the Insurance Law, do hereby appoint:

Maribel Nunez

as proper person to examine into the affairs of the

**AMERICAN STEAMSHIP OWNERS MUTUAL PROTECTION AND
INDEMNITY ASSOCIATION, INC.**

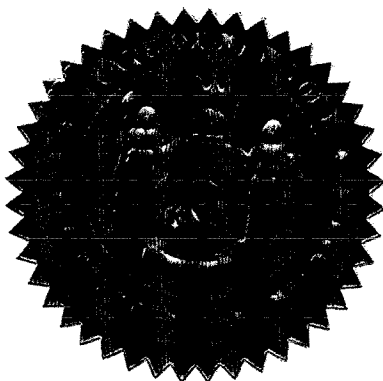
and to make a report to me in writing of the condition of the said

Association

with such other information as he 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 22nd day of February, 2006



Howard Mills

HOWARD MILLS
Superintendent of Insurance