

REPORT ON EXAMINATION

OF

WTC CAPTIVE INSURANCE COMPANY, INC.

AS OF

DECEMBER 31, 2018

DATE OF REPORT

APRIL 13, 2020

EXAMINER

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Department of Financial Services

KATHY HOCHUL
Governor

ADRIENNE A. HARRIS
Superintendent

November 3, 2021

Honorable Adrienne A. Harris
Acting Superintendent
New York State Department of Financial Services
Albany, New York 12257

Madam:

Pursuant to the requirements of the New York Insurance Law, and in compliance with the instructions contained in Appointment Number 32040 dated February 13, 2020, attached hereto, I have made an examination into the condition and affairs of WTC Captive Insurance Company, Inc. as of December 31, 2018, and submit the following report thereon.

Wherever the designation “the Company” appears herein without qualification, it should be understood to indicate WTC Captive Insurance Company, 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 remotely due to the Governor’s Executive Order of New York State on PAUSE regarding the COVID-19 pandemic.

1. SCOPE OF EXAMINATION

The examination covers the period from January 1, 2014 through December 31, 2018 and was limited in its scope to a review or audit of only those balance sheet items considered by this Department to require analysis. Transactions occurring subsequent to this period were review where deemed appropriate. The examination included a review of Company records deemed necessary to accomplish such analysis or verification. Additionally, a review was performed to determine whether the captive insurer was operating within its by-laws, conforming with its plan of operation, as submitted to the New York State Department of Financial Services, and was in compliance with Article 70 of the New York Insurance Law (“the Law”).

Comments and recommendations are limited to procedural recommendation, items requiring financial adjustment, or instances where the Company was not conforming to the application submitted to the Department or Article 70 of the Law.

The report utilized work performed by the Company’s independent certified public accountant and its opining actuary to the extent considered appropriate.

2. DESCRIPTION OF COMPANY

On February 20, 2003, the President of the United States signed the Consolidated Appropriations Resolution, 2003, Public Law 108-7, which provided \$999.9 million to create an insurance company to cover the risks assumed by New York City and its hired contractors working without commercial insurance coverage, for claims resulting from work completed subsequent to the terrorist attacks on September 11, 2001 (“terrorist attacks”).

WTC Captive Insurance Company, Inc. is a not-for-profit corporation formed in New York State with funding from the Federal Emergency Management Administration (“FEMA”) in response to the terrorist attacks. The appropriated amount represented the maximum award authorized and available. Absent additional authority and funding from Congress, the amount of the award can not be increased. The Company was incorporated on July 1, 2004 and commenced operations on December 3, 2004.

The Company shall insure the City of New York and the contractors, subcontractors and consultants of any tier of the City of New York for liability arising out of activities in or near the World

Trade Center site in response to the terrorist attacks. WTC Captive Insurance Company, Inc. has no owners. New York City is the sole member of the Company, which has been formed as a Type D corporation pursuant to Section 201 of the Not-For-Profit Corporation Law and pursuant to 2003 NY Laws 188 (2003). The Mayor of New York City appoints all directors of the Company.

A. Certificate of Incorporation

According to its Certificate of Incorporation, the Company was formed to provide insurance on an “occurrence basis,” for liabilities incurred by the City of New York and its affiliated companies for events occurring on or after September 11, 2001, related to activities involving the World Trade Center debris removal project. The Company is a pure captive insurance company formed by the City of New York as a Not-for-Profit corporation pursuant to Section 7005(a)(3) of the Law.

The Company is organized to transact those kinds of insurances specified in paragraph 13, 14, 19 and 20 of Section 1113(a) of the Law, subject at all times to the limitations on the business of pure captive insurance companies set forth in Article 70 of the Law.

B. By-Laws

The examination found that the Company was in compliance with its by-laws in all material respects.

C. Capital Structure

The Company received funding of \$999.9 million from FEMA on December 3, 2004. The transfer of funds to the Company was accounted for using “deposit accounting” since no insurance risk was present in the contract. The Company originally designated \$899.9 million of its funds as a “deposit liability.” The deposit liability account is reduced to the extent that loss and loss adjustment expenses are paid and increased to the extent that additional funds are received. The Company’s board of directors approved that the remaining \$100,000,000 be designated as a “residual liability” to satisfy the capital and surplus requirements of Section 7004 of the Law.

As of December 31, 2018, the deposit liability account had been reduced to \$180,020,050. The residual liability had been maintained at \$100,000,000, while the “accumulated adjustment to residual liability” account was \$10,672,083.

D. Corporate Records

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

E. Operations

The Company issues a liability insurance policy to cover third party general, environmental, professional and marine liability claims arising from the debris removal work that resulted from the collapse of the World Trade Center buildings on September 11, 2001. The WTC Captive Insurance Company, Inc. was funded on December 3, 2004 with \$999.9 million from FEMA pursuant to a FEMA Grant Agreement. The liability insurance policy is the only contract that has been issued by the Company. It is an occurrence basis liability insurance policy that provides coverage on both an excess of loss and first dollar basis depending on the line of business.

F. Management and Control

(i) Captive Manager

Section 7003(b)(4) of the Law provides that no captive insurer shall do any captive insurance business in this State unless it utilizes a captive manager resident in this State that is licensed as an agent or broker under the provisions of Article 21 of the Law, or any other person approved by the Superintendent.

During the period covered by this examination, the Company was managed by Marsh Management Services, Inc. ("Marsh"), which is authorized to act as a manager for captive insurance companies by the Department.

Pursuant to a Management Agreement, effective October 1, 2010, Marsh has the responsibility for providing the Company with administrative and other general management and operational services for a fee. These responsibilities also include assisting the Company in complying with the rules, regulations and requirements of the Law and the preparation of the annual financial report required by the Department.

(ii) Board of Directors

Pursuant to the its by-laws, the business and affairs of the Company shall be managed under the direction of a board of directors. The board of directors shall consist of five members, at least two of whom

shall be residents of New York State. As of December 31, 2018, the board of directors was comprised of the following five members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Gregg Bishop Brooklyn, NY	Commissioner, NYC Small Business Services
Jeffrey Friedlander Brooklyn, NY	Retired (formerly-First Assistant and Corporate Counsel), New York City Law Department
Melanie Hartzog Brooklyn, NY	Director of Office of Management & Budget, City of New York
Meredith Jones Brooklyn, NY	General Counsel & Secretary, New York City Economic Development Corporation
Peter Tully Lattin town, NY	President, Tully Construction Co, Inc.

During the period covered by the examination, the board of directors met at least five times each year. A review of the board of directors meeting minutes indicated that all meetings were well attended.

(iii) Officers

As of December 31, 2018, the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
David R. Biester	President, CEO & General Counsel
James E. Schoenbeck	Vice President, Treasurer, CFO & Secretary
Raymond Lee	Vice President & Assistant Secretary

G. Certified Public Accountant

Saslow Lufkin & Buggy, LLP was the Company's independent certified public accounting firm for the year 2014. Crowe Horwath LLP was the Company's independent certified public accounting firm for the years 2015 through 2018. Crowe Horwath LLP stated that the Company's financial statement presented fairly, in all material respects, the financial position of WTC Captive Insurance Company, Inc. for the years 2018 and 2017, in accordance with accounting principles general accepted in the United States of America.

3. FINANCIAL STATEMENTS

A. Balance Sheet

The financial statements of the Company have been prepared in conformity with accounting principles generally accepted in the United States of America.

Assets

Cash	\$7,773,000	
Investment	272,388,000	
Certificate of deposit	9,900,000	
Receivable for pending sale of investments	4,072,000	
Investment income due and accrued	1,178,000	
Prepaid expenses	47,000	
Funds held on deposit	<u>36,000</u>	
Total assets		<u>\$295,394,000</u>

Liabilities

Accrued expenses	\$161,000	
Payable for pending purchase of investment	4,541,000	
Deposit liability	<u>180,020,000</u>	
Total liabilities		<u>184,722,000</u>

Capital and Surplus

Residual Liability	\$100,000,000	
Accumulated adjustments to residual liability	<u>10,672,000</u>	
Total capital and surplus		\$110,672,000
Total liabilities, capital and surplus		<u>\$295,394,000</u>

B. Statement of Income

The Company's net income for the period covered by the examination was (\$19,260,000), as detailed below:

Underwriting Income

Premiums earned		\$0
Deductions:		
General and administrative expenses	\$2,594,000	
Professional and management fees	5,584,000	
Personnel expenses	<u>3,374,000</u>	
Total underwriting deductions		<u>11,552,000</u>
Net underwriting income		(\$11,552,000)
Investment income		<u>(7,708,000)</u>
Net income		<u>(\$19,260,000)</u>

C. Capital and Surplus Account

The Company's capital and surplus decreased \$19,260,000 during the period covered by this examination, as detailed below:

Capital and surplus as of January 1, 2014		\$129,932,000
	<u>Increase in surplus</u>	<u>Decrease in surplus</u>
Net income	_____	\$19,260,000
Net decrease in surplus		<u>19,260,000</u>
Capital and surplus as of December 31, 2018		<u>\$110,672,000</u>

4. DEPOSIT LIABILITY

Under the deposit accounting model, all loss and loss adjustment expense activity are accounted for through the deposit liability account. As of December 31, 2018, the deposit liability of \$180,020,050 was the result of the prior examination's ending deposit liability of \$197,808,479, adjusted by the net activity during the period covered by this examination.

5. ARTICLE 70 COMPLIANCE

Article 70 of the New York State Insurance Law is the governing section of the law for the formation and continued operation of captive insurers in New York State. A review was performed to test the Company's compliance with all applicable parts of Article 70. No significant areas of non-compliance were found.

6. SUBSEQUENT EVENT

On March 11, 2020, the World Health Organization declared an outbreak of a novel coronavirus ("COVID-19") pandemic. The COVID-19 pandemic has continued to develop throughout 2020 and 2021, with significant uncertainty remaining regarding the full effect of COVID-19 on the U.S. and global insurance and reinsurance industry. At the time of releasing this report, the examination's review noted that there has not been a significant impact to the Company. The Department will take necessary action if a solvency concern arises.

7.

SUMMARY OF COMMENTS AND RECOMMENDATIONS

There are no comments or recommendations in this report.

Respectfully submitted,

_____/S/
Wei Cao
Senior Insurance Examiner

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

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

_____/S/
Wei Cao

Subscribed and sworn to before me
this _____ day of _____, 2021.

APPOINTMENT NO. 32040

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, Linda A. Lacewell, Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:

Wei Cao

as a proper person to examine the affairs of the

WTC Captive Insurance Company, Inc.

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

COMPANY

with such other information as she shall deem requisite.

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

this 13th day of February, 2020

LINDA A. LACEWELL
Superintendent of Financial Services



By:

Joan Riddell
Deputy Bureau Chief