

REPORT ON EXAMINATION

OF

EMPIRE BONDING & INSURANCE COMPANY

AS OF

DECEMBER 31, 2020

DATE OF REPORT

FEBRUARY 23, 2022

EXAMINER

LAMIN JAMMEH

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## Department of Financial Services

**KATHY HOCHUL**  
Governor

**ADRIENNE A. HARRIS**  
Superintendent

February 23, 2022

Honorable Adrienne A. Harris  
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 32242 dated April 29, 2021, attached hereto, I have made an examination into the condition and affairs of Empire Bonding & Insurance Company as of December 31, 2020, and submit the following report thereon.

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

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

Due to the COVID-19 pandemic, this examination was conducted remotely.

## 1. SCOPE OF EXAMINATION

The Department has performed an examination of Empire Bonding & Insurance Company, a multi-state insurer. The previous examination was conducted as of December 31, 2015. This examination covered the five-year period from January 1, 2016 through December 31, 2020. 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, which requires that we plan and perform the examination to evaluate the financial condition and identify current and prospective risks of the Company by obtaining information about the Company including corporate governance, identifying and assessing inherent risks within the Company and evaluating system controls and procedures used to mitigate those risks. This examination also includes assessing the principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation, management’s compliance with New York laws, statutory accounting principles, and annual statement instructions.

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

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

A review was also made to ascertain what action was taken by the Company with regard to the recommendations contained in the prior report on examination.

This report on examination is confined to financial statements and comments on those matters that involve departures from laws, regulations, or rules, or that are deemed to require explanation or description.

## 2. DESCRIPTION OF COMPANY

Empire Bonding & Insurance Company was incorporated under the laws of the State of New York on February 25, 2008. It became licensed and commenced business on April 26, 2011. The Company is a wholly-owned subsidiary of Empire Surety Holdings, Inc. (“Empire Surety”), which in turn is owned equally by Michelle Esquenazi, Wendy Fordin, and Jason Fordin.

### A. Corporate Governance

Pursuant to the Company’s charter and by-laws, management of the Company is vested in a board of directors consisting of not less than 13 nor more than 15 members. The board meets four times during each calendar year. At December 31, 2020, the board of directors was comprised of the following thirteen members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Mario Esquenazi Oceanside, NY	Retired
Michael C. Esquenazi Staten Island, NY	Agent, Empire Bail Bonds
Michelle Esquenazi Oceanside, NY	President, Empire Bonding & Insurance Company
Sheila Esquenazi Oceanside, NY	Homemaker
Barbara Fordin Oceanside, NY	Retired
Hallie Fordin Bellmore, NY	Part-Time Substitute Teacher, Bellmore School District
Jason Fordin Bellmore, NY	Treasurer, Empire Bonding & Insurance Company
Wendy Fordin Oceanside, NY	Secretary, Empire Bonding & Insurance Company
Penny Fuller Phoenix, AZ	President, Accounting N More Inc. aka Fuller & Assoc. Inc.

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Eileen Goldberg Old Bridge, NJ	Retired
Robert Goldberg Old Bridge, NJ	Retired
Ilana Kauffman Farmingdale, NY	Vice President, Empire Bonding & Insurance Company
Shayna R. Lee Royal Oak, MI	Part-Time Substitute Teacher, Southfield School District

A review noted that there was a discrepancy between the charter and by-laws pertaining to the maximum number of directors. Based on that, it was recommended that the Company amend the charter or by-laws to ensure that there is no conflict between the provisions of the charter and by-laws. During the examination period, the Company amended its by-laws to comply with its charter.

The review of the board of directors' minutes revealed that the board members were not provided with a financial and actuarial review. The prior report also contains a similar finding.

It is again recommended that the board members be provided with a financial and actuarial review and document such in the board meeting minutes.

As of December 31, 2020, the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
Michelle Esquenazi	President
Wendy Fordin	Secretary
Jason Fordin	Treasurer
Ilana Kauffman	Vice President

#### B. Territory and Plan of Operation

As of December 31, 2020, the Company was licensed to write business in Alabama, Alaska, Arizona, New York, Mississippi, and Pennsylvania. The Company became licensed in Alabama, Alaska, Arizona, and Mississippi in 2020. During the examination period, the Company wrote business solely in New York.

As of the examination date, the Company was authorized to write fidelity and surety insurance as defined in paragraph 16 of Section 1113 (a) of the New York Insurance Law. Based upon the line of business for which the Company is licensed and the Company's current capital structure, and pursuant to the requirements of Articles 13, 41, and 68 of the New York Insurance Law, the Company is required to maintain a minimum surplus to policyholders in the amount of \$1,000,000.

The Company did not assume any premiums during the examination period. The following schedule shows the direct premiums written by the Company for the period under examination:

<u>Calendar Year</u>	<u>Total Gross Premiums</u>
2016	\$866,155
2017	\$969,745
2018	\$894,658
2019	\$714,951
2020	\$452,508

The Company writes fidelity and surety (bail bonds, motor vehicle forfeiture bonds, license & permit bonds, court bonds, and other miscellaneous commercial bonds). The decline in premiums written is mainly attributable to the change in bail bond legislation in New York effective January 1, 2020. Seventy-eight percent of the business is written through the following five affiliated producer agents: Empire Bonding Agency, Inc., Jawam Inc., SIM 3 Corporation, SIM 3 Management Corp., and Bail Bond AAAA Empire Agency Inc.

C. Reinsurance Ceded

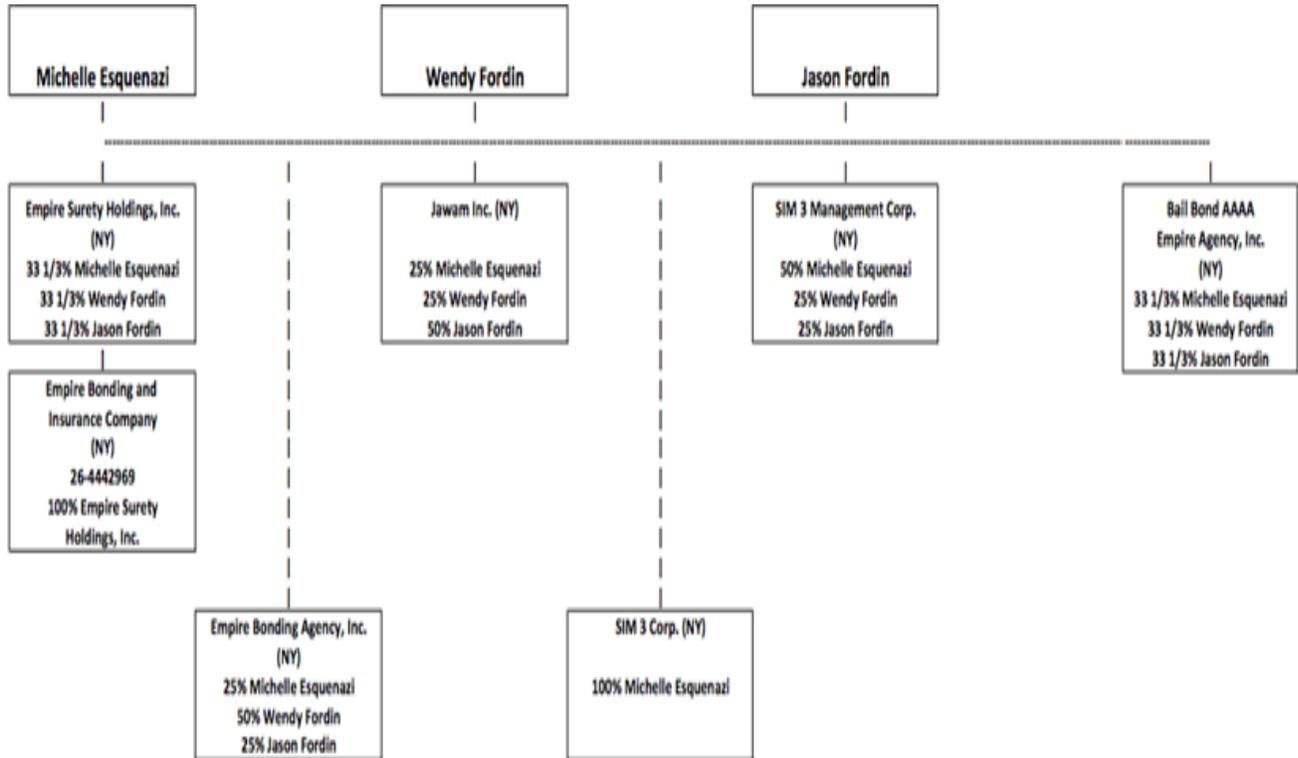
The Company does not have any ceded reinsurance.

D. Holding Company System

The Company is a wholly-owned subsidiary of Empire Surety Holdings, Inc. ("Empire Surety"), which in turn is owned equally by Michelle Esquenazi, Wendy Fordin, and Jason Fordin. Both companies are governed by the same set of directors and officers.

A review of the Holding Company Registration Statements filed with this Department indicated that such filings were complete and were filed in a timely manner pursuant to Article 15 of the New York Insurance Law and Department Regulation 52.

The following is an unabridged chart of the holding company system at December 31, 2020:



### Holding Company Agreements

At December 31, 2020, the Company was party to the following agreements with other members of its holding company system:

#### Tax Allocation Agreement

Effective January 1, 2011, the Company entered into a tax allocation agreement with Empire Surety. Pursuant to the terms of the agreement, the Company shall make periodic payments of estimated tax to Empire Surety, in such amounts as, and by the dates on which, payments of estimated amounts would have been due by the Company if it were not included in the consolidated group and had filed its pro forma return. The balance of the tax due for the taxable year shall be paid no later than the date on which such taxes would be due, if any, for such consolidated return year, determined as if the portion of the taxable year in which Empire is included in the consolidated group were a separate return.

This agreement was filed with the Department in accordance with Department Circular Letter No. 33 (1979).

#### Producer Agreements

Effective February 1, 2010, the Company entered into separate producer agreements with Empire Bonding Agency, Inc., Jawam Inc., Sim 3 Corporation, and Sim 3 Management Corp. Effective June 1, 2013, the Company also entered into a producer agreement with Bail Bond AAAA Empire Agency, Inc. The producer agreements were amended several times since inception. The Company and these producers are members of the same holding company system as defined in Article 15 of the New York Insurance Law. The producer agreements set forth terms and conditions whereby the Company appoints the producers as agencies of the Company, for the purposes of soliciting and writing bail bonds.

#### Service Agreement

Effective February 10, 2010, the Company entered into a service agreement with Empire Bonding Agency, Inc. (“Empire”), an affiliate of the Company. The agreement sets forth the terms and conditions whereby Empire agrees to provide administrative, investment, and legal services to the Company. Pursuant to the agreement, Empire shall provide an allocation to the Company of the estimated cost and expense of performing services for the Company. The allocation and classification of shared expenses will be made in accordance with Department Regulation 30.

The examiner noted that although the Company entered into a service agreement with Empire, the duties have been performed internally by the Company and the service agreement has not been utilized. Therefore, no expenses have been shared to date.

All of the above agreements were submitted to the Department and non-disapproved pursuant to Section 1505(d)(3) of the New York Insurance Law.

#### E. Significant Ratios

The Company’s operating ratios, computed as of December 31, 2020, fall within the benchmark ranges set forth in the Insurance Regulatory Information System of the NAIC.

<u>Operating Ratios</u>	<u>Result</u>
Net premiums written to policyholders' surplus	15%
Adjusted liabilities to liquid assets	44%
Two-year overall operating	77%

#### Underwriting Ratios

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

	<u>Amount</u>	<u>Ratio</u>
Losses and loss adjustment expenses incurred	\$ 218,805	5.44%
Other underwriting expenses incurred	2,360,794	58.74%
Net underwriting gain	<u>1,439,807</u>	<u>35.82%</u>
Premiums earned	<u>\$4,019,406</u>	<u>100.00%</u>

The Company's reported risk-based capital ("RBC") score was 1,493.4% at December 31, 2020. The RBC score is a measure of the minimum amount of capital appropriate for a reporting entity to support its overall business operations in consideration of its size and risk profile. An RBC score of 200% or below can result in regulatory action.

There were no financial adjustments in this report that impacted the Company's RBC score.

#### F. Accounts and Records

Examination review of the filed annual statements for all years under examination revealed that the Company failed to complete Schedule Y, Part 2. The prior examination report also contained the same finding.

Therefore, it is again recommended that the Company exercise greater care in the preparation of its filed annual statement and ensure that it complies with the NAIC annual statement instructions.

Subsequent to the examination period, the Company has complied with this recommendation.

### 3. FINANCIAL STATEMENTS

#### A. Balance Sheet

The following shows the assets, liabilities, and surplus as regards policyholders as of December 31, 2020, as reported by the Company:

#### Assets

	<u>Assets</u>	<u>Nonadmitted</u> <u>Assets</u>	<u>Net Admitted</u> <u>Assets</u>
Bonds	\$2,365,316	\$ 0	\$2,365,316
Common stocks	316,864	0	316,864
Cash, cash equivalents and short-term investments	2,608,972	0	2,608,972
Investment income due and accrued	29,411	0	29,411
Uncollected premiums and agents' balances in the course of collection	61,354	0	61,354
Net deferred tax asset	27,652	422	27,230
Deposits	25,000	0	25,000
Startup cost	<u>6,661</u>	<u>6,661</u>	<u>0</u>
Total assets	<u>\$5,441,230</u>	<u>\$7,083</u>	<u>\$5,434,147</u>

Liabilities, Surplus and Other FundsLiabilities

Losses and loss adjustment expenses	\$ 150,000
Other expenses (excluding taxes, licenses and fees)	68,894
Taxes, licenses and fees (excluding federal and foreign income taxes)	21,041
Current federal and foreign income taxes	(24,789)
Borrowed money and interest thereon	52,591
Unearned premiums	255,283
Amounts withheld or retained by company for account of others	1,179,167
Buff payable	<u>658,954</u>
Total liabilities	\$2,361,141

Surplus and Other Funds

Common capital stock	\$1,000,000
Gross paid in and contributed surplus	562,571
Unassigned funds (surplus)	<u>1,510,435</u>
Surplus as regards policyholders	<u>3,073,006</u>
Total liabilities, surplus and other funds	<u>\$5,434,147</u>

Note: The Internal Revenue Service has not audited tax returns covering tax years 2016 through 2020. The examiner is unaware of any potential exposure of the Company to any tax assessment and no liability has been established herein relative to such contingency.

B. Statement of Income

The net income for the examination period as reported by the Company was \$1,161,353, as detailed below:

Underwriting Income

Premiums earned		\$4,019,406
Deductions:		
Losses and loss adjustment expenses incurred	\$ 218,805	
Other underwriting expenses incurred	<u>2,360,794</u>	
Total underwriting deductions		<u>2,579,599</u>
Net underwriting gain		\$1,439,807

Investment Income

Net investment income earned	\$ 227,829	
Net realized capital gains	<u>(22,515)</u>	
Net investment gain or (loss)		205,314

Other Income

Aggregate write-ins for miscellaneous income	\$ <u>(1,783)</u>	
Total other income		<u>(1,783)</u>
Net income after dividends to policyholders but before federal and foreign income taxes		\$1,643,338
Federal and foreign income taxes incurred		<u>481,985</u>
Net income		<u>\$1,161,353</u>

C. Capital and Surplus

Capital paid in is \$1,000,000 consisting of 100 shares of \$10,000 par value per share common stock. Gross paid in and contributed surplus is \$562,571. Gross paid in and contributed surplus and capital paid in remained the same during the examination period.

Surplus as regards policyholders increased \$1,080,616 during the five-year examination period January 1, 2016, through December 31, 2020, as reported by the Company, detailed as follows:

Surplus as regards policyholders as reported by the Company as of December 31, 2015			\$1,992,390
	<u>Gains in</u>	<u>Losses in</u>	
	<u>Surplus</u>	<u>Surplus</u>	
Net income	\$1,161,353		
Net unrealized capital gains	37,529		
Change in net deferred income tax		\$ 2,868	
Change in nonadmitted assets	23,008		
Dividends to stockholders		137,975	
Aggregate write-ins for gains and losses in surplus (Others)	<u>0</u>	<u>431</u>	
Total gains and losses	\$1,221,890	\$141,274	
Net increase (decrease) in surplus			<u>1,080,616</u>
Surplus as regards policyholders as reported by the Company as of December 31, 2020			<u>\$3,073,006</u>

No adjustments were made to surplus as a result of this examination.

#### 4. **LOSSES AND LOSS ADJUSTMENT EXPENSES**

The examination liability for the captioned items of \$150,000 is the same as reported by the Company as of December 31, 2020. The examination analysis of the loss and loss adjustment expense reserves was conducted in accordance with generally accepted actuarial standards of practice and statutory accounting principles, including SSAP No. 55.

During the period under examination, 100% of the Company's loss adjustment expense ("LAE") reserve is allocated to defense and cost containment ("DCC") expenses. However, based on the Company's historical paid data, it is recommended that the Company allocate 80% of the LAE reserve to adjusting and other expenses, and the remaining 20% to DCC. While this is lower than indicated by Schedule P, it offers some flexibility as the Company continues to grow.

#### 5. **SUBSEQUENT EVENTS**

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 has been in communication with the Company regarding the impact of COVID-19 on its business operations and financial position. The Department continues to closely monitor the impact of the pandemic on the Company and will take necessary action if a solvency concern arises.

## 6. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior report on examination contained 16 recommendations as follows (page numbers refer to the prior report):

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Management</u>	
i. It was recommended that board members who are unable or unwilling to attend meetings consistently should resign or be replaced.	5
The Company has complied with this recommendation	
ii. It was recommended that the board members be provided with a financial and actuarial review and document such in the board meeting minutes.	5
The Company has not complied with this recommendation. A similar recommendation has been made in this report	
iii. It was recommended that the board members agree with and approve the contents of the prior meeting minutes.	5
The Company has complied with the recommendation	
iv. It was recommended that the Company ensure that the board and committee meeting minutes include details of the proceedings of the board and committee meetings.	5
The Company has complied with this recommendation	
v. It was recommended that the Company amend its charter or by-laws so that both documents agree to the date of the annual shareholder's meeting.	6
The Company has complied with this recommendation	
vi. It was recommended that the Company re-evaluate board member Russell Lusterman's duties for the Company so as to avoid a conflict of interest.	6
Subsequent to the examination date, the Company has complied with this recommendation	
B. <u>Holding Company System</u>	
i. It was recommended that the Company review its tax allocation agreement and ensure that it is in compliance with Department Circular Letter No. 33 (1979).	9

Subsequent to the examination date, the Company has complied with this recommendation.

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- ii. It was recommended that the Company ensure that its producers submit a report for bonds written to the Company as per the producer agreements or amend the producer agreements to reflect how the producers submit the reports.

The Company has complied with this recommendation

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- iii. It was further recommended that the Company maintain its records for six calendar years from its creation or until after the filing of the report on examination in which the record was subject to review, whichever is longer, in accordance with 11 NYCRR 243 (Regulation 152).

The Company has complied with this recommendation

C. Accounts and Records

- i. It was recommended that the Company exercise greater care in the preparation of its annual statement and ensure that it complies with the annual statement instructions.

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The Company has not complied with this recommendation. A similar comment has been made in this report.

- ii. It was recommended that the Company implement a formal audit committee charter that sets forth the general purpose, authority, composition and responsibilities of the audit committee to ensure that the committee is meeting its objectives.

13

The Company has complied with this recommendation

- iii. It was recommended that going forward, the Company include a footnote in Schedule Y, Part 1 stating that Empire Bail Bonds is only a name used for a DBA.

13

The Company has complied with this recommendation

- iv. It was recommended that the Company evaluate its business needs and purchase the minimum fidelity insurance coverage as set forth in the guidance promulgated by the NAIC.

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The Company has complied with this recommendation

- v. It was recommended that in future annual statements filed with the Department, the Company comply with the classification requirements of Department Regulation 30.

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The Company has complied with this recommendation

- vi. It was recommended that the Company comply with Section 325(a) of the New York Insurance Law by maintaining its books and records at its principal office. 14

The Company has complied with this recommendation

- vii. It was recommended that in the future, the Company provide written notification to the Department of any change in membership of the audit committee pursuant to Part 89.12(e) of Department Regulation 118. 14

The Company has complied with this recommendation

7. **SUMMARY OF COMMENTS AND RECOMMENDATIONS**

<u>ITEM</u>	<u>PAGE NO.</u>
<p>A. <u>Management</u>            It is again recommended that the board members be provided with a financial and actuarial review and document such in the board meeting minutes.</p>	4
<p>B. <u>Accounts and Records</u>            It is again recommended that the Company exercise greater care in the preparation of its filed annual statement and ensure that it complies with the NAIC annual statement instructions.</p> <p>Subsequent to the examination period, the Company has complied with this recommendation.</p>	8
<p>C. <u>Loss and Loss Adjustment Expenses</u>            It is recommended that the Company allocate 80% of the LAE reserve to adjusting and other expenses, and the remaining 20% to DCC.</p>	13

Respectfully submitted,

\_\_\_\_\_/S/\_\_\_\_\_  
Lamin Jammeh  
Senior Insurance Examiner

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

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

\_\_\_\_\_/S/\_\_\_\_\_  
Lamin Jammeh

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

*APPOINTMENT NO. 32242*

*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:*

***Lamin Jammeh***

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

***Empire Bonding & Insurance Company***

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

***COMPANY***

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

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

*this 29th day of April, 2021*

*LINDA A. LACEWELL  
Superintendent of Financial Services*

*By:*

*Joan Riddell*

*Joan Riddell  
Deputy Bureau Chief*

