

REPORT ON EXAMINATION

OF THE

AMERICAN STEAMSHIP OWNERS MUTUAL  
PROTECTION AND INDEMNITY ASSOCIATION, INC.

AS OF

DECEMBER 31, 2010

DATE OF REPORT

JULY 17, 2012

EXAMINER

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Benjamin M. Lawskey  
Superintendent

July 17, 2012

Honorable Benjamin M. Lawskey  
Superintendent of Financial Services  
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 30726 dated June 14, 2011, attached hereto, I have made an examination into the condition and affairs of American Steamship Owners Mutual Protection and Indemnity Association, Inc. as of December 31, 2010, and submit the following report thereon.

Wherever the designation “the Association” appears herein without qualification, it should be understood to indicate 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 State Department of Financial Services.

The examination was conducted at the Association’s home office located at 1 Battery Park Plaza 31<sup>st</sup> Floor, New York, NY 10004.

## **1. SCOPE OF EXAMINATION**

The Department has performed an individual examination of the Association, a single-state insurer. The previous examination was conducted as of December 31, 2005. This examination covered the five-year period from January 1, 2006 through December 31, 2010. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

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 prospective risks of the Association by obtaining information about the Association including corporate governance, identifying and assessing inherent risks within the Association 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 Statutory Accounting Principles and annual statement instructions when applicable to domestic state regulations.

All financially significant accounts and activities of the Association were considered in accordance with the risk-focused examination process. The examiners also relied upon audit work performed by the Association’s independent public accountants when appropriate.

This examination report includes a summary of significant findings for the following items as called for in the Handbook:

- Significant subsequent events
- History of Association
- Corporate records
- Management and control
- Fidelity bonds and other insurance
- Territory and plan of operation
- Loss experience
- Reinsurance
- Accounts and records
- Financial statements
- Summary of recommendations

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 that involve departures from laws, regulations or rules, or that 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 primarily writes ocean marine for its members.

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. The members are subject to a contingent liability or assessment without limit for a proportionate share of any deficiency or impairment as provided by law and fixed in accordance with the bylaws of the Association. However, any such assessment shall be for the exclusive benefit of the policyholders who provided such a contingent liability.

### **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 meets four times during each calendar year. At December 31, 2010, the board of directors was comprised of the following twenty three members:

#### Name and Residence

Vassilios Bacolitsas  
London, UK

#### Principal Business Affiliation

Director,  
Sea Pioneer Shipping Corporation

Name and ResidencePrincipal Business Affiliation

Morton S. Bouchard III  
Lloyd Harbor, NY

President – Chief Executive Officer,  
Bouchard Transportation Company, Inc.

Lawrence J. Bowles  
Manhasset, NY

Partner  
Nourse & Bowles, LLP.

Richard H. Brown, Jr.  
Rockville Center, NY

Non-Member Director

Calvin W.S. Cheng  
New York, NY

Chairman,  
Eastmark Associates, Inc.

James P. Corcoran  
Lloyd Harbor, NY

Non-Member Director

Kenneth T. Engstrom  
Miami, FL

Executive Vice-President,  
International Shipping Partners

Elias Gotsis  
Piraeus, Greece

Manager Director,  
Eurotankers, Inc.

George D. Gourdomichalis  
Piraeus, Greece

President/Executive Director,  
G. Bros. Maritime S.A.

Chih-Chien Hsu  
Shanghai, China

Managing Director,  
Eddie Steamship Company, Ltd.

Angelos Kostakos  
Athens, Greece

Claims Manager,  
Oceanstar Management, Inc.

Markos K. Marinakis  
New York, NY

President,  
Marinakis Chartering, Inc.

Michael L. Murley  
Longview, TX

Risk Manager,  
Martin Resource Management Corporation

Martin C. Recchuite  
Calabasas, CA

Non-Member Director

Katia Restis  
Athens, Greece

Control Manager,  
Enterprises Shipping & Trading S.A.

Paul Sa  
New York, NY

Managing Director,  
Standard Shipping, Inc.

Cigdem Sarioglu Ergut  
Istanbul, Turkey

Vice President,  
Sarioglu Shipping & Tourism Ltd

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Steven T. Scalzo Yarrow Point, Washington	Chief Operating Officer, Marine Resources Group, Inc.
George Vakirtzis Athens, Greece	General Manager, Chief Financial Officer, Polembros Shipping Limited
Ioannis Vardinoyannis Piraeus, Greece	Chief Executive Officer, Hellenic Seaways Maritime S.A.
Jonathan C. Wales Marblehead, MS	Chief Financial Officer, Reinauer Transportation Companies
J. Arnold Witte Hillside, NJ	President/Chief Executive Officer, Donjon Marine Company, Inc.
Servet Yardimci Istanbul, Turkey	Chairman, Yardimci Group

A review of the minutes of the board of directors' meetings held during the examination period indicated that the meetings were generally well attended. Each member was furnished a copy of the prior report on examination 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. SCB is owned by Eagle Ocean Management, LLC ("EOM"). The shareholders of EOM consist exclusively of members of SCB's management staff.

As of December 31, 2010, the principal officers of the Association were as follows:

<u>Name</u>	<u>Title</u>
Joseph Hughes	Chairman/Chief Executive Officer – SCB, Inc. & Secretary
Vincent J Solarino	President/Chief Operating Officer – SCB, Inc. & Manager
Arpad A. Kadi	Controller - SCB, Inc. & Manager

B. Territory and Plan of Operation

As of December 31, 2010, the Association was licensed to write business in New York State only. As of the examination date, the Association was authorized to transact the kinds 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 charterers, which is marketed predominately through brokers. Business from international members accounts for more than 85% of the Association's written tonnage.

The following schedule shows the direct premiums written by the Association in New York for the period under examination:

<u>Year</u>	<u>Direct Premiums Written</u>
2006	\$ 175,967,376
2007	\$ 132,649,595
2008	\$ 145,466,336
2009	\$ 109,907,089
2010	\$ 115,336,577

C. Reinsurance

Assumed

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



International Group of Protection and Indemnity Clubs (“International Group” or “Pool”)

Effective December 1997, the Association became one of the thirteen separate and independent principal clubs in the International Group that purchases excess of loss reinsurance protection for marine risks as a pool. In accordance with the terms of the pooling 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 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.

The Association’s 2010 contribution to pool claims is fixed at 4.1%. Claims in excess of \$8,000,000 are submitted to the other members of the pool who will pay approximately 95.9% of the losses on the lower pool layer (between \$8,000,000 and \$30,000,000) and the upper pool layer (between \$30,000,000 and \$50,000,000). The Pool collectively purchases outward reinsurance (“general excess”) in excess of \$50,000,000 at 75% for the first layer of \$500,000,000, and at 100% thereafter. The exposed 25% of the first general excess layer is collectively reinsured by all pooling members as well. The Hydra Insurance Company Limited (“Hydra”) captive reinsures each club for losses incurred on other pooling members’ pool claims in this layer as well as the upper pool layer. Hydra Insurance Company Limited is a segregated cell captive insurance company incorporated under the laws of Bermuda in which each Club is an account owner.

Ceded

The Association has structured its ceded reinsurance program as follows:

<u>Type of Contract</u>	<u>Cession</u>
<u>Protection and Indemnity (“P &amp; I”)</u>	
Layer 1A 100% Unauthorized (Partner Re)	50% of \$4,000,000 excess of \$4,000,000 ultimate net loss any one vessel, any one accident or occurrence up to \$16,000,000 in the aggregate.
Layer 1B 100% Unauthorized (50% Munich Re; 50% Swiss Re )	50% of \$3,000,000 excess of \$5,000,000, ultimate net loss any one vessel, any one accident or occurrence up to \$9,000,000 in the aggregate.
Lower Pool Layer	\$22,000,000 excess of \$8,000,000 any one vessel, any one accident or occurrence.

Type of Contract

Upper Pool Layer

25% Pool Co-Insurance

Pool-Hydra

Upper Pool Layer

25% Pool Co-Insurance

Pool-Excess of Loss

First Layer

78.2% Authorized

21.8% Unauthorized

Second Layer

58.9% Authorized

41.1% Unauthorized

Third Layer

46.4% Authorized

53.6% Unauthorized

Cession

\$20,000,000 excess of \$30,000,000 any one vessel, any one accident or occurrence.

25% of \$500,000,000 excess of \$50,000,000 of any one vessel arising out of any event.

\$20,000,000 excess of \$30,000,000 any one vessel, any one accident or occurrence.

25% of \$500,000,000 excess of \$50,000,000 of any one vessel arising out of any event.

Oil Pollution Risk

25% of \$500,000,000 excess of \$50,000,000 of any one vessel arising out of any event.

Oil Pollution Risk

75% of \$500,000,000 excess of \$50,000,000 as a separate limit for oil pollution risk for any one vessel, any one event with the Pool covering the remaining 25%, which is then reinsured by Hydra.

\$500,000,000 excess of \$550,000,000 any one vessel arising out of any one event.

\$500,000,000 excess of \$550,000,000 as a separate limit for oil pollution risk for any one vessel, any one event.

\$1,000,000,000 excess of \$1,050,000,000 any one vessel, any one event and in aggregate related to Protection & Indemnity claims other than oil pollution claims.

Type of ContractCessionCollective Overspill

3.75 Authorized  
96.25% Unauthorized

\$1,000,000,000 excess of \$2,050,000,000 any one vessel arising from any one event and in aggregate.

Passenger Liabilities

There is an overall limit of \$3,000,000,000 for any one vessel, any one event covering passengers and seamen as defined in the pooling agreement and a sub limit of \$2,000,000,000 in respect of liabilities to passengers only.

Salvors' Liability

92.7% Authorized  
7.3% Unauthorized

\$100,000,000 excess of \$375,000 any one salvage operation. To cover Salvors' legal liability for oil pollution during work in the nature of salvage but only to pay claims. Excluding liability arising from the use of Salvors' vessels covered by the vessels entry in a P&I Association.

War Risk

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  
78.4% Authorized  
21.6% Unauthorized

\$200,000,000 excess of the proper value of the ship, or \$100M, whichever is less, and further subject to a minimum excess of \$50,000 any one vessel, any one occurrence.

Second Layer  
76.6% Authorized  
23.4% Unauthorized

\$200,000,000 excess of First Layer limit any one vessel, any one occurrence.

Third Layer  
64.9% Authorized  
35.1% Unauthorized

\$100,000,000 excess of Second Layer limit any one vessel, any one occurrence.

Crew Liability

97.2% Authorized  
2.8% Unauthorized

To pay claims in respect of crew risks as original.

First Layer

\$4,500,000 excess of \$500,000 any one accident, any one vessel.

Second Layer

\$5,000,000 excess of \$5,000,000 any one accident, any one vessel.

Type of ContractCession

Third Layer

\$20,000,000 excess of \$10,000,000 any one accident, any one vessel.

Non-PoolableExcess Liability – P&I

97.7% Authorized

2.3% Unauthorized

First Layer

A) Protection and indemnity for extended “non-poolable” tug and barge coverage as defined as original. \$24,000,000 any one accident or occurrence as defined as original or equivalent in other currencies excess of \$1,000,000 any one accident or occurrence as defined as original or equivalent in other currencies.

B) Charterers’ liability for protection and indemnity risks (including liability cargo), damage to hull, charterers freight, charterers bunkers including other non-poolable risks excluded by virtue of pooling agreement and/or club rules (including but not limited to deviation, extended cargo, specialist operations exclusion buy-back, towers liability, contractual liability, liability to passenger as defined as original, \$24,500,000 each interest any one accident or occurrence as defined as original or equivalent in other currencies excess of \$500,000 each interest any one accident or occurrence as defined as original or equivalent in other currencies.

C) Freight, demurrage and defence coverage as defined as original, \$1,500,000 any one claim and in the aggregate as defined as original or equivalent in other currencies excess of \$500,000 any one claim as defined as original or equivalent in other currencies which in turn in excess of original deductibles and further subject \$500,000 in the aggregate per annum of losses otherwise recoverable hereunder. Subject to one reinstatement of limit hereunder at 19.75% of Original net premium.

Second Layer

A) Protection and indemnity for extended “non-poolable” Tug and Barge Coverage as defined as original, \$75,000,000 any one accident or occurrence as defined as original or equivalent in other currencies excess of \$25,000,000 each interest, any one accident or occurrence.

Type of ContractCession

B) Charterers' liability for protection and indemnity risks (including liability to cargo), damage to hull, charterers freight, charterers bunkers including other non-poolable risks excluded by virtue of pooling agreement and/or club rules (including but not limited to deviation, extended cargo, specialist operations exclusion buy-back, towers liability, contractual liability, liability to passengers) as defined as original, \$75,000,000 each interest any one accident or occurrence as defined as original or equivalent in other currencies excess of \$25,000,000 each interest, any one accident or occurrence as defined as original or equivalent in other currencies.

Excess Liability – Charterers  
80.3% Authorized  
19.7% Unauthorized

Charterers' liability for protection & indemnity risks, damage to hull, charterers freight, charterers bunkers including other non-poolable risks excluded by virtue of pooling agreement and/or Club rules as defined as original, \$250,000,000 each interest any one accident or occurrence as defined as original or equivalent in other currencies excess of \$100,000,000 each interest any one accident or occurrence as defined as original or equivalent in other currencies.

Crew Familiarization

97.2% Authorized  
2.8% Unauthorized

\$5,000,000 any one accident or occurrence or series of accidents or occurrences arising out of one event, subject to a deductible of \$20,000.

A review of the ceded reinsurance contracts in effect during the examination period revealed that the contract between Swiss Re and the Association did not have signatures from both parties, and the contract between Partner Re and the Association did not have the Association's signature. It is further noted that the Association was not able to provide the signed general excess of loss contracts. Only cover notes were provided as evidence of coverage.

It is recommended that the Association obtain finalized and signed reinsurance contracts in accordance with the guidelines set forth in NAIC Accounting Practices and Procedures Manual, Statements of Statutory Accounting Principles ("SSAP") 62R, paragraph 24.

In addition, it is recommended that all finalized contracts should include the required terms including insolvency clause, recoveries, entire contract and reports of premiums and losses, payment of losses in accordance with SSAP 62R, paragraph 8.

It is further recommended that reinsurance contracts shall be accounted for as a retroactive reinsurance agreement if the contracts have not been finalized and signed by the parties within nine months after the commencement of the policy period covered by the reinsurance arrangement.

As part of the pooling arrangement, the Association along with the rest of the pool members entered into the designated reserves agreement, in which each Club agreed to contribute to a trust comprised of “Designated Reserves” for developing non-current claims. The Association claimed its share of the Designated Reserves, up to the amount of reinsurance recoverable from the Pool net of ceded balance payable and other allowable offsets, and reported it as a “letter of credit” in Schedule F - Part 5 Column 7 of the Annual Statement. The 2010 NAIC Annual Statement instructions state that Schedule F – Part 5 Column 10 (Other Allowed Offset Items) is for the placement of “report trust funds and other acceptable security.”

It is recommended that any amount in the “Designated Reserves” trust account up to the Association’s share of recoveries from the Pool shall be reported in Schedule F – Part 5 Column 10 as Other Allowed Offset Items in accordance with the Annual Statement Instructions.

#### Unauthorized Reinsurance

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

Other than the exception noted above, examination review found that the Schedule F data reported by the Company in its filed annual statement accurately reflected its reinsurance transactions. Additionally, management has represented that all material ceded reinsurance agreements transfer both underwriting and timing risk as set forth in SSAP No. 62R. Representations were supported by appropriate risk transfer analyses and an attestation from the Association's chief executive officer and chief financial officer pursuant to the NAIC Annual Statement Instructions. Additionally, examination review indicated that the Company was not a party to any finite reinsurance agreements. All ceded reinsurance agreements were accounted for utilizing reinsurance accounting as set forth in SSAP No. 62R.

D. Significant Operating Ratios

The following ratios have been computed as of December 31, 2010, based upon the results of this examination:

Net premiums written to surplus as regards policyholders	176.2%
Liabilities to liquid assets (cash and invested assets less investments in affiliates)	101.9%
Premiums in course of collection to surplus as regards policyholders	52.8%

The above ratios fall within the benchmark ranges set forth in the Insurance Regulatory Information System of the National Association of Insurance Commissioners except for the liabilities to liquid assets ratio. The liabilities to liquid assets ratio falls outside the range due to the examination change to the Association's liability for Losses and loss adjustment expenses.

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

	<u>Amounts</u>	<u>Ratios</u>
Losses and loss adjustment expenses incurred	\$447,746,243	71.44%
Other underwriting expenses incurred	123,400,027	19.69
Net underwriting loss	<u>55,587,302</u>	<u>8.87</u>
Premiums earned	<u>\$626,733,572</u>	<u>100.00%</u>

E. Accounts and Records

Conflict of Interest Statement

The Association could not provide the signed conflict of interest statements for some of its directors and officers as required by its conflict of interest policy.

It is recommended that the Association make a more diligent effort to obtain signed conflict of interest statements.

It is also recommended that the Association obtain signed conflict of interest statements from all directors and officers when they were hired/elected/appointed and annually thereafter.

### 3. FINANCIAL STATEMENTS

#### A Balance Sheet

The following shows the assets, liabilities and surplus as regards policyholders as of December 31, 2010 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>Non-Admitted Assets</u>	<u>Net Admitted Assets</u>	<u>Net Assets</u>	
Bonds	\$121,157,630	\$ 0	\$121,157,630	\$121,157,630	\$ 0
Preferred stocks	2,105,661	0	2,105,661	2,105,661	0
Common stocks	83,287,014	0	83,287,014	83,287,014	0
Cash, cash equivalents and short-term investments	33,583,528	0	33,583,528	33,583,528	0
Other invested assets	8,492,432	0	8,492,432	8,492,432	0
Receivables for securities	945,642	0	945,642	945,642	0
Investment income due and accrued	1,489,055	0	1,489,055	1,489,055	0
Uncollected premiums and agents' balances in the course of collection	34,644,945	2,830,229	31,814,716	31,814,716	0
Amounts recoverable from reinsurers	2,677,122	0	2,677,122	2,677,122	0
Current federal and foreign income tax recoverable and interest thereon	415,326	0	415,326	415,326	0
Electronic data processing equipment and software	94,827	0	94,827	94,827	0
New York state income tax & payroll taxes receivable	(673)	0	(673)	(673)	0
Paid loss in suspense	881,277	434,284	446,993	446,993	0
Future assessments up to difference in ultimate & present value of losses	<u>18,819,478</u>	<u>0</u>	<u>18,819,478</u>	<u>18,074,478</u>	<u>745,000</u>
Total assets	<u>\$308,593,264</u>	<u>\$3,264,513</u>	<u>*\$305,328,751</u>	<u>\$304,583,751</u>	<u>\$745,000</u>



Liabilities, Surplus and Other Funds

<u>Liabilities</u>	<u>Examination</u>	<u>Association</u>	Surplus Increase <u>(Decrease)</u>
Losses and loss adjustment expenses	\$210,870,462	\$199,007,462	\$(11,863,000)
Other expenses (excluding taxes, licenses and fees)	263,006	263,006	
Taxes, licenses and fees (excluding federal and foreign income taxes)	250	250	
Borrowed money	7,500,000	0	(7,500,000)
Unearned premiums	14,268,474	4,268,474	
Ceded reinsurance premiums payable (net of ceding commissions)	3,027,707	3,027,707	
Amounts withheld or retained by company for account of others	6,024,758	6,024,758	
Provision for reinsurance	187,989	187,989	
Payable for securities	2,869,596	2,869,596	
Aggregate write-ins for liabilities	<u>0</u>	<u>7,500,000</u>	<u>7,500,000</u>
Total liabilities	<u>\$245,012,242</u>	<u>\$233,149,242</u>	<u>\$(11,863,000)</u>
<u>Surplus and Other Funds</u>			
Unassigned funds (surplus)	<u>*\$60,316,509</u>	<u>\$71,434,509</u>	<u>*\$(11,118,000)</u>
Total liabilities, surplus and other funds	<u>*\$305,328,751</u>	<u>\$304,583,751</u>	

\* Immaterial difference due to rounding

**NOTE:** The Internal Revenue Service has not yet begun to audit tax returns 2006 through 2010. 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.

B. Underwriting & Investment Exhibit

Surplus as regards policyholders increased \$82,776,571 during the five-year examination period from January 1, 2006 through December 31, 2010, detailed as follows:

Underwriting Income

Premiums earned		\$626,733,572
Deductions:		
Losses and loss adjustment expenses incurred	\$447,746,243	
Other underwriting expenses incurred	123,400,028	
Aggregate write-ins for underwriting deductions	<u>(1)</u>	
Total underwriting deductions		<u>571,146,270</u>
Net underwriting gain or (loss)		\$55,587,302

Investment Income

Net investment income earned	\$24,120,596	
Net realized capital gain	<u>8,902,138</u>	
Net investment gain or (loss)		\$33,022,734

Other Income

Net gain or (loss) from agents' or premium balances charged off	\$(16,479,797)	
Aggregate write-ins for miscellaneous income	<u>732,263</u>	
Total other income		<u>\$(15,747,534)</u>
Net income after dividends to policyholders but before federal and foreign income taxes		\$72,862,502
Federal and foreign income taxes incurred		<u>1,003,198</u>
Net income		<u>\$71,859,304</u>

C. Capital and Surplus Account

Surplus as regards policyholders per report on examination as of December 31, 2005			\$(36,219,080)
	<u>Gains in</u>	<u>Losses in</u>	
	<u>Surplus</u>	<u>Surplus</u>	
Net income	\$71,859,304		
Net unrealized capital gains or (losses)	5,903,842		
Change in nonadmitted assets	17,867,346		
Change in provision for reinsurance	2,646,030		
Aggregate write-ins for gains and losses in surplus	<u>0</u>	<u>\$1,740,933</u>	
Total gains and losses	<u>\$98,276,522</u>	<u>\$1,740,933</u>	
Net increase (decrease) in surplus			<u>96,535,589</u>
Surplus as regards policyholders per report on examination as of December 31, 2010			<u>\$60,316,509</u>

**4. LOSSES AND LOSS ADJUSTMENT EXPENSES**

The examination liability for the captioned items of \$210,870,462 is \$11,863,000 more than the \$199,007,462 reported by the Association as of December 31, 2010. The reserve deficiency of \$11,863,000 represents 16.6% of the Association's reported surplus to policyholders as of December 31, 2010.

The examination change is based on the Department's review of the actuarial analysis performed by the Company's independent actuarial consultant and implementation of our own selections, where warranted, to project losses and loss adjustment expenses to ultimate.

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.

**5. FUTURE ASSESSMENTS UP TO THE DIFFERENCE BETWEEN ULTIMATE & PRESENT VALUE OF LOSSES**

The examination admitted asset for the captioned item of \$18,819,478 is \$745,000 more than the \$18,074,478 reported by the Association as of December 31, 2010.

The admitted asset represents anticipated future assessments and reflects the ability and practice of the Association to levy assessments for policy year deficits when needed. The Department granted a permitted practice to the Association allowing it to take credit for the captioned item as an admitted 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 Association admitted asset was derived using the projected loss payout pattern from its consulting actuary's actuarial report and applying a discount rate of 4.91%. The examination admitted asset was determined using the loss payout pattern from the Department's actuarial review and applying the same discount rate of 4.91%.

The discount rate used is supposed to represent the expected net investment return of the Association's investment portfolio. As part of this permitted practice, the Department requires the Association to submit quarterly verification of the interest rate used in the calculation of the captioned asset, as well as verification of the methodology and data used in the calculation of this asset. The Association failed to provide the Department with this information during the examination period.

Subsequent to the examination period, the Association provided the Department with the data used to determine the 2010 discount rate. On October 25, 2011, the Department granted the Association continued use of this permitted practice, provided that the discount rate will be capped at a rate no greater than the average of the 10-year Treasury rate, plus 100 basis points. This permitted practice is predicated upon the Association's ability to assess their membership for any shortfalls in their statutory surplus. With the imposed cap on the discount rate, it is no longer necessary for the Association to submit quarterly documentation verifying the interest rate used in the calculation.

## 6. BORROWED MONEY

The association reported a liability in the amount of \$7,500,000 under the caption “Aggregate write-ins for liabilities” on line 25 of the liability page in its 2010 annual statement. This examination has reclassified this item to line 8 of the liability page under the caption “borrowed money.” The reclassification has no effect on the Association’s surplus as regards policyholders.

The liability represents the balance owed by the Association on a line of credit. The NAIC Annual Statement Instructions state the following with respect to Line 8 of the liability page:

“. . . Report the unpaid balance outstanding at the year-end on any borrowed money plus accrual interest and any unamortized premium or discount (commercial paper, bank loans, notes, etc). Include interest payable on debt reported as a liability. . .”

It is recommended that the Association report the loan of \$7,500,000 plus accrual interest on Line 8 of the liability page in accordance with the NAIC Annual Statement Instructions.

## 7. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior report on examination contained twenty-three comments and recommendations as follows (page numbers refer to the prior report):

<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> <p>The Association completed the impairment plan by issuing subsequent assessments of \$39,275,944 for policy year 2005 and prior. The Association subsequently received the assessments and has cured the impairment.</p>	1, 18, 23

<u>ITEM</u>	<u>PAGE NO.</u>
B. <u>Management</u>	
i.     It is recommended that board members who are unable or unwilling to attend meetings consistently should resign or be replaced.	5
The Association has complied with this recommendation.	
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.	5
The Association has complied with this recommendation.	
C. <u>Territory and Plan of Operation</u>	
It is recommended that the Association report its premiums written outside the United States in line 57 of Schedule T according to NAIC annual statement instructions.	7
Due to the unique mutual indemnity nature of the Association's operations in ocean marine business and the fact that all of its business is written at its New York City home office, the Department allows the Association to continue to report premiums processed at its New York home office as written in New York State.	
D. <u>Reinsurance</u>	
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.	8
The Association has complied with this recommendation.	
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.	8
The Association has complied with this recommendation.	
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	9

ITEMPAGE NO.

assuming insurer.

The Association has complied with this recommendation.

- 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

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

- 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

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

- 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

A similar comment is made in the report and addressed in the Summary of Comments and Recommendations- item A ii.

- 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

The Association has complied with this recommendation.

- 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

The Association has complied with this recommendation.

E. Abandoned Property Report

- 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

The Association has complied with this recommendation.

ITEMPAGE NO.F. Accounts and Recordsi. Directors and Officer Policy

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

The Association has complied with this recommendation.

ii. CPA Contract

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

The Association has complied with this recommendation.

iii. Fidelity Insurance

It is recommended that either the Association or Shipowners Claims Bureau obtain fidelity insurance to properly safeguard the Association's assets. 15

The Association has complied with this recommendation.

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

The Association has complied with this recommendation.

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

The Association has complied with this recommendation.



<u>ITEM</u>	<u>PAGE NO.</u>
v. <u>Admitted Assets</u>	
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
The Association has complied with this recommendation.	
vi. <u>Conflict of Interest Statement</u>	
It is recommended that each director of the Association sign a conflict of interest statement annually and disclose any conflict.	16
The Association has not complied with this recommendation. A similar comment is made in this report.	
G. <u>Uncollected Premiums and Agents' Balances in the Course of Collection</u>	
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
The Association has complied with this recommendation.	
ii.    It is recommended that the Association comply with SSAP 6, paragraph 10 and write off any receivable deemed uncollectible.	21
The Association has complied with this recommendation.	
H. <u>Future Assessments Up to Difference in Ultimate and Present Value of Losses</u>	
It is recommended that the Association submit the documentation agreed upon with the Department on a timely basis.	22
With the imposed cap on the discount rate, it is no longer necessary for the Association to submit quarterly documentation verifying the interest rate used in the calculation.	

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

<u>ITEM</u>	<u>PAGE NO.</u>
A.	<u>Reinsurance</u>
i.	It is recommended that the Association obtain finalized and signed reinsurance contracts in accordance with the guidelines set forth in SSAP 62R, paragraph 24. <span style="float: right;">11</span>
ii.	It is recommended that all finalized contracts should include the required terms including insolvency clause, recoveries, entire contract and reports of premiums and losses, payment of losses in accordance with SSAP 62R, paragraph 8. <span style="float: right;">11</span>
iii.	It is further recommended that reinsurance contracts shall be accounted for as a retroactive reinsurance agreement if the contracts have not been finalized and signed by the parties within nine months after the commencement of the policy period covered by the reinsurance arrangement. <span style="float: right;">12</span>
iv.	It is recommended that any amount in the “Designated Reserves” trust account up to the Association’s share of recoveries from the Pool shall be reported in Schedule F – Part 5 Column 10 as Other Allowed Offset Items in accordance with the Annual Statement Instructions. <span style="float: right;">12</span>
B.	<u>Accounts and Records</u>
	<u>Conflict of Interest Statement</u>
i.	It is recommended that the Association make a more diligent effort to obtain signed conflict of interest statements. <span style="float: right;">13</span>
ii.	It is also recommended that the Association obtain a signed conflict of interest statement from all directors and officers at the time they are hired/elected/appointed and annually thereafter. <span style="float: right;">13</span>
C.	<u>Loss and Loss Adjustment Expenses</u>
	The examination liability for the captioned items of \$210,870,462 is \$11,863,000 more than the \$199,007,462 reported by the Association as of December 31, 2010. <span style="float: right;">17</span>

ITEMPAGE NO.

## D. Future Assessments Up To The Difference Between Ultimate &amp; Present Value of Losses

The examination admitted asset for the captioned item of \$18,819,478 is \$745,000 more than the \$18,074,478 reported by the Association as of December 31, 2010.

17

E. Borrowed Money

It is recommended that the Association should report the loan of \$7,500,000 plus accrual interest on Line 8 of the liability page in accordance with the Annual Statement Instructions.

19

Respectfully submitted,

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Wei Cao  
Senior Insurance Examiner

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

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

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Wei Cao

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Appointment No. 30726

STATE OF NEW YORK  
INSURANCE DEPARTMENT

I, James J. Wrynn Superintendent of Insurance of the State of New York,  
pursuant to the provisions of the Insurance Law, do hereby appoint:

**Wei Cao**

*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 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 14th day of June, 2011*



*James J. Wrynn*  
\_\_\_\_\_  
JAMES J. WRINN  
Superintendent of Insurance