

KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

April 3, 2024

Cisca Hung, Chief Compliance and Risk Officer
American Transit Insurance Company
One MetroTech Center
Brooklyn, New York 11201

Re: American Transit Insurance Company ("Company")
Report on Examination as of December 31, 2018 and
Report on Examination as of December 31, 2019 (collectively, "Reports")

Dear Ms. Hung:

Enclosed are final versions of the Reports (see files named 2018 ATIC ROE Clean 4-3-24.pdf and 2019 ATIC ROE Clean 4-3-2024) as well as redlines reflecting changes made to the draft Reports that were sent to you on January 26, 2024 (see files 2018 ATIC ROE Redline 4-3-24.pdf and 2019 ATIC ROE Redline 4-3-2024). These changes were made after considering your response dated February 16, 2024, the redlines that you submitted on February 23, 2024, and the comments made by the Company's management during the closing conference on February 26, 2024.

Pursuant to New York Insurance Law ("Insurance Law") Section 311(b) the final versions of the Reports will be placed on file and made available for public inspection. You may request a hearing within ten (10) days of the date of this letter. If you request a hearing, your request must identify the specific facts, conclusions, or recommendations in the Reports that you contest.

We note that nowhere in the Company's response nor at any time during the closing conference did the Company offer any documentation or calculations that would dispute the loss and loss adjustment expense reserve ("reserves") indications set forth in the Reports. In fact, your consulting actuary agrees that the Company's reserves are massively deficient. In the Statement of Actuarial Opinion filed with the Company's December 31, 2023 annual statement, your consulting actuary indicates that the Company should have reserves of approximately \$878 million. Instead, the Company has reported reserves of only \$187 million, resulting in a reserve deficiency of more than \$691 million. Since ATIC reported a surplus of approximately \$26 million, this results in an insolvency of approximately \$665 million.

The insolvency determined by ATIC's actuary represents approximately \$665 million in claims (and claim expenses) for accidents that have already occurred and should be reflected in ATIC's reserves. These are personal injury, property damage, and medical expenses New Yorkers are counting on ATIC to pay. Despite having collected premiums from drivers for years, ATIC does not have the assets to pay these claims.

Absent a substantial capital infusion, the Company can only use current premiums to pay those past claims. This dangerous practice leaves no assets to pay for the claims incurred by current policyholders. If this situation is not resolved, ATIC is at significant risk of failure. A collapse of ATIC would leave tens of thousands of livery drivers uninsured and without a source of income. Furthermore, hundreds of millions of dollars in anticipated claims from accident victims and their health care providers could go unpaid. This would be economically devastating for livery drivers, passengers, health care providers, and the New York economy, and would disrupt vital transportation services.

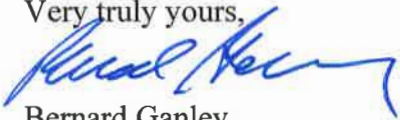
The Reports underscore the long-term, ongoing deterioration of ATIC's financial condition. The Department's findings about ATIC's insolvency were consistently shared with the Company. ATIC's reserves were first identified as inadequate in 1979 and the amount of the insolvency has continued to increase since then. As of December 31, 1986, the Insurance Department concluded that the Company was insolvent by \$6.2 million. By year-end 1989, the Department found that ATIC was insolvent by \$39.9 million. The report on examination as of December 31, 1997, which was prepared by an independent accounting firm, concluded that ATIC was insolvent by \$79.3 million. The Department found that, as of December 31, 2007, ATIC was insolvent by \$139.8 million and, by year-end 2013, the insolvency had increased to \$254.4 million.

Over the years, the Department has repeatedly sought to engage with ATIC to get the Company to address its financial condition. The Department has variously tried to compel ATIC to address its insolvency through court proceedings, voluntary agreements to obtain more capital, or as part of the ongoing regulatory dialogue about the challenges facing the Company. For decades, the Company has failed to address the issues identified by the Department previously and in the attached Reports. The result of those failures is the continued deterioration of the Company. While the Reports cover the years ended 2018 and 2019, the opinion submitted by ATIC's own actuary for year-end 2023 estimates that, based on its calculations, ATIC should have reported itself as insolvent by approximately \$665 million. This is a substantial shortfall and represents an unsustainable trajectory that must be corrected by direct, concrete action.

Unfortunately, the remediation plan submitted by ATIC on February 26, 2024, falls far short of the drastic action needed to restore ATIC to a sustainable financial condition. While the plan identifies certain measures ATIC believes will mitigate losses going forward, including rate increases, it lacks any substantive detail describing how the Company's management plans to cure the existing insolvency. In fact, the plan acknowledges that ATIC is unable to attract any capital, which is critical to ATIC's ability to survive.

ATIC must take immediate action to cure its insolvency in order to protect New York policyholders. Given the magnitude of the insolvency, the Company is directed to immediately explore all possible options to obtain additional capital funding – including, but not limited to, a potential sale of ATIC to a counterparty that can infuse the necessary capital – and provide a plan within 90 days of the date of this letter detailing concrete actions the Company will take to cure its insolvency . ATIC is further directed to provide monthly updates to the Department on its financial condition, including a balance sheet, income statement, and cash flow statement twenty (20) days after the close of each month, as well as monthly updates on its efforts to obtain additional funding and address the findings in the Reports. The Department will continue to monitor ATIC and reserves the right to take any action it deems necessary or appropriate to protect ATIC’s insureds and the broader insurance market.

Very truly yours,



Bernard Ganley
Deputy Superintendent for Insurance
New York State Department of Financial Services

MEMORANDUM

To: Adrienne A. Harris, Superintendent

From: Joseph Rome, Consulting Examiner-in-Charge

Date: January 26, 2024

Re: American Transit Insurance Company Report on Examination as of December 31, 2018
and Report on Examination as of December 31, 2019

Pursuant to the requirements of the New York Insurance Law, and in compliance with the instructions contained in Appointment Numbers 32021 and 32164, dated December 16, 2019 and December 3, 2020, respectively, I have made an examination into the condition and affairs of American Transit Insurance Company as of December 31, 2018, and as of December 31, 2019, and submit the following Reports thereon.

Wherever the designation “the Company” or “ATIC” appears herein without qualification, it should be understood to indicate American Transit 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 Governor’s Executive Order of New York State on PAUSE regarding the COVID-19 pandemic, the examination was primarily conducted remotely.

The examination has determined that, as of December 31, 2018, the Company was insolvent in the amount of \$637,775,436, its capital was impaired in the amount of \$638,775,436, and its minimum required to be maintained surplus of \$500,000 was impaired in the amount of \$638,275,436.

Furthermore, the examination has determined that, as of December 31, 2019, the Company was insolvent in the amount of \$707,370,226, its capital was impaired in the amount of \$708,370,226 and its minimum required to be maintained surplus of \$500,000 was impaired in the amount of \$707,870,226.



**REPORT ON EXAMINATION
OF
AMERICAN TRANSIT INSURANCE COMPANY
AS OF DECEMBER 31, 2018**

**EXAMINER:
DATE OF REPORT:**

**JOSEPH ROME, CFE
APRIL 14, 2021**

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1. SCOPE OF EXAMINATION

The Department has performed an examination of American Transit Insurance Company (“ATIC” or “the Company”), a single-state insurer. The previous examination was conducted as of December 31, 2013. This examination covered the five-year period from January 1, 2014 through December 31, 2018. Transactions occurring after this period were reviewed when 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 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 management’s overall financial statement presentation, and 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

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

American Transit Insurance Company was incorporated under the laws of the State of New York on January 19, 1972. It became licensed on September 14, 1972 and commenced business on January 1, 1973. ATIC issues liability insurance policies to owners of taxis, traditional livery vehicles, and other for-hire vehicles (e.g. Uber, Lyft).

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 21 members. The board meets one time during each calendar year. At December 31, 2018, the board of directors was comprised of the following 16 members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Ralph Bisceglia Huntington, New York	President, Chief Executive Officer and Secretary, American Transit Insurance Company
Yee Mui Bisceglia Huntington, New York	Esthetician
Susan Carroll New Canaan, Connecticut	Educator, New Canaan High School
Nancy Casella New York, New York	Attorney, Alliance for Downtown New York
Mary C. Cole Hingham, Massachusetts	Founding Principal, Brooke Charter School East Boston
Victor Ferrante Bridgeport, Connecticut	Attorney
Cisca Hung New York, New York	Chief Compliance and Risk Officer, American Transit Insurance Company
Catherine McGettigan West Norwalk, Connecticut	Elementary School Educator, Darien Public School District
Joan McGettigan Norwalk, Connecticut	Director of Education and Information Technology, North Broward Preparatory School
Linda McGettigan	Retired

Name and Residence
Bloomsburg, Pennsylvania

Principal Business Affiliation

John Poklemba
New York, New York

General Counsel and Treasurer,
American Transit Insurance Company

Christopher Ryan
Redding, Connecticut

Chief Financial Officer,
American Transit Insurance Company

Kathleen Shea
Stony Point, New York

Retired

Romilda Smith
Gulf Breeze, Florida

Registered Nurse,
Baptist Hospital

Marianne Zacherl
Springfield, Virginia

Homemaker

Richard Zaremski
Norwalk, Connecticut

Senior Vice President,
First County Bank

Article XI - Code of Ethics of the Company's amended by-laws states the following:

“The Board of Directors will adopt a Code of Ethics applicable to the Company's Directors, officers and key employees, in conformity with the requirements of New York State Department of Financial Services, Department of Insurance.”

Also, in the Company's 2018 Annual Statement, the Company responded “Yes” to General Interrogatory 14.1, which states:

“14.1 Are the senior officers (principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing functions) of the reporting entity subject to a code of ethics, which includes the following standards:

- (a) Honest and ethical conduct, including ethical handling of actual or apparent conflicts of interest between personal and professional relationships;
- (b) Full, fair, accurate, timely and understandable disclosure in periodic reports required to be filed by the reporting entity;
- (c) Compliance with applicable government laws, rules and regulations;
- (d) The prompt internal reporting of violations to an appropriate person or persons identified in the code; and
- (e) Accountability for adherence to the code.”

The Company does not maintain conflict of interest statements for its officers and directors. Thus, the Company has no way to monitor whether any of its directors or officers have a conflict with respect to any of its business transactions and, if appropriate, ensure that such director or officer is recused from such transactions. The lack of a conflict of interest policy is contrary to both NAIC guidelines and ATIC's corporate by-laws. It is recommended that ATIC's board of directors adopt a conflict of interest policy in accordance with NAIC guidelines and its own corporate by-laws.

The NAIC Handbook recommends that an insurer with assets and revenue comparable to that of the Company maintain a minimum fidelity bond of \$1.25 million to \$1.50 million in coverage. The Company does not maintain a fidelity bond to safeguard its investments and corporate assets. It is recommended that ATIC procure adequate fidelity bond coverage to properly safeguard its assets.

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

<u>Name</u>	<u>Title</u>
Ralph Bisceglia	President, Chief Executive Officer and Secretary
John Poklemba	General Counsel and Treasurer
Cisca Hung	Chief Compliance and Risk Officer
Christopher Ryan	Chief Financial Officer

B. Territory and Plan of Operation

As of December 31, 2018, the Company was licensed to write business in New York and was authorized to transact the kinds of insurance as defined in the following numbered paragraphs of Section 1113(a) of the New York Insurance Law:

<u>Paragraph</u>	<u>Line of Business</u>
13	Personal injury liability
14	Property damage liability
19	Motor vehicle and aircraft physical damage

Based upon the lines of business for which the Company is licensed and the Company's current capital structure, and pursuant to the requirements of Articles 13 and 41 of the New York Insurance Law, the Company is required to maintain a minimum surplus to policyholders in the amount of \$500,000.

The following schedule shows the direct premiums written by the Company for the period under examination:

<u>Calendar Year</u>	<u>Direct Premiums</u>
2014	\$162,803,528
2015	\$227,471,645
2016	\$287,051,800
2017	\$333,607,558
2018	\$327,461,852

The Company did not assume any reinsurance business during the examination period.

The Company is a commercial automobile liability insurer writing business predominantly in the New York City metropolitan area. The Company issues liability insurance policies to owners of taxis, traditional livery vehicles, and other for-hire vehicles (e.g. Uber, Lyft). The Company’s business mix during the 2018 calendar year consisted of assigned risk (0.34%); yellow taxi (18.30%); and traditional livery and other for-hire vehicles (81.36%). The Company has an agreement with its affiliate, ATIC Security Inc. (“ASI”), to produce business. Pursuant to this agreement, ASI may not produce for ATIC gross written premiums in excess of the greater of 2.4 times ATIC’s surplus or 80% of ATIC’s total writings.

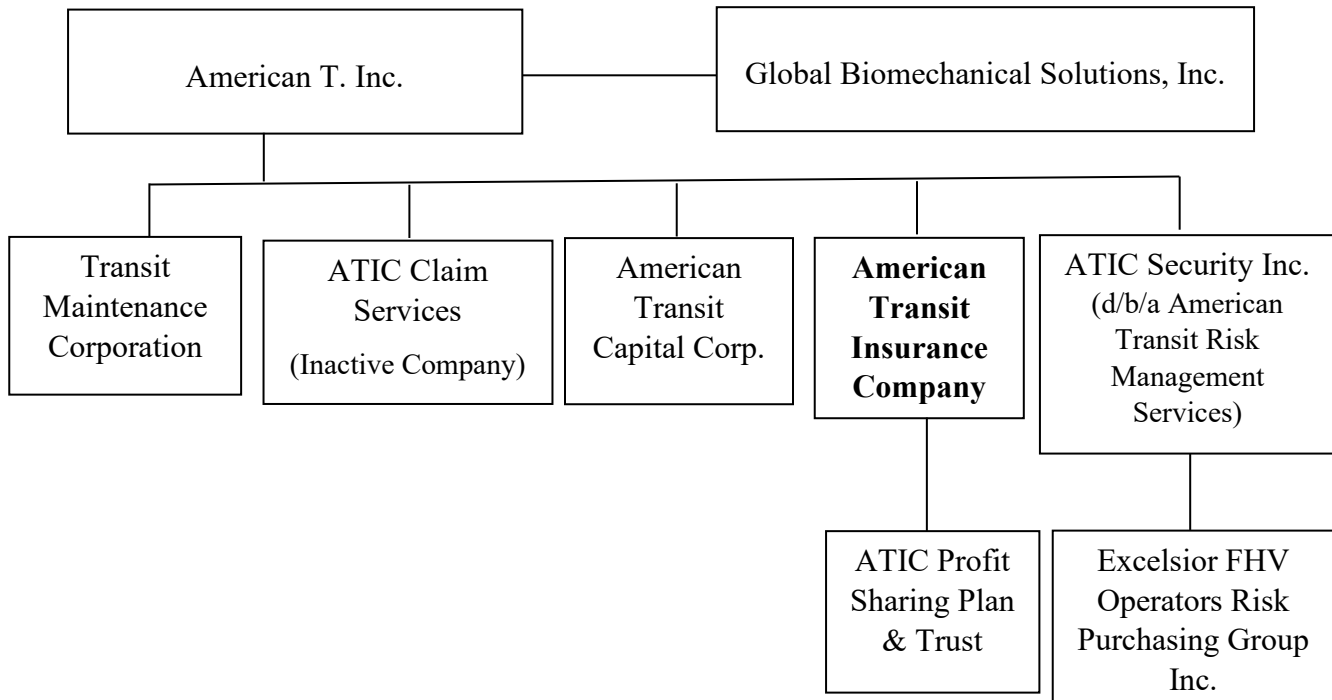
C. Reinsurance Ceded

Since 1999, ATIC has been writing insurance without the benefit of any reinsurance.

D. Holding Company System

The Company is 100% owned by American T. Inc. (“American T”), an insurance holding company incorporated in New York, and is ultimately controlled (as defined by Section 1501(a) of the New York Insurance Law) by the following individuals at December 31, 2018: Ralph Bisceglia (12.83%); Marianne Zacherl (11.73%); Nancy Casella (10.8%); and Catherine McGettigan (10.46%). The remaining shares of American T are held by various other investors (including board member Susan Carroll), none of whom own more than 10%.

The following is an abridged chart of the holding company system at December 31, 2018:



American T is a privately held holding company that owns ATIC, ASI (d/b/a American Transit Risk Management Services), American Transit Capital Corp., and Transit Maintenance Corporation. ATIC Claim Services is an inactive New York corporation. ATIC Profit Sharing Plan & Trust is an employee retirement plan administered by a third-party financial services company and sponsored by the Company. Excelsior FHV Operators Risk Purchasing Group Inc. is a not-for-profit New York corporation. ASI is a licensed insurance producer for the livery industry. During the examination period, American Transit Capital Corp. leased office space in Freeport, New York to the Company. In December 2018, American Transit Capital Corp. transferred the office building, with a fair market value of \$4.3 million, to American T. In turn, American T contributed the property to the Company, which contribution was approved by the Department. Transit Maintenance Corporation provided building maintenance services to the Company's principal offices located at 1 MetroTech Center, Brooklyn, New York. Ralph Bisceglia, a controlling shareholder of American T and Company board member, and Catherine McGettigan, a controlling shareholder of American T and daughter-in-law of the Company's co-founder, Edward T. McGettigan, Sr., had controlling interests in Global Biomechanical Solutions, Inc.

Pursuant to Part 80-1.4 of Department Regulation 52 (11 NYCRR 80):

“Every controlled insurer registered or required to register pursuant to Insurance Law section 1503 shall, within 120 days following the end of its ultimate holding

company's fiscal year, and within 120 days following the end of each succeeding fiscal year, furnish to the superintendent a report..."

The Company is required to file the annual holding company registration statement by April 30th of each year. A review of the holding company registration statements filed with the Department during the examination period indicated that such filings were incomplete. It is recommended that, on a prospective basis, the Company identify all related parties in its holding company registration statement, as required by Part 80-1.4 of Department Regulation 52.

i. Audited Financial Statements of American T. Inc. and ATIC Security Inc.

Section 80-1.4(c) of Department Regulation 52 provides that every controlled insurer shall file each year with the Superintendent the following:

"A consolidated balance sheet of the ultimate holding company and each significant person within the holding company system, as of the end of the holding company's fiscal year, and related consolidated statements of income and surplus for the year then ended. Such financial statements shall be accompanied by an opinion of an independent certified public accountant to the effect that such financials present fairly the consolidated financial position of the ultimate holding company and such persons, and the results of their operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. In lieu of fully consolidated statements, registrant may furnish separate certified financial statements with respect to any person or persons, and certified consolidated or combined statements with respect to any group of persons, within the holding company system ..."

Regarding the consolidated balance sheet for the years 2015 through 2018, the Company's HC-1 filing indicated that: "The information is being finalized by our accountants and will be provided to the Department under separate cover." However, for each year under examination, no separate consolidated balance sheets were filed with the Department. Additionally, during the examination period, the Company failed to file the American T and ASI yearly audited financial statements, as required by Section 80-1.4(c) of Department Regulation 52.

It is recommended that the Company annually file a consolidated balance sheet and the audited financial statements of the ultimate holding company and significant entities within the holding company system, in accordance with Section 80-1.4(c) of Department Regulation 52.

ii. Separate Operating Identity Between ATIC Security Inc. and ATIC

Section 1507 of the New York Insurance Law states:

“(a) Management of controlled insurers. Notwithstanding the control of an authorized insurer by any person, the insurer’s officers and directors shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this chapter.

(b) Nothing herein shall preclude an authorized insurer from having or sharing a common management or cooperative or joint use of personnel, property or services with one or more other persons under arrangements meeting the standard of subsection (a) of section one thousand five hundred five of this article.”

The Company failed to maintain separate books and records between itself and its affiliate, ASI, as multiple ATIC employees served both companies without the benefit of a written cost sharing agreement. It is recommended that the Company take appropriate measures to assure its separate operating identity from its affiliates, in accordance with Section 1507(a) of the New York Insurance Law.

ATIC employees provided services to ASI (as noted above) and ATIC Profit Sharing Plan & Trust (discussed further herein). The Company received services from Global Biomechanical Solutions, Inc. and Transit Maintenance Corporation (both discussed further herein).

Section 1505(d)(3) of the New York Insurance Law states, in part:

“(d) The following transactions between a domestic controlled insurer and any person in its holding company system may not be entered into unless the insurer has notified the superintendent in writing of its intention to enter into any such transaction at least thirty days prior thereto . . . or such shorter period as the superintendent may permit, and the superintendent has not disapproved it within such period: . . .

(3) rendering of services on a regular or systematic basis . . .”

It is recommended that, if the Company’s employees are to provide services to multiple companies within the American T holding company system, or if the Company receives services from affiliated entities, a cost sharing agreement be filed with the Superintendent, pursuant to Section 1505(d)(3) of the New York Insurance Law and Department Regulation 52.

Holding Company Agreements

At December 31, 2018, the Company was party to the following agreements with other members of its holding company system:

Commission Agreement – ATIC Security Inc.

The Company and its affiliate, ASI, maintain a commission agreement wherein ASI serves as a producer for the Company. The agreement was filed with the Department in January 2009. ASI utilized approximately 140 independent brokers to produce business. ASI received \$81,160,564 in commissions from ATIC during the five-year examination period for billing and premium collection services, calculated as follows:

2014	\$12,340,925
2015	21,581,862
2016	11,549,388
2017	17,501,711
2018	<u>18,186,678</u>
Total	<u>\$81,160,564</u>

The commission agreement states, in part:

“ATIC will pay to ASI collected earned commissions at a rate consistent with the prevailing commission rate paid by ATIC to unaffiliated brokers for comparable business placed, but in no event greater than 12% (twelve percent) for all business placed by ASI on behalf of ATIC.”

Under the agreement, ASI shall provide quarterly accounts detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to ASI. The commission agreement limits ASI’s writing to the greater of 2.4 times the Company’s surplus (\$93 million in surplus to policyholders as of December 31, 2018 times 2.4 equals \$223 million) or 80% of its total writing (2018 direct premiums written of \$327 million times 80% equals \$262 million).

ASI and Better Claims Management Solutions (“BCMS”), an American T affiliate, together produced 100% of the Company’s 2018 direct premiums written of \$327 million, in contravention of ATIC’s filed commission agreement. ASI had a separate commission agreement with BCMS (“ASI/BCMS commission agreement”). BCMS merged into ASI on October 3, 2019.

Section 80-1.5(d) of Department Regulation 52 states:

“Any series of transactions designed to evade the provisions of subdivision (c) of this section shall be deemed a material transaction and subject to the filing requirements of Insurance Law section 1505(d)(4).”

Section 1505(d) of the New York Insurance Law states, in part:

“The following transactions between a domestic controlled insurer and any person in its holding company system may not be entered into unless the insurer has notified the superintendent in writing of its intention to enter into any such transaction at least thirty days prior thereto, or with regard to reinsurance treaties or agreements at least forty-five days prior thereto, or such shorter period as the superintendent may permit, and the superintendent has not disapproved it within such period: . . .

(4) any material transaction, specified by regulation, that the superintendent determines may adversely affect the interests of the insurer's policyholders or shareholders . . .”

A review of the ASI/BCMS commission agreement, dated January 10, 2017, indicated that the agreement was not filed with the Department and appeared to be designed to evade the filing requirements of Article 15 of the New York Insurance Law. The transactions under this commission agreement were deemed material such that the commission agreement was required to be filed with the Department pursuant to Section 1505(d)(4) of the New York Insurance Law. It is recommended that the Company comply with Section 1505(d)(4) of the New York Insurance Law. It is also recommended that the Company comply with the terms of its commission agreement with ASI. As noted above, BCMS merged into ASI on October 3, 2019.

Commission Agreement – Better Claims Management Solutions

American T acquired BCMS on May 1, 2015. The Company and BCMS sought to enter into a Service and Expense Agreement. The Company’s outside counsel submitted a BCMS Service and Expense Agreement to the Department on October 28, 2015. This Service and Expense Agreement was not approved by the Department due to the calculation of expense reimbursement not being deemed fair and equitable. As previously noted, BCMS merged into ASI on October 3, 2019.

Tax Allocation Agreement

In 2008, the Company entered into a tax allocation agreement with its parent, American T, and other members of the holding company to file consolidated tax returns under the provision of Section 1504(a) of the Internal Revenue Code of 1986, as amended. Tax liability/refund for the subsidiaries will be computed

using the separate company method. The agreement states that, if the subsidiary pays an amount in excess of the tax payment made by the parent to the Internal Revenue Service, the excess amount will be held in an escrow account. The escrow account will be established and maintained by the parent and will be used for all settlements between the subsidiary and the parent.

This agreement was approved in accordance with Section 1505 of the New York Insurance Law on July 23, 2008.

Transit Maintenance Corporation

Transit Maintenance Corporation is a wholly owned subsidiary of American T, the Company's parent. Transit Maintenance Corporation provided maintenance services for the Company's offices during the examination period without the benefit of an agreement. The Company paid Transit Maintenance Corporation the following amounts during the examination period:

2014	\$188,202
2015	164,013
2016	181,247
2017	207,438
2018	<u>252,927</u>
Total	<u>\$993,827</u>

Section 1505(d)(3) of the New York Insurance Law states, in part:

“(d) The following transactions between a domestic controlled insurer and any person in its holding company system may not be entered into unless the insurer has notified the superintendent in writing of its intention to enter into any such transaction at least thirty days prior thereto . . . or such shorter period as the superintendent may permit, and the superintendent has not disapproved it within such period: . . .

(3) rendering of services on a regular or systematic basis . . .”

In addition, Section 80-1.5 of Department Regulation 52 states, in part:

“(a) . . . notices of proposed transactions pursuant to Insurance Law section 1505(d), shall be accompanied by descriptions of the essential features of such transactions that are reasonably adequate to permit proper evaluation thereof by the superintendent.

(b) Such descriptions shall in all cases include at least the following:

(1) the nature and purpose of the transaction;

- (2) the nature and amounts of any payments or transfers of assets between the parties;
- (3) the identities of all parties to such transaction and whether any officers or directors of a party are pecuniarily interested therein; and
- (4) copies of any contracts, agreements or memoranda of understanding between the parties relating to the transaction ...”

It is recommended that a maintenance agreement between Transit Maintenance Corporation and the Company be committed to writing and submitted to the Superintendent, pursuant to Section 1505(d)(3) of the New York Insurance Law and Department Regulation 52.

Global Biomechanical Solutions, Inc.

During the examination period, Ralph Bisceglia, a controlling shareholder of American T and Company board member, and Catherine McGettigan, a controlling shareholder of American T and daughter-in-law of the Company’s co-founder, Edward T. McGettigan, Sr., had controlling interests in Global Biomechanical Solutions, Inc. (“GBS”). As controlling members of American T, the Company’s parent, transactions between the insurance company and entities owned by controlling members of the holding company fall within the purview of Article 15 of the New York Insurance Law and Department Regulation 52, and are required to be submitted to the Superintendent. During the examination period, ATIC paid GBS \$8,357,973 in fees, as follows:

<u>Year</u>	<u>Amount</u>
2014	\$1,576,704
2015	1,458,737
2016	1,804,999
2017	1,821,653
2018	<u>1,695,880</u>
Total	<u>\$8,357,973</u>

It is recommended that an agreement between GBS and the Company be committed to writing and submitted to the Superintendent, pursuant to Section 1505(d)(3) of the New York Insurance Law and Department Regulation 52.

American Transit Capital Corp.

Effective January 1, 2011, American Transit Capital Corp. entered into a lease agreement for office space with ATIC. The term of the lease was from January 1, 2011 through January 1, 2015, which could be

extended for five additional years. According to the terms of the agreement, ATIC did not have to pay a rental fee for the first two years of the agreement; subsequently, pursuant to the agreement, the rental fee would be \$525,000 per year. The rental fee for any extension would also be \$525,000. ATIC incurred \$2.625 million in rental fees pursuant to this agreement between 2014 and 2018. The agreement was voided when the property was transferred to ATIC on December 31, 2018.

This lease agreement was never filed with the Department, in contravention of Section 1505(d)(3) of the New York Insurance Law and Department Regulation 52.

E. Significant Ratios

The Company's operating ratios, computed as of December 31, 2018, fall outside the benchmark ranges set forth in the Insurance Regulatory Information System of the NAIC:

<u>Operating Ratios</u>	<u>Result</u>	<u>Benchmark Range</u>
Net premiums written to policyholders' surplus	N/A	Not greater than 300%
Adjusted liabilities to liquid assets	365.7%	Not greater than 100%
Two-year overall operating	208.1%	Not greater than 100%

The net premiums written to policyholders' surplus ratio was not computed because it is not meaningful due to the Company's negative surplus, as determined by this examination.

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	\$1,617,888,412	125.1%
Other underwriting expenses incurred	419,203,744	32.4%
Net underwriting gain (loss)	<u>(743,688,626)</u>	<u>(57.5)%</u>
Premiums earned	<u>\$1,293,403,530</u>	<u>100.0%</u>

The Company's reported risk-based capital ("RBC") score was 206.6% at December 31, 2018. 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.

The examination adjustments of \$731,525,164 resulted in an RBC score of less than zero, which triggered a mandatory control level event as defined in Section 1324 of the New York Insurance Law.

F. Accounts and Records

The examiner notes the following deficiencies:

i) Section 1411(a) of the New York Insurance Law states:

"No domestic insurer shall make any loan or investment, except as provided in subsection (h) hereof, unless authorized or approved by its board of directors or a committee thereof responsible for supervising or making such investment or loan. The committee's minutes shall be recorded and a report submitted to the board of directors at its next meeting."

As of December 31, 2018, ATIC did not have a written "Investment Policy." Additionally, a review of the board minutes revealed that the board of directors did not approve any of its investment transactions during the examination period. It is recommended that the Company's board of directors, or its investment committee, approve all of the Company's investment transactions, as required by Section 1411(a) of the New York Insurance Law.

ii) Section 4117(g) of the New York Insurance Law states, in part:

"(1) Effective with the nineteen hundred ninety annual statement every licensed property/casualty insurer required to file such annual statement with the superintendent by the following April first, shall, unless exempted by the superintendent, engage a qualified independent loss reserve specialist for the following year to render an opinion as to the adequacy of its loss and loss adjustment expense reserves when two of three of such insurer's results of its loss and loss adjustment expense ratio . . . [One Year Reserve Development to Surplus, Two Year Reserve Development to Surplus and/or Estimated Current Reserve Deficiency to Surplus]... are outside of the indicated acceptable ranges . . .

(2) Such opinion shall be submitted by the qualified loss reserve specialist to the insurer and the superintendent, by such date established by the superintendent."

ATIC's results on two or more of the IRIS loss ratios during each year of the examination period, 2014 through 2018, were outside the acceptable range. Accordingly, as the Company had failed two or more IRIS loss ratios throughout that period of time, it was required to have its Statement of Actuarial Opinion ("SAO") documents completed by an independent consulting actuary for each year in that timeframe. The Company did not file its 2018 SAO with the Department until May 8, 2019, over two months after the required filing date of March 1, 2019. Likewise, the underlying actuarial report was filed on August 21, 2019, over three months after the required filing date of May 1, 2019. This has been a habitual practice for over a decade in which the Company has filed actuarial documents a few weeks to several months late, requiring extensive intervention by the Department to obtain these documents. Subsequent to the examination period, after repeated requests by the Department, the Company appointed a new actuary.

It is recommended that the Company comply with all the filing requirements of Section 4117(g) of the New York Insurance Law. Subsequent to the examination period, the Company has complied with the filing requirements of Section 4117(g) of the New York Insurance Law.

G. Risk Management and Internal Controls - Enterprise Risk Management System

Section 1503(b) of the New York Insurance Law states:

“A holding company that directly or indirectly controls an insurer shall adopt a formal enterprise risk management function and shall file an enterprise risk report with the superintendent by April thirtieth of each year. The report shall, to the best of the holding company's knowledge and belief, identify the material risks within the holding company system that could pose enterprise risk to the insurer.”

The examination of ATIC's corporate records and internal controls found that the Company failed to maintain written records in support of a fully functioning enterprise risk management system, as required by Section 1503 of the New York Insurance Law and Department Regulation 203. The Company should take appropriate measures to both adopt and document a fully functioning enterprise risk management system and submit the requisite enterprise risk report to the Superintendent, as required by Section 1503 of the New York Insurance Law and Department Regulation 203.

In addition, Department Regulation 203 (11 NYCRR 82) states, in part:

“(a) Pursuant to Insurance Law sections 1503(b) . . . an entity shall adopt a formal enterprise risk management function that identifies, assesses, monitors, and manages enterprise risk . . . The enterprise risk management function shall be appropriate for the nature, scale, and complexity of the risk and shall adhere to the following, as relevant:

(1) have an objective enterprise risk management function headed by an appropriately experienced individual with the requisite authority and who has access to the board of directors . . . and senior management;

(2) have a written risk policy adopted by the respective board or a committee thereof . . . that delineates the insurer's, holding company system's . . . risk/reward framework, risk tolerance levels, and risk limits;

(3) provide a process for the identification and measurement of risk under a sufficiently wide range of outcomes using techniques that are appropriate to the nature, scale, and complexity of the risks the insurer, holding company system, article 16 system, or article 17 system bears and are adequate for capital management and solvency purposes;

(4) have a process of risk identification and measurement supported by documentation that provides appropriately detailed descriptions and explanations of risks identified, the measurement approaches used, key assumptions made, and outcomes of any plausible adverse scenarios that were run; . . .

(6) incorporate risk tolerance levels and limits in the policies and procedures, business strategy, and day-to-day strategic decision-making processes;

(7) consider a risk and capital management process to monitor the level of financial resources relative to economic capital and regulatory capital requirements;

(8) incorporate investment policy, asset-liability management policy, effective controls on internal models, longer-term continuity analysis, and feedback loops to update and improve the enterprise risk management function continuously;

(9) address all reasonably foreseeable and relevant material risks including, as applicable, insurance, underwriting, asset-liability matching, credit, market, operational, reputational, liquidity, and any other significant risks;

(10) include an assessment that identifies the relationship between risk management and the level and quality of financial resources necessary as determined with quantitative and qualitative metrics; and

(11) identify, quantify, and manage any risks to which the insurer may be exposed by transactions or affiliations with any other member of the holding company system . . .

(b)(1) Pursuant to Insurance Law sections 1503(b) . . . an entity shall file electronically a confidential enterprise risk report with the superintendent . . . each year and . . . identify therein the material risks . . . that could pose enterprise risk to the insurer . . .

(2) The report required to be filed by paragraph (1) of this subdivision shall provide information regarding the following areas that could produce enterprise risk, provided that the information has not already been disclosed in a registration statement filed pursuant to Insurance Law section 1503(a) . . . during the prior 12 months:

(i) any material developments regarding strategy, internal audit findings, compliance or risk management affecting the insurer, holding company system . . .

(v) the business plan of the insurer, holding company system . . . and a summary of the insurer's or system's strategies for the next 12 months . . .

(vii) the identification of capital resources and material distribution patterns with regard to the insurer, holding company system . . .”
(Emphasis added.)

The examination found that ATIC did not have a written strategic plan, business plan, or capital management process, failed to maintain documentation in support of its enterprise risk management function, and did not have a written risk policy adopted by its board of directors.

The examination also found that ATIC only has one board meeting a year, management is centralized in a small number of executives, internal controls appear weak, there is no internal audit department, loss reserves and premium rates are not set pursuant to actuarial standards, investments are not ratified by the board of directors, there is no written investment policy, and there are no conflict of interest statements completed by board members or officers. The Company acknowledged a lack of written procedures and stated that its enterprise risk management program was a work in progress.

Further, the lack of internal controls over the Company's financial reporting function continued to impact the Company as its filed financial statements contained numerous and repeated errors, including but not limited to, no aging of accounts receivable, unrecorded liabilities, incomplete disclosure of related party transactions, claim counts missing from Schedule P, and Schedule Y not accurately completed. The Company should enhance its internal control structure to ensure proper and accurate financial reporting.

H. Affiliated Expenses and Officer Bonuses

As described in section 2D of this report, the Company and ASI have a commission agreement wherein ASI may receive a commission up to 12% for producing insurance business for ATIC. ASI uses ATIC office space, equipment, and personnel. However, there is no separate expense agreement and the

commission agreement is silent as to sharing expenses for these items. ASI does not appear to have any underlying costs. During the 5-year examination period, ATIC paid ASI \$81,160,564 in commissions despite the fact that there does not appear to have been any policies produced by ASI. In addition to the commissions paid to ASI, ATIC paid a varying commission of approximately 8-10% to the originating independent brokers for the same business. Without providing any evidence, the Company now contends that amounts received by ASI were reinvested in American T. for, *inter alia*, capital and surplus contributions to the Company, holding company system taxes, and expenses. The Company also contends that some of the money reinvested in American T. was distributed as dividends to its shareholders in accordance with the shareholders' respective interests. No documentation was provided to support any of these contentions. ATIC did not pay dividends to its sole shareholder, American T, during the examination period. However, American T, through its ownership of ASI, indirectly received funds from the Company through ASI's commission agreement with the Company. The examination found no purpose for ASI other than to receive commissions from the Company.

As described in section 2D of this report, during the examination period, ATIC paid GBS fees totaling \$8,357,973. Ralph Bisceglia and Catherine McGettigan have controlling interests in GBS. It is unclear what additional value or services GBS provides to ATIC that ATIC cannot perform itself. The Company now contends that ATIC paid GBS \$8,357,973 to cover GBS' operating expenses, including salaries and reimbursements to expert witnesses and biomechanical engineers. No documentation was provided to support this contention.

During the examination period, a total of \$11,698,981 was given out in bonuses to five officers of the Company, in addition to their salaries. Considering the Company's precarious financial condition, these bonuses appear to be excessive. The total compensation of ATIC's management appears to be based on premium volume (see prior discussion of ASI) rather than underwriting results.

All of the above expenses were paid to management and affiliates of the Company without any apparent reasonable business justification while, at the same time, management was filing financial statements that did not accurately reflect the Company's true financial condition. By authorizing these payments, management put the interests of affiliated parties - specifically ASI, GBS and five officers of the Company - ahead of the interests of the Company's policyholders and claimants. It is recommended that the Company recover the above expense amounts that were paid during the examination period, which total \$101,217,518. The Company now contends that it received fair value for the amounts paid to affiliated

entities and that total annual compensation to Company executives, including bonus amounts, is in-line with market rate compensation. No documentation was provided to support this contention.

3. FINANCIAL STATEMENTS

A. Balance Sheet

The following shows the assets, liabilities, and surplus as regards policyholders as of December 31, 2018, as reported by the Company:

Assets

	<u>Assets</u>	Assets Not <u>Admitted</u>	Net Admitted <u>Assets</u>
Bonds	\$195,729,267	\$ 0	\$195,729,267
Preferred stock	483,040	0	483,040
Common stocks	12,235,709	0	12,235,709
Real estate - Properties occupied by the Company	4,300,000	0	4,300,000
Cash, cash equivalents and short-term investments	39,557,560	0	39,557,560
Investment income due and accrued	1,699,336	0	1,699,336
Uncollected premiums and agents' balances in the course of collection	17,919,695	0	17,919,695
Deferred premiums, agents' balances and installments booked but deferred and not yet due	28,037,516	0	28,037,516
Net deferred tax asset	1,793,276	0	1,793,276
Electronic data processing equipment and software	298,616	298,616	0
Receivable from parent, subsidiaries and affiliates	395,395	0	395,395
Security deposit	678,303	678,303	0
Salvage and subrogation receivable	5,043,785	0	5,043,785
Other receivables	1,015,066	0	1,015,066
Advances to employees	<u>16,678</u>	<u>0</u>	<u>16,678</u>
Total assets	<u>\$309,203,240*</u>	<u>\$976,919</u>	<u>\$308,226,322</u>

*Rounding difference of \$1

Liabilities, Surplus, and Other FundsLiabilities

Losses and loss adjustment expenses	\$145,000,000
Commissions payable, contingent commissions and other similar charges	3,616,429
Other expenses (excluding taxes, licenses and fees)	4,741,187
Unearned premiums	61,702,366
Amounts withheld or retained by company for account of others	(930,243)
Drafts outstanding	340,488
Payable to parent, subsidiaries and affiliates	<u>6,367</u>
 Total liabilities	 \$214,476,594

Surplus and Other Funds

Common capital stock	\$ 1,000,000
Gross paid in and contributed surplus	106,981,721
Unassigned funds (surplus)	<u>(14,231,993)</u>
 Surplus as regards policyholders	 <u>93,749,728</u>
 Total liabilities, surplus and other funds	 <u>\$308,226,322</u>

Note: The Internal Revenue Service has completed its audits of the Company's consolidated federal income tax returns through tax year 2014. All material adjustments, if any, made subsequent to the date of examination and arising from said audits, are reflected in the financial statements included in this report. No additional audits covering subsequent tax years are currently in progress. 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 \$46,564,233, as detailed below:

Underwriting Income

Premiums earned		\$1,293,403,530
Deductions:		
Losses and loss adjustment expenses incurred	\$891,088,412	
Other underwriting expenses incurred	<u>419,203,744</u>	
Total underwriting deductions		<u>1,310,292,156</u>
Net underwriting gain or (loss)		\$ (16,888,626)

Investment Income

Net investment income earned	\$ 12,779,547	
Net realized capital gains or (losses)	<u>2,970,289</u>	
Net investment gain or (loss)		15,749,836

Other Income

Finance and service charges not included in premiums	\$ 44,932,105	
File copy fees	1,349,216	
Change in loss reserves	555,000	
Miscellaneous income	<u>866,702</u>	
Total other income or (loss)		<u>47,703,023</u>
Net income before federal and foreign income taxes		\$ 46,564,233
Federal and foreign income taxes incurred		<u>0</u>
Net income		\$ <u>46,564,233</u>

C. Capital and Surplus

Surplus as regards policyholders increased \$63,047,264 during the five-year examination period, January 1, 2014 through December 31, 2018, as reported by the Company, detailed as follows:

Surplus as regards policyholders as reported by the Company as of December 31, 2013			\$30,702,464
	<u>Gains in Surplus</u>	<u>Losses in Surplus</u>	
Net income	\$46,564,233		
Net unrealized capital gains or losses		\$2,187,657	
Change in nonadmitted assets		17,254	
Surplus adjustments paid in Suspense account	18,807,777 <u>0</u>	<u>119,835</u>	
Total gains and losses	\$65,372,010	\$2,324,746	
Net increase (decrease) in surplus			<u>63,047,264</u>
Surplus as regards policyholders as reported by the Company as of December 31, 2018			<u>\$93,749,728</u>

At December 31, 2018, capital paid in was \$1,000,000 consisting of 1,000 shares of common stock at \$1,000 par value per share. Gross paid in and contributed surplus is \$106,981,721. Gross paid in and contributed surplus increased by \$18,807,777 during the examination period, as follows:

<u>Year</u>	<u>Description</u>		<u>Amount</u>
2013	Beginning gross paid in and contributed surplus		\$ 88,173,944
2014	Surplus contribution	\$6,307,777	
2015	Surplus contribution	5,000,000	
2018	Surplus contribution	<u>7,500,000</u>	
	Total surplus contributions		\$ <u>18,807,777</u>
2019	Ending gross paid in and contributed surplus		<u>\$106,981,721</u>

D. Analysis of Changes to Surplus

Surplus as regards policyholders as of December 31, 2018, as reported by the Company			\$ 93,749,728
	<u>Surplus Increase</u>	<u>Surplus Decrease</u>	
Examination change in loss and loss adjustment expense reserves	\$0	\$726,800,000	
Examination change in net deferred tax asset	0	1,793,276	
CPA adjustments noted in the audited financial statements	<u>0</u>	<u>2,931,888</u>	
Total increases and decreases	\$0	\$731,525,164	
Net increase (decrease) in surplus			<u>(731,525,164)</u>
Surplus at December 31, 2018, per report on examination			<u>\$(637,775,436)</u>

This examination has determined that, as of December 31, 2018, the Company was insolvent in the amount of \$637,775,436 and its capital was impaired in the amount of \$638,775,436. Additionally, the Company's minimum required to be maintained surplus of \$500,000 was impaired in the amount of \$638,275,436. The Company objects to the magnitude of the examination adjustments referenced in this report. No specific details or documentation were provided to support their objection. Furthermore, the Company's position is contradicted by the Company's own loss reserve development as set forth in section 6 of this report.

E. Analysis of Changes to Income

Net income for the examination period, as reported by the Company			\$ 46,564,233
	<u>Income Increase</u>	<u>Income Decrease</u>	
Examination change in loss and loss adjustment expense reserves	\$0	\$726,800,000	
CPA adjustments noted in the audited financial statements	<u>0</u>	<u>721,336</u>	
Total increases and decreases	\$0	\$727,521,336	
Net increase (decrease) in income			<u>(727,521,336)</u>
Net income (loss) for the examination period, per report on examination			<u>\$(680,957,103)</u>

4. NET DEFERRED TAX ASSET

The Company reported an admitted asset under this caption in the amount of \$1,793,276 as of the examination date. The Company's RBC ratio, based on the financials determined by this examination, is below 200%. The NAIC Accounting Practices and Procedures Manual, Statement of Statutory Principles ("SSAP") No. 101 does not permit an insurer with an RBC ratio of less than 200% to admit any portion of a net deferred tax asset. As such, the captioned admitted asset as of December 31, 2018 has been non-admitted in its entirety.

5. ADJUSTMENTS NOTED IN THE AUDITED FINANCIAL STATEMENTS

The 2018 audited financial statements included various adjustments to the Company's annual statement. These adjustments are noted in the table below:

	<u>Surplus as regards policyholders</u>	<u>Net income</u>
<u>CPA adjustment:</u>		
Increase in cash	\$10,071,080	\$ (1,970)
Increase due from parent and affiliates	1,802,030	0
Decrease in premiums receivable	(9,111,028)	(5,046,821)
Decrease unpaid expenses, taxes, etc.	1,693,131	693,870
Decrease in other assets	(1,031,744)	16,574
Decrease in subrogation recoverable	(897,358)	(352,078)
Increase in non-admitted assets	0	(464,885)
Increase in deferred tax assets ¹	3,524,509	0
Increase in drafts outstanding	(8,380,927)	(72,562)
Decrease in commission payable	3,034,403	(576,650)
Decrease in accrued investment income	(978,805)	(455,898)
Decrease in funds held	(930,243)	0
Increase in federal taxes payable	<u>(1,726,936)</u>	<u>5,539,084</u>
Total adjustments	<u>\$(2,931,888)</u>	<u>\$(721,336)</u>

¹ As noted in section 4 of this report, the Department is not recognizing a deferred tax asset. For simplicity, the examiner is not eliminating the auditor's increase to the net deferred tax asset and the resultant increase in surplus.

As outlined above, Bonamassa, Maietta & Cartelli, LLP (“BMC”), an external audit firm engaged by the Company, decreased the amount that the Company reported as surplus to policyholders by \$2,931,888, and increased the net loss reported by the Company by \$721,336. As such, the audited financial statements as of December 31, 2018 reflects surplus to policyholders of \$90,817,840 and a net loss of \$10,170,058. Even after BMC identified the above adjustments in the 2018 audited financial statements, BMC issued a disclaimer of opinion. According to the Statements on Auditing Standards issued by the American Institute of Certified Public Accountants, a disclaimer of opinion is required when “(t)he auditor ... is unable to obtain sufficient appropriate audit evidence on which to base the opinion, and the auditor concludes that the possible effects on the financial statements of undetected misstatements, if any, could be both material and pervasive.” For at least the last three years, any audit report issued relative to the Company included a disclaimer of opinion by the Company’s auditors.

6. LOSSES AND LOSS ADJUSTMENT EXPENSES

The examination liability for the captioned items of \$871,800,000 is \$726,800,000 more than the \$145,000,000 reported by the Company in its filed annual statement as of December 31, 2018. The examination analysis of the loss and loss adjustment expense reserves was conducted in accordance with generally accepted actuarial standards and practices, as well as statutory accounting principles, including SSAP No. 55.

The deficiency in the Company’s carried reserves as of December 31, 2018 is severely material. As the Company’s reported surplus as of December 31, 2018 was \$93,749,728, the \$726,800,000 reserve deficiency implies an insolvency of \$633,050,272 as of December 31, 2018.

Additionally, the reserve analysis completed by the Department as of December 31, 2019 also found the Company’s reported reserves to be severely deficient. The Department concluded that, as of December 31, 2019, the Company’s liability for loss and loss adjustment expenses of \$163,000,000 was understated by \$787,800,000. As the Company’s reported surplus as of December 31, 2019 was \$91,106,592, the \$787,800,000 deficiency indicates that the Company was insolvent by \$696,693,408 as of December 31, 2019.

The Department had also performed an analysis of the Company’s loss and loss adjustment expense reserves as of December 31, 2013. The Department concluded that the Company’s liability for loss and loss adjustment expenses of \$47,100,000 was understated by \$285,100,000. The understatement included

consideration of a premium deficiency liability of \$1,300,000. As the Company's reported surplus as of December 31, 2013 was \$30,702,464, the \$285,100,000 deficiency implied that the Company was insolvent by \$254,397,536 as of December 31, 2013.

The Company's own reported adverse loss and loss adjustment expense reserve development through December 31, 2020 for accident years 2013 and prior was \$279,743,000, which is essentially equivalent to the Department's projected loss and loss adjustment expense deficiency of \$285,100,000 as of December 31, 2013. The total deficiency of \$279,743,000 is comprised of \$274,084,000 of adverse development on loss and defense and cost containment expenses and \$5,659,000 of adverse development on adjusting and other expenses.

If the Company had initially booked reserves for accident year 2013 and prior at year-end 2013 that included the adverse development that was booked as of December 31, 2020, it would have reported itself insolvent in the amount of \$249,040,536 at December 31, 2013. A similar calculation for years 2014 through 2018 reveals that, if the Company had included the self-reported adverse development through December 31, 2020 in its initial reserves, it would have reported itself insolvent each and every year from 2014 through 2018. This is demonstrated in the table below (\$000 omitted).

<u>(1)</u> <u>Year</u>	<u>(2)</u> <u>Reserves *</u> <u>Reported at</u> <u>Year-End</u>	<u>(3)</u> <u>Surplus</u> <u>Reported at</u> <u>Year-End</u>	<u>(4)</u> <u>Adverse Development</u> <u>recorded through</u> <u>December 31, 2020 for</u> <u>relevant accident years</u>	<u>(5) = (3) + (4)</u> <u>Adjusted Surplus</u>
2014	\$ 47,655	\$40,270	\$(324,631)	\$(284,361)
2015	\$ 60,655	\$50,296	\$(357,158)	\$(306,862)
2016	\$ 93,000	\$63,499	\$(385,078)	\$(321,579)
2017	\$135,500	\$76,804	\$(378,464)	\$(301,660)
2018	\$145,000	\$93,750	\$(323,762)	\$(230,012)

* "Reserves" include net Losses & Defense and Cost Containment expenses & Adjusting and Other expenses.

It is important to note that the adverse development indicated in the table above only reflects the Company's self-reported adverse development through December 31, 2020. The table serves to demonstrate the Company's consistent pattern of under-reserving. It also serves to demonstrate that, if the Company had reported adequate loss and loss adjustment expense reserves initially, it would have reported itself insolvent each year from 2014 through 2018. It is further noted that the Company consistently suppresses its initial reserve liabilities.

Since 1989, the Company has engaged in a long-term practice of consistently booking unrealistically low initial reserves, especially for the more recent (less mature) years, which results in a consistently overstated surplus. This practice results in material adverse development of its reported reserves as is demonstrated in the Reported-to-date to Initial Reported accident year ratios that range from a low of 179% (the least mature year) to a high of 407%. This is depicted in the table below, with information extracted from the Company's 2020 Annual Statement, Schedule P, Part 2 Summary (\$000 omitted).

<u>(1)</u> <u>Years in which</u> <u>Losses Were</u> <u>Incurred</u> <u>(Accident Year)</u>	<u>(2)</u> <u>Incurred Losses *</u> <u>Initially Reported</u> <u>By Accident Year</u>	<u>(3)</u> <u>Incurred Losses *</u> <u>Reported as of</u> <u>December 31, 2020</u>	<u>(4) = (2) – (3)</u> <u>Adverse</u> <u>Development</u> <u>by Accident</u> <u>Year(s)</u>	<u>(5) = (3)/(2)</u> <u>Ratio = (Incurred</u> <u>Losses reported as of</u> <u>December 31, 2020)/</u> <u>(Incurred Losses</u> <u>initially reported)</u>
All Prior Years	\$83,156	\$204,693	\$(121,537)	246.2%
2011	\$48,701	\$123,703	\$ (75,002)	254.0%
2012	\$44,657	\$126,715	\$ (82,058)	283.8%
2013	\$45,220	\$137,564	\$ (92,344)	304.2%
2014	\$34,367	\$139,875	\$(105,508)	407.0%
2015	\$43,785	\$154,304	\$(110,519)	352.4%
2016	\$58,823	\$178,360	\$(119,537)	303.2%
2017	\$72,002	\$172,043	\$(100,041)	238.9%
2018	\$78,539	\$140,624	\$ (62,085)	179.0%

* "Incurred Losses" include net losses & defense and cost containment expenses.

The Company's appointed actuary issued an SAO stating that the Company's loss and loss adjustment expense reserve liabilities as of December 31, 2018 were deficient. The SAO stated that the Company's \$145,000,000 provision for unpaid loss and loss adjustment expenses was \$53,300,000 less than the minimum amount necessary to be within the range of reasonable estimates for such unpaid loss and loss adjustment expenses. It is important to note that the Company's self-reported adverse development for the years 2018 and prior, at December 31, 2020 of \$323,762,000 far exceeded the \$53,300,000 deficiency indicated in the SAO. The Company's appointed actuary issued a deficient opinion in each year from 2014 through 2018.

The same appointed actuary issued an SAO stating that the Company's loss and loss adjustment expense reserve liabilities as of December 31, 2019 were deficient. The SAO stated that the Company's \$163,000,000 provision for unpaid loss and loss adjustment expenses is \$387,000,000 less than the minimum amount necessary to be within the range of reasonable estimates for such unpaid loss and loss

adjustment expenses. Had this amount been reported by the Company in its 2019 filed annual statement, the Company would have reported itself insolvent in the amount of \$295,893,408.

The Company's independent auditors issued a disclaimer of opinion for the 2019 calendar year and for each year from 2014 through 2018. The reasons for the 2019 disclaimer included a failure to obtain the 2019 independent actuarial report, a rejection of the 2018 independent actuarial report, and the inability to perform sufficient auditing procedures to satisfy themselves of the adequacy of the reserve liabilities. The reasons for the 2018 disclaimer were rejections of the independent 2017 and 2018 actuarial reports, as well as the inability to perform sufficient auditing procedures. Similarly, the Company's independent auditor issued disclaimer of opinions for 2014 through 2017 for the same reasons. According to the Statements on Auditing Standards issued by the American Institute of Certified Public Accountants, a disclaimer of opinion is required when "(t)he auditor...is unable to obtain sufficient appropriate audit evidence on which to base the opinion, and the auditor concludes that the possible effects on the financial statements of undetected misstatements, if any, could be both material and pervasive." The consistent issuance of disclaimers of opinion by the Company's independent auditors implies that the Company's financial statements, particularly the reserve liabilities included therein, are not reliable.

The Company's loss and loss adjustment expense liabilities are severely understated and mask a significant insolvency. This statement is supported by the Department's analysis, the opinion of the Company's appointed actuary, the disclaimer opinions of the Company's independent auditor, and the Company's historical reported reserve development. The Company's failure to maintain a reasonable reserve liability is not in compliance with applicable statutory requirements. Section 1303 of the New York Insurance Law states, in part:

"Every insurer shall . . . maintain reserves in an amount estimated in the aggregate to provide for the payment of all losses or claims incurred on or prior to the date of statement, whether reported or unreported, which are unpaid as of such date and for which such insurer may be liable, and also reserves in an amount estimated to provide for the expenses of adjustment or settlement of such losses or claims."

Additionally, SSAP No. 55, Paragraph 10, states, in part:

"The liability for claim reserves and claim liabilities, unpaid losses, and loss/claim adjustment expenses shall be based upon the estimated ultimate cost of settling the claims (including the effects of inflation and other societal and economic factors), using past experience adjusted for current trends, and any other factors that would modify past experience . . ."

It is recommended that the Company immediately address these ongoing reserving inadequacies and increase its carried reserves to an appropriate level, pursuant to the provisions of Section 1303 of the New York Insurance Law and Paragraph 10 of SSAP No. 55.

Subsequent to 2019, the Company changed its appointed actuary. The newly appointed actuary also issued a deficient opinion on the adequacy of the Company's loss and loss adjustment expense liabilities as of December 31, 2020. The opinion stated that the Company's \$190,000,000 loss and loss adjustment expense reserve is \$508,793,000 less than the minimum amount necessary to be within the range of reasonable estimates. An increase in the reserve liabilities by the \$508,793,000 deficiency results in an insolvency of \$430,981,515 as of December 31, 2020.

7. SUBSEQUENT EVENTS

On March 11, 2020, the World Health Organization declared an outbreak of a novel coronavirus ("COVID-19") pandemic. The pandemic presented significant uncertainty to the U.S. and global insurance and reinsurance industry, with the full effect of COVID-19 still unknown. The Department has been in communication with the Company regarding the impact of COVID-19 on its operations and financial position.

8. CONCLUSION

This examination has determined that, as of December 31, 2018, the Company was insolvent in the amount of \$637,775,436 and its capital was impaired in the amount of \$638,775,436. Additionally, the Company's minimum required to be maintained surplus of \$500,000 was impaired in the amount of \$638,275,436.

The Company is directed to provide a remediation plan within 30 days of receipt of this report on examination that is acceptable to the Superintendent and that will cure the Company's insolvency in a timely manner.

9. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Insolvency</u>	
i. This examination has determined that as of December 31, 2018, the Company was insolvent in the amount of \$637,775,436 and its capital was impaired in the amount of \$638,775,436. Additionally, the Company's minimum required to be maintained surplus of \$500,000 was impaired in the amount of \$638,275,436.	25, 31
ii. The Company is directed to provide a remediation plan within 30 days of receipt of this report on examination that is acceptable to the Superintendent and that will cure the Company's insolvency in a timely manner.	31
B. <u>Corporate Governance</u>	
i. It is recommended that ATIC's board of directors adopt a conflict of interest policy in accordance with NAIC guidelines and its own corporate by-laws.	5
ii. It is recommended that ATIC procure adequate fidelity bond coverage to properly safeguard its assets.	5
C. <u>Holding Company System</u>	
i. It is recommended that, on a prospective basis, the Company identify all related parties in its holding company registration statement, as required by Part 80-1.4 of Department Regulation 52.	8
ii. It is recommended that the Company annually file a consolidated balance sheet and the audited financial statements of the ultimate holding company and significant entities within the holding company system, in accordance with Section 80-1.4(c) of Department Regulation 52.	8
iii. It is recommended that the Company take appropriate measures to assure its separate operating identity from its affiliates, in accordance with Section 1507(a) of the New York Insurance Law.	9
iv. It is recommended that, if the Company's employees are to provide services to multiple companies within the American T holding company system, , or if the Company receives services from affiliated entities, a cost sharing agreement be filed with the Superintendent, pursuant to	9

<u>ITEM</u>	<u>PAGE NO.</u>
Section 1505(d)(3) of the New York Insurance Law and Department Regulation 52.	
v. It is recommended that the Company comply with Section 1505(d)(4) of the New York Insurance Law.	11
vi. It is recommended that the Company comply with the terms of its commission agreement with ASI.	11
vii. It is recommended that a maintenance agreement between Transit Maintenance Corporation and the Company be committed to writing and submitted to the Superintendent, pursuant to Section 1505(d)(3) of the New York Insurance Law and Department Regulation 52.	13
viii. It is recommended that an agreement between GBS and the Company be committed to writing and submitted to the Superintendent, pursuant to Section 1505(d)(3) of the New York Insurance Law and Department Regulation 52.	13
D. <u>Accounts and Records</u>	
i. It is recommended that the Company's board of directors, or its investment committee, approve all of the Company's investment transactions, as required by Section 1411(a) of the New York Insurance Law.	15
ii. It is recommended that the Company comply with all the filing requirements of Section 4117(g) of the New York Insurance Law.	16
Subsequent to the examination period, the Company has complied with the filing requirements of Section 4117(g) of the New York Insurance Law.	
E. <u>Risk Management and Internal Controls</u>	
i. The Company should take appropriate measures to both adopt and document a fully functioning enterprise risk management system and submit the requisite enterprise risk report to the Superintendent, as required by Section 1503 of the New York Insurance Law and Regulation 203.	16
ii. The Company should enhance its internal control structure to ensure proper and accurate financial reporting.	18

ITEMPAGE NO.F. Affiliated Expenses and Officer Bonuses

It is recommended that the Company recover the expense amounts that were paid during the examination period, which total \$101,217,518. 19

G. Losses and Loss Adjustment Expenses

It is recommended that the Company immediately address ongoing reserving inadequacies and increase its carried reserves to an appropriate level, pursuant to the provisions of Section 1303 of the New York Insurance Law and Paragraph 10 of SSAP No. 55. 31

Respectfully submitted,

_____/S/_____

Joseph Rome, CFE
Consulting Examiner-in-Charge

STATE OF LOUISIANA)

)ss:

PARISH OF LIVINGSTON)

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

_____/S/_____

Joseph Rome

Subscribed and sworn to before me

this _____ day of _____, 2024.

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:

Joseph Rome

as a proper person to examine the affairs of the

American Transit 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*

16th day of December, 2019

*LINDA A. LACEWELL
Superintendent of Financial Services*



By:

Joan Riddell

*Joan Riddell
Deputy Bureau Chief*



May 17, 2024

Cisca Hung, Chief Compliance and Risk Officer
American Transit Insurance Company
5 Broadway
Freeport, New York 11520

Re: American Transit Insurance Company (“ATIC” or the “Company”)
Addendum to the Report on Examination as of December 31, 2018 (“Report”)

Dear Ms. Hung:

On April 3, 2024, pursuant to Section 311 of the Insurance Law, the Department of Financial Services (the “Department”) transmitted the Report to ATIC. By an email dated April 12, 2024, ATIC requested permission to submit a statement and records to clarify only the findings in the Report regarding the amounts paid, directly or indirectly, by ATIC to ATIC Security Inc. (“ASI”) and Global Biomechanical Solutions Inc. (“GBS”) during the examination period (“Supplemental Submission”). ATIC indicated that it would provide that information by April 26, 2024. Although such clarifying information should have been provided during the examination, in response to the draft Report provided to ATIC on January 26, 2024, or in connection with the closing conference held on February 26, 2024, the Department agreed to accept the Supplemental Submission. The Department conditioned its agreement to ATIC’s proposal on ATIC’s providing a comprehensive Supplemental Submission that addressed specific issues with supporting documentation by April 26, 2024.

ATIC failed to provide the Supplemental Submission by that date and, three days later, on April 29, 2024, the Department advised ATIC that the Report was final and not subject to further revision. A copy of the final Report was provided to ATIC at that time. After the Report was finalized, ATIC submitted the Supplemental Submission and requested that the Department revise the now final Report to reflect the additional information.

As the Department previously advised ATIC, the Report is final and not subject to further revision. This letter reflects the Department’s assessment of the Supplemental Submission and will be appended to the Report as an addendum to reflect the clarifications to the Report findings regarding ATIC’s payments to ASI and GBS that are warranted, in the Department’s assessment, by the Supplemental Submission.

The Supplemental Submission was not comprehensive, omitting a substantial amount of the support for the disposition of the funds ATIC paid to its affiliates. Although ATIC provided a spreadsheet representing how ATIC's payments to its affiliates were ultimately used, supporting documentation for many of these payments was missing.

The Report concluded that ATIC paid ASI substantial commissions throughout the examination period in addition to the 8-10% commissions ATIC paid to originating brokers for the same business. As such, the Report questioned whether ASI performed any work to earn the commissions it received from ATIC or whether the commission agreement was just a vehicle to divert money from ATIC to ATIC's executives or to affiliates either owned by ATIC's parent or directly owned by executives of ATIC.

The Supplemental Submission does not change the core findings regarding ATIC's affiliate payments. At best, the Supplemental Submission represents that some of the money paid to ATIC's affiliates was used to pay for ATIC's expenses or ultimately used by American T. Inc. ("American T") to make capital contributions to ATIC. While this portion of expenses remain insufficiently documented and unverified, even if accurate, there remains no reasonable business justification for the balance of the substantial payments to ASI or GBS. While some of the money ATIC paid to affiliates may ultimately have been used to pay for ATIC's expenses, some portion of the money ATIC paid to its affiliates was used to benefit its affiliates and management. For example, based on the information provided by ATIC, American T used \$4,457,475 from the commissions ASI shared with American T to pay dividends to the owners of American T during the examination period. Those dividends were funded by ATIC but could not be directly paid out of ATIC due to the Company's financial condition; specifically, because Section 4105 of the Insurance Law only allows property insurance companies to pay dividends from earned surplus. Because ATIC's earned surplus has been in a negative position for decades, it was prohibited from paying any dividends.

Similarly, \$8,191,466 was paid to employees of ASI and American T for unspecified services while another \$3,494,867 was paid to consultants for unspecified data processing or information technology services. After reviewing the information contained in the Supplemental Submission, the Department found that four of these consultants appear to be affiliated with ATIC employees or executives, raising additional questions about the nature of the services provided by these consultants and about the justification for the substantial payments they received.

Overall, given that ATIC pays 8-10% commissions to the originating brokers for the same business for which ATIC paid a commission to ASI, the finding in the Report remains unchanged that ASI appears to exist to allow management to remove funds from ATIC that the Company should be using to pay policyholder claims. The Department will continue to investigate these payments.

In addition to those commissions, ATIC paid \$8,357,973 to GBS, a company that is 70% owned by two of American T's controlling shareholders, Ralph Bisceglia and Catherine McGettigan. While the Supplemental Submission represents without sufficient verification that no payments were made to Mr. Bisceglia or Ms. McGettigan out of the money paid to GBS, and

that GBS has saved ATIC a substantial amount of money, ATIC does not explain why it outsources these services to a company owned by two of American T's controlling shareholders or why ATIC is unable to perform these services without paying another company. ATIC's assertion that it has limited information on the operations of GBS when 70% of GBS is owned by two of American T's controlling shareholders is unpersuasive.

The Report recommended that the Company recover the affiliate payments made by ATIC as well as the bonuses paid to Company officers, totaling \$101,217,518. While some documentation was provided indicating that some of the affiliate payments were ultimately used to pay for ATIC's expenses, the Supplemental Submission does not alter the conclusion in the Report that the affiliate payments took money out of ATIC that the Company cannot afford to lose and that was used, in some part, to benefit ATIC's affiliates and management. The Department recommends that ATIC recover the bonuses paid to Company officers and all affiliate payments made by ATIC during the examination period that do not reflect actual, documented, and verifiable expenses attributable to ATIC.

Remedial action taken by ATIC relative to each and every Report comment and recommendation will be reviewed and assessed during the next examination of the Company.

Very truly yours,



Bernard Ganley
Deputy Superintendent for Insurance
New York State Department of Financial Services



**REPORT ON EXAMINATION
OF
AMERICAN TRANSIT INSURANCE COMPANY
AS OF DECEMBER 31, 2019**

**EXAMINER:
DATE OF REPORT:**

**JOSEPH ROME, CFE
APRIL 14, 2021**

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1. SCOPE OF EXAMINATION

The Department has performed an examination of American Transit Insurance Company (“ATIC” or “the Company”), a single-state insurer. The previous examination was conducted as of December 31, 2018. This examination covered the one-year period from January 1, 2019 through December 31, 2019. Transactions occurring after this period were reviewed when 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 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 management’s overall financial statement presentation, and 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

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

American Transit Insurance Company was incorporated under the laws of the State of New York on January 19, 1972. It became licensed on September 14, 1972 and commenced business on January 1, 1973. ATIC issues liability insurance policies to owners of taxis, traditional livery vehicles, and other for-hire vehicles (e.g. Uber, Lyft).

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 21 members. The board meets one time during each calendar year. At December 31, 2019, the board of directors was comprised of the following 11 members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Ralph Bisceglia Huntington, New York	President, Chief Executive Officer and Secretary, American Transit Insurance Company
Adrian Bisceglia New York, New York	Chief Operating Officer, American Transit Insurance Company
Susan Carroll New Canaan, Connecticut	Educator, New Canaan High School
Victor Ferrante Bridgeport, Connecticut	Attorney
Cisca Hung New York, New York	Chief Compliance and Risk Officer, American Transit Insurance Company
John Poklemba New York, New York	General Counsel and Treasurer, American Transit Insurance Company
Christopher Ryan Redding, Connecticut	Chief Financial Officer, American Transit Insurance Company
Cormac Synott Dumont, New Jersey	Director of Bodily Injury Claims, American Transit Insurance Company

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Edward Troy Massapequa, New York	Insurance Consultant
Marianne Zacherl Springfield, Virginia	Homemaker
Richard Zaremski Norwalk, Connecticut	Senior Vice President, First County Bank

It is recommended that ATIC maintain a minimum of 13 board members at all times to comply with its corporate by-laws. Subsequent to the examination date, in December 2020, the Company added Barry Sample and Carl McCall to its board of directors.

Article XI - Code of Ethics of the Company's amended by-laws states the following:

“The Board of Directors will adopt a Code of Ethics applicable to the Company's Directors, officers and key employees, in conformity with the requirements of New York State Department of Financial Services, Department of Insurance.”

Also, in the Company's 2019 Annual Statement, the Company responded “Yes” to General Interrogatory 14.1, which states:

“14.1 Are the senior officers (principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing functions) of the reporting entity subject to a code of ethics, which includes the following standards:

- (a) Honest and ethical conduct, including ethical handling of actual or apparent conflicts of interest between personal and professional relationships;
- (b) Full, fair, accurate, timely and understandable disclosure in periodic reports required to be filed by the reporting entity;
- (c) Compliance with applicable government laws, rules and regulations;
- (d) The prompt internal reporting of violations to an appropriate person or persons identified in the code; and
- (e) Accountability for adherence to the code.”

The Company does not maintain conflict of interest statements for its officers and directors. Thus, the Company has no way to monitor whether any of its directors or officers have a conflict with respect to any of its business transactions and, if appropriate, ensure that such director or officer is recused from such

transactions. The lack of a conflict of interest policy is contrary to both NAIC guidelines and ATIC's corporate by-laws. It is recommended that ATIC's board of directors adopt a conflict of interest policy in accordance with NAIC guidelines and its own corporate by-laws.

The NAIC Handbook recommends that an insurer with assets and revenue comparable to that of the Company maintain a minimum fidelity bond of \$1.25 million to \$1.50 million in coverage. The Company does not maintain a fidelity bond to safeguard its investments and corporate assets. It is recommended that ATIC procure adequate fidelity bond coverage to properly safeguard its assets.

As of December 31, 2019, the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
Ralph Bisceglia	President, Chief Executive Officer and Secretary
John Poklemba	General Counsel and Treasurer
Cisca Hung	Chief Compliance and Risk Officer
Christopher Ryan	Chief Financial Officer
Adrian Bisceglia	Chief Operating Officer

B. Territory and Plan of Operation

As of December 31, 2019, the Company was licensed to write business in New York and was authorized to transact the kinds of insurance as defined in the following numbered paragraphs of Section 1113(a) of the New York Insurance Law:

<u>Paragraph</u>	<u>Line of Business</u>
13	Personal injury liability
14	Property damage liability
19	Motor vehicle and aircraft physical damage

Based upon the lines of business for which the Company is licensed and the Company's current capital structure, and pursuant to the requirements of Articles 13 and 41 of the New York Insurance Law, the Company is required to maintain a minimum surplus to policyholders in the amount of \$500,000.

During 2019, the Company wrote \$349,485,212 in direct premiums. The Company did not assume any reinsurance business during the examination year.

The Company is a commercial automobile liability insurer writing business predominantly in the New York City metropolitan area. The Company issues liability insurance policies to owners of taxis, traditional livery vehicles, and other for-hire vehicles (e.g. Uber, Lyft). The Company's business mix during

the 2019 calendar year consisted of assigned risk (0.2%); yellow taxi (16.4%); and traditional livery and other for-hire vehicles (83.4%). The Company has an agreement with its affiliate, ATIC Security Inc. (“ASI”) to produce business. Pursuant to this agreement, ASI may not produce for ATIC gross written premiums in excess of the greater of 2.4 times ATIC’s surplus or 80% of ATIC’s total writings.

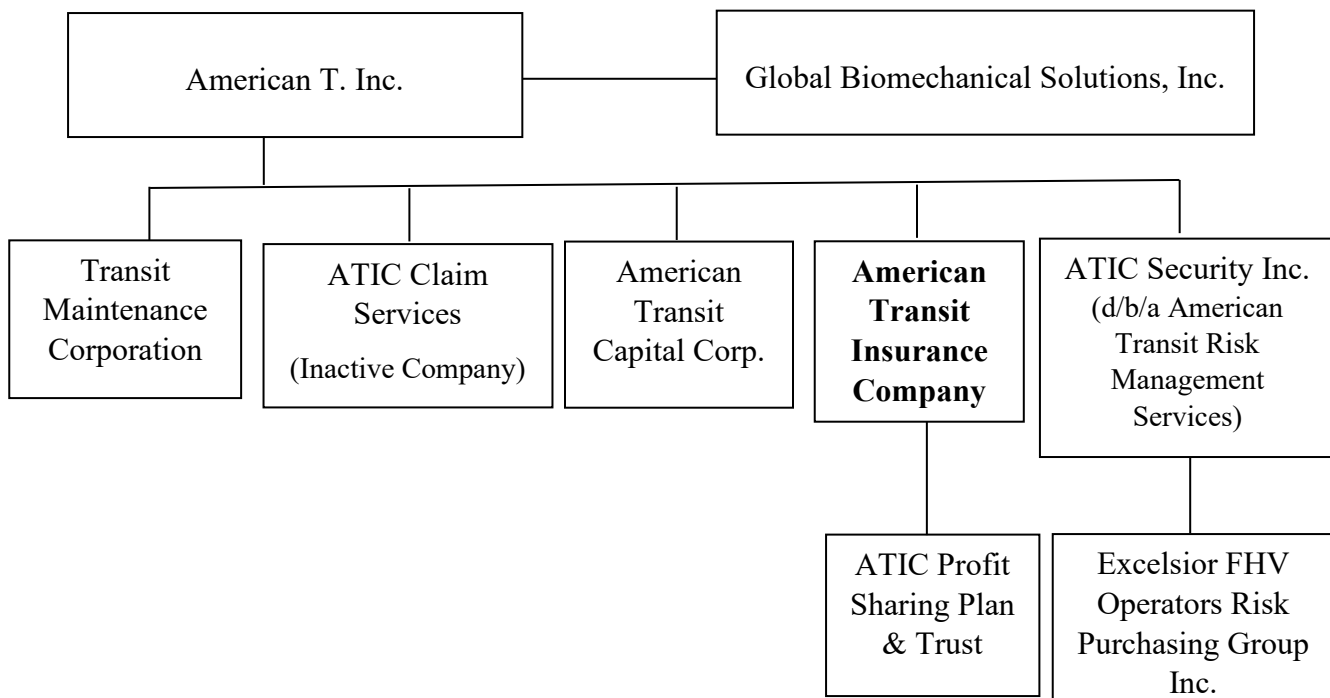
C. Reinsurance Ceded

Since 1999, ATIC has been writing insurance without the benefit of any reinsurance.

D. Holding Company System

The Company is 100% owned by American T. Inc (“American T”), an insurance holding company incorporated in New York, and is ultimately controlled (as defined by Section 1501(a) of the New York Insurance Law) by the following individuals at December 31, 2019: Ralph Bisceglia (12.83%); Marianne Zacherl (11.73%); Nancy Casella (10.8%); and Catherine McGettigan (10.46%). The remaining shares of American T are held by various other investors (including board member Susan Carroll), none of whom own more than 10%.

The following is an abridged chart of the holding company system at December 31, 2019:



American T is a privately held holding company that owns ATIC, ASI (d/b/a American Transit Risk Management Services), American Transit Capital Corp., and Transit Maintenance Corporation. ATIC Claim Services is an inactive New York corporation. ATIC Profit Sharing Plan & Trust is an employee retirement plan administered by a third-party financial services company and sponsored by the Company. Excelsior FHV Operators Risk Purchasing Group Inc. is a not-for-profit corporation domiciled in New York. ASI is a licensed insurance producer for the livery industry. Prior to the examination period, American Transit Capital Corp. leased office space in Freeport, New York to the Company. In December 2018, American Transit Capital Corp. transferred the office building, with a fair market value of \$4.3 million, to American T. In turn, American T contributed the property to the Company, which contribution was approved by the Department. Transit Maintenance Corporation provided building maintenance services to the Company's principal offices located at 1 MetroTech Center, Brooklyn, New York. Ralph Bisceglia, a controlling shareholder of American T and Company board member, and Catherine McGettigan, a controlling shareholder of American T and daughter-in-law of the Company's co-founder, Edward T. McGettigan, Sr., had controlling interests in Global Biomechanical Solutions, Inc.

Pursuant to Part 80-1.4 of Department Regulation 52 (11 NYCRR 80):

“Every controlled insurer registered or required to register pursuant to Insurance Law section 1503 shall, within 120 days following the end of its ultimate holding company's fiscal year, and within 120 days following the end of each succeeding fiscal year, furnish to the superintendent a report...”

The Company is required to file the annual holding company registration statement by April 30th of each year. A review of the holding company registration statement filed with the Department indicated that such filing was incomplete. It is recommended that, on a prospective basis, the Company identify all related parties in its holding company registration statement, as required by Part 80-1.4 of Department Regulation 52.

i. Audited Financial Statements of American T. Inc and ATIC Security Inc.

Section 80-1.4(c) of Department Regulation 52 provides that every controlled insurer shall file each year with the Superintendent the following:

“A consolidated balance sheet of the ultimate holding company and each significant person within the holding company system, as of the end of the holding company's fiscal year, and related consolidated statements of income and surplus for the year then ended. Such financial statements shall be accompanied by an opinion of an independent certified public accountant to the effect that such financials present fairly the consolidated financial position of the ultimate holding company and such

persons, and the results of their operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. In lieu of fully consolidated statements, registrant may furnish separate certified financial statements with respect to any person or persons, and certified consolidated or combined statements with respect to any group of persons, within the holding company system ...”

Regarding the consolidated balance sheet, the Company’s HC-1 filing indicated that: “The information is being finalized by our accountants and will be provided to the Department under separate cover.” As of this report date, the Company has failed to file with the Department a separate consolidated balance sheet. Additionally, during the examination period, the Company failed to file the American T and ASI yearly audited financial statements, as required by Section 80-1.4(c) of Department Regulation 52.

It is recommended that the Company annually file a consolidated balance sheet and the audited financial statements of the ultimate holding company and significant entities within the holding company system, in accordance with Section 80-1.4(c) of Department Regulation 52.

ii. Separate Operating Identity Between ATIC Security Inc. and ATIC

Section 1507 of the New York Insurance Law states:

“(a) Management of controlled insurers. Notwithstanding the control of an authorized insurer by any person, the insurer’s officers and directors shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this chapter.

(b) Nothing herein shall preclude an authorized insurer from having or sharing a common management or cooperative or joint use of personnel, property or services with one or more other persons under arrangements meeting the standard of subsection (a) of section one thousand five hundred five of this article.”

The Company failed to maintain separate books and records between itself and its affiliate, ASI, as multiple ATIC employees served both companies without the benefit of a written cost sharing agreement. It is recommended that the Company take appropriate measures to assure its separate operating identity from its affiliates, in accordance with Section 1507(a) of the New York Insurance Law.

ATIC employees provided services to ASI (as noted above) and ATIC Profit Sharing Plan & Trust (discussed further herein). The Company received services from Global Biomechanical Solutions, Inc. and Transit Maintenance Corporation (both discussed further herein).

Section 1505(d)(3) of the New York Insurance Law states, in part:

“(d) The following transactions between a domestic controlled insurer and any person in its holding company system may not be entered into unless the insurer has notified the superintendent in writing of its intention to enter into any such transaction at least thirty days prior thereto . . . or such shorter period as the superintendent may permit, and the superintendent has not disapproved it within such period: . . .

(3) rendering of services on a regular or systematic basis . . .”

It is recommended that, if the Company’s employees are to provide services to multiple companies within the American T holding company system, or if the Company receives services from affiliated entities, a cost sharing agreement be filed with the Superintendent, pursuant to Section 1505(d)(3) of the New York Insurance Law and Department Regulation 52.

Holding Company Agreements

At December 31, 2019, the Company was party to the following agreements with other members of its holding company system:

Commission Agreement – ATIC Security Inc.

The Company and its affiliate, ASI, maintain a commission agreement wherein ASI serves as a producer for the Company. The commission agreement was filed with the Department in January 2009. ASI utilized approximately 140 independent brokers to produce business. ASI received \$18,759,267 in commissions from the Company during the one-year examination period for billing and premium collection services.

The commission agreement states, in part:

“ATIC will pay to ASI collected earned commissions at a rate consistent with the prevailing commission rate paid by ATIC to unaffiliated brokers for comparable business placed, but in no event greater than 12% (twelve percent) for all business placed by ASI on behalf of ATIC.”

Under the agreement, ASI shall provide quarterly accounts detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, ASI. The commission agreement limits ASI’s writing to the greater of 2.4 times the Company’s surplus (\$91 million in surplus to policyholders as of December 31, 2019 times 2.4 equals \$218 million) or 80% of its total writing (2019 direct premiums written of \$349 million times 80% equals \$280 million).

The Company's 2019 Regulation 52-A filing indicated that ASI produced 100% of the Company's 2019 direct premiums written of \$349 million, in contravention of its filed commission agreement. Subsequently, the Company explained that this Regulation 52-A filing was in error, as ASI produced 78% of the Company's 2019 premiums written and Better Claims Management Solutions ("BCMS"), an American T affiliate, produced the remaining 22% under a separate commission agreement with ASI ("ASI/BCMS commission agreement"). BCMS merged into ASI on October 3, 2019.

Section 80-1.5(d) of Department Regulation 52 states:

"Any series of transactions designed to evade the provisions of subdivision (c) of this section shall be deemed a material transaction and subject to the filing requirements of Insurance Law section 1505(d)(4)."

Section 1505(d) of the New York Insurance Law states, in part:

"The following transactions between a domestic controlled insurer and any person in its holding company system may not be entered into unless the insurer has notified the superintendent in writing of its intention to enter into any such transaction at least thirty days prior thereto, or with regard to reinsurance treaties or agreements at least forty-five days prior thereto, or such shorter period as the superintendent may permit, and the superintendent has not disapproved it within such period: . . .

(4) any material transaction, specified by regulation, that the superintendent determines may adversely affect the interests of the insurer's policyholders or shareholders . . ."

A review of the ASI/BCMS commission agreement, dated January 10, 2017, indicated that the agreement was not filed with the Department and appeared to be designed to evade the filing requirements of Article 15 of the New York Insurance Law. The transactions under this commission agreement were deemed material such that the commission agreement was required to be filed with the Department pursuant to Section 1505(d)(4) of the New York Insurance Law. It is recommended that the Company comply with Section 1505(d)(4) of the New York Insurance Law. It is also recommended that the Company comply with the terms of its commission agreement with ASI. As noted above, BCMS merged into ASI on October 3, 2019.

Commission Agreement – Better Claims Management Solutions

American T acquired BCMS on May 1, 2015. The Company and BCMS sought to enter into a Service and Expense Agreement. The Company's outside counsel submitted a BCMS Service and Expense Agreement to the Department on October 28, 2015. This Service and Expense Agreement was not approved

by the Department due to the calculation of expense reimbursement not being deemed fair and equitable. As previously noted, BCMS merged into ASI on October 3, 2019.

Tax Allocation Agreement

In 2008, the Company entered into a tax allocation agreement with its parent, American T, and other members of the holding company to file consolidated tax returns under the provision of Section 1504(a) of the Internal Revenue Code of 1986, as amended. Tax liability/refund for the subsidiaries will be computed using the separate company method. The agreement states that, if the subsidiary pays an amount in excess of the tax payment made by the parent to the Internal Revenue Service, the excess amount will be held in an escrow account. The escrow account will be established and maintained by the parent and will be used for all settlements between the subsidiary and the parent.

This agreement was approved in accordance with Section 1505 of the New York Insurance Law on July 23, 2008.

Transit Maintenance Corporation

Transit Maintenance Corporation is a wholly owned subsidiary of American T, the Company's parent. Transit Maintenance Corporation provided maintenance services for the Company's offices during the examination period without the benefit of an agreement. The Company paid Transit Maintenance Corporation \$173,473 in expenses in 2019.

Section 1505(d)(3) of the New York Insurance Law states, in part:

“(d) The following transactions between a domestic controlled insurer and any person in its holding company system may not be entered into unless the insurer has notified the superintendent in writing of its intention to enter into any such transaction at least thirty days prior thereto . . . or such shorter period as the superintendent may permit, and the superintendent has not disapproved it within such period: . . .

(3) rendering of services on a regular or systematic basis . . .”

In addition, Section 80-1.5 of Department Regulation 52 states, in part:

“(a) . . . notices of proposed transactions pursuant to Insurance Law section 1505(d), shall be accompanied by descriptions of the essential features of such transactions that are reasonably adequate to permit proper evaluation thereof by the superintendent.

(b) Such descriptions shall in all cases include at least the following:

- (1) the nature and purpose of the transaction;
- (2) the nature and amounts of any payments or transfers of assets between the parties;
- (3) the identities of all parties to such transaction and whether any officers or directors of a party are pecuniarily interested therein; and
- (4) copies of any contracts, agreements or memoranda of understanding between the parties relating to the transaction ...”

It is recommended that a maintenance agreement between Transit Maintenance Corporation and the Company be committed to writing and submitted to the Superintendent, pursuant to Section 1505(d)(3) of the New York Insurance Law and Department Regulation 52.

Global Biomechanical Solutions, Inc.

During the examination period, Ralph Bisceglia, a controlling shareholder of American T and Company board member, and Catherine McGettigan, a controlling shareholder of American T and daughter-in-law of the Company’s co-founder, Edward T. McGettigan, Sr., had controlling interests in Global Biomechanical Solutions, Inc. (“GBS”). As controlling members of American T, the Company’s parent, transactions between the insurance company and entities owned by controlling members of the holding company fall within the purview of Article 15 of the New York Insurance Law and Department Regulation 52, and are required to be submitted to the Superintendent. During the one-year examination period, ATIC paid GBS \$1,560,504 in fees.

It is recommended that an agreement between GBS and the Company be committed to writing and submitted to the Superintendent, pursuant to Section 1505(d)(3) of the New York Insurance Law and Department Regulation 52.

E. Significant Ratios

The Company’s operating ratios, computed as of December 31, 2019, fall outside the benchmark ranges set forth in the Insurance Regulatory Information System of the NAIC.

<u>Operating Ratios</u>	<u>Result</u>	<u>Benchmark Range</u>
Net premiums written to policyholders’ surplus	N/A	Not greater than 300%
Adjusted liabilities to liquid assets	377.8%	Not greater than 100%
Two-year overall operating	216.8%	Not greater than 100%

The net premiums written to policyholders' surplus ratio was not computed because it is not meaningful due to the Company's negative surplus, as determined by this examination.

Underwriting Ratios

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

	<u>Amount</u>	<u>Ratio</u>
Losses and loss adjustment expenses incurred	\$1,048,431,121	309.2%
Other underwriting expenses incurred	95,508,467	28.2%
Net underwriting gain (loss)	<u>(804,888,003)</u>	<u>(237.4)%</u>
Premiums earned	<u>\$ 339,051,585</u>	<u>100.0%</u>

The Company's reported risk-based capital ("RBC") score was 208.2% at December 31, 2019. 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.

The examination adjustments of \$798,476,819 resulted in an RBC score of less than zero, which triggered a mandatory control level event as defined in Section 1324 of the New York Insurance Law.

F. Accounts and Records

The examiner notes the following deficiencies:

- i) Section 1411(a) of the New York Insurance Law states:

"No domestic insurer shall make any loan or investment, except as provided in subsection (h) hereof, unless authorized or approved by its board of directors or a committee thereof responsible for supervising or making such investment or loan. The committee's minutes shall be recorded and a report submitted to the board of directors at its next meeting."

As of December 31, 2019, ATIC did not have a written "Investment Policy." Additionally, a review of the board minutes revealed that the board of directors did not approve any of its investment transactions during the examination period. It is recommended that the Company's board of directors, or its investment committee, approve all of the Company's investment transactions, as required by Section 1411(a) of the New York Insurance Law.

ii) Section 4117(g) of the New York Insurance Law states, in part:

“(1) Effective with the nineteen hundred ninety annual statement every licensed property/casualty insurer required to file such annual statement with the superintendent by the following April first, shall, unless exempted by the superintendent, engage a qualified independent loss reserve specialist for the following year to render an opinion as to the adequacy of its loss and loss adjustment expense reserves when two of three of such insurer’s results of its loss and loss adjustment expense ratio . . . [One Year Reserve Development to Surplus, Two Year Reserve Development to Surplus and/or Estimated Current Reserve Deficiency to Surplus]... are outside of the indicated acceptable ranges . . .

(2) Such opinion shall be submitted by the qualified loss reserve specialist to the insurer and the superintendent, by such date established by the superintendent.”

For the year ended December 31, 2018, ATIC’s results on two or more of the IRIS loss ratios were outside the acceptable range. Accordingly, the Company was required to have its 2019 Statement of Actuarial Opinion (“SAO”) completed by an independent consulting actuary and have the SAO filed with the Department by March 1, 2020. The Company did not file its 2019 SAO with the Department until September 1, 2020, six months after the required filing date. Likewise, the underlying actuarial report was submitted to the Department on November 20, 2020, over six months after the May 1, 2020 due date. This has been a habitual practice for over a decade in which the Company has filed actuarial documents a few weeks to several months late, requiring extensive intervention by the Department to obtain these documents. Subsequent to the examination period, after repeated requests by the Department, the Company appointed a new actuary.

It is recommended that the Company comply with all the filing requirements of Section 4117(g) of the New York Insurance Law. Subsequent to the examination period, the Company has complied with the filing requirements of Section 4117(g) of the New York Insurance Law.

G. Risk Management and Internal Controls - Enterprise Risk Management System

Section 1503(b) of the New York Insurance Law states:

“A holding company that directly or indirectly controls an insurer shall adopt a formal enterprise risk management function and shall file an enterprise risk report with the superintendent by April thirtieth of each year. The report shall, to the best of the holding company’s knowledge and belief, identify the material risks within the holding company system that could pose enterprise risk to the insurer.”

The examination of ATIC’s corporate records and internal controls found that the Company failed to maintain written records in support of a fully functioning enterprise risk management system, as required by Section 1503 of the New York Insurance Law and Department Regulation 203. The Company should take appropriate measures to both adopt and document a fully functioning enterprise risk management system and submit the requisite enterprise risk report to the Superintendent, as required by Section 1503 of the New York Insurance Law and Regulation 203.

In addition, Department Regulation 203 (11 NYCRR 82) states, in part:

“(a) Pursuant to Insurance Law sections 1503(b) . . . an entity shall adopt a formal enterprise risk management function that identifies, assesses, monitors, and manages enterprise risk . . . The enterprise risk management function shall be appropriate for the nature, scale, and complexity of the risk and shall adhere to the following, as relevant:

- (1) have an objective enterprise risk management function headed by an appropriately experienced individual with the requisite authority and who has access to the board of directors . . . and senior management;
- (2) have a written risk policy adopted by the respective board or a committee thereof . . . that delineates the insurer’s, holding company system’s . . . risk/reward framework, risk tolerance levels, and risk limits;
- (3) provide a process for the identification and measurement of risk under a sufficiently wide range of outcomes using techniques that are appropriate to the nature, scale, and complexity of the risks the insurer, holding company system, article 16 system, or article 17 system bears and are adequate for capital management and solvency purposes;
- (4) have a process of risk identification and measurement supported by documentation that provides appropriately detailed descriptions and explanations of risks identified, the measurement approaches used, key assumptions made, and outcomes of any plausible adverse scenarios that were run; . . .

- (6) incorporate risk tolerance levels and limits in the policies and procedures, business strategy, and day-to-day strategic decision-making processes;
- (7) consider a risk and capital management process to monitor the level of financial resources relative to economic capital and regulatory capital requirements;
- (8) incorporate investment policy, asset-liability management policy, effective controls on internal models, longer-term continuity analysis, and feedback loops to update and improve the enterprise risk management function continuously;
- (9) address all reasonably foreseeable and relevant material risks including, as applicable, insurance, underwriting, asset-liability matching, credit, market, operational, reputational, liquidity, and any other significant risks;
- (10) include an assessment that identifies the relationship between risk management and the level and quality of financial resources necessary as determined with quantitative and qualitative metrics; and
- (11) identify, quantify, and manage any risks to which the insurer may be exposed by transactions or affiliations with any other member of the holding company system . . .

(b)(1) Pursuant to Insurance Law sections 1503(b) . . . an entity shall file electronically a confidential enterprise risk report with the superintendent . . . each year and . . . identify therein the material risks . . . that could pose enterprise risk to the insurer . . .

(2) The report required to be filed by paragraph (1) of this subdivision shall provide information regarding the following areas that could produce enterprise risk, provided that the information has not already been disclosed in a registration statement filed pursuant to Insurance Law section 1503(a) . . . during the prior 12 months:

(i) any material developments regarding strategy, internal audit findings, compliance or risk management affecting the insurer, holding company system . . .

(v) the business plan of the insurer, holding company system . . . and a summary of the insurer's or system's strategies for the next 12 months . . .

(vii) the identification of capital resources and material distribution patterns with regard to the insurer, holding company system . . .”
(Emphasis added.)

The examination found that ATIC did not have a written strategic plan, business plan, or capital management process, failed to maintain documentation in support of its enterprise risk management function, and did not have a written risk policy adopted by its board of directors.

The examination also found that ATIC only has one board meeting a year, management is centralized in a small number of executives, internal controls appear weak, there is no internal audit department, loss reserves and premium rates are not set pursuant to actuarial standards, investments are not ratified by the board of directors, there is no written investment policy, and there are no conflict of interest statements completed by board members or officers. The Company acknowledged a lack of written procedures and stated that its enterprise risk management program was a work in progress.

Further, the lack of internal controls over the Company's financial reporting function continued to impact the Company as its filed financial statements contained numerous and repeated errors, including but not limited to, no aging of accounts receivable, unrecorded liabilities, incomplete disclosure of related party transactions, claim counts missing from Schedule P, and Schedule Y not accurately completed. The Company should enhance its internal control structure to ensure proper and accurate financial reporting.

H. Affiliated Expenses and Officer Bonuses

As described in section 2D of this report, the Company and ASI have a commission agreement wherein ASI may receive a commission up to 12% for producing insurance business for ATIC. ASI uses ATIC office space, equipment, and personnel. However, there is no separate expense agreement, and the commission agreement is silent as to sharing expenses for these items. ASI does not appear to have any underlying costs. In 2019, ATIC paid ASI \$18,759,267 in commissions despite the fact that there does not appear to have been any policies produced by ASI. In addition to the commissions paid to ASI, ATIC paid a varying commission of approximately 8-10% to the originating independent brokers for the same business. Without providing any evidence, the Company now contends that amounts received by ASI were reinvested in American T. for, *inter alia*, capital and surplus contributions to the Company, holding company system taxes, and expenses. The Company also contends that some of the money reinvested in American T. were distributed as dividends to its shareholders in accordance with the shareholders' respective interests. No documentation was provided to support any of these contentions. ATIC did not pay dividends to its sole shareholder, American T, during the examination period. However, American T, through its ownership of ASI, indirectly received funds from the Company through ASI's commission agreement with the Company. The examination found no purpose for ASI other than to receive commissions from the Company.

As described in section 2D of this report, during the examination period, ATIC paid GBS fees totaling \$1,560,504. Ralph Bisceglia and Catherine McGettigan have controlling interests in GBS. It is unclear what additional value or services GBS provides to ATIC that ATIC cannot perform itself. The Company now contends that ATIC paid GBS \$1,560,504 to cover GBS' operating expenses, including salaries and reimbursements to expert witnesses and biomechanical engineers. No documentation was provided to support this contention.

A total of \$1,680,289 was given out in bonuses in 2019 to five officers of the Company, in addition to their salaries. Considering the Company's precarious financial condition, these bonuses appear to be excessive. The total compensation of ATIC's management appears to be based on premium volume (see prior discussion of ASI) rather than underwriting results.

All of the above expenses were paid to management and affiliates of the Company without any apparent reasonable business justification while, at the same time, management was filing financial statements that did not accurately reflect the Company's true financial condition. By authorizing these payments, management put the interests of affiliated parties - specifically ASI, GBS, and five officers of the Company - ahead of the interests of the Company's policyholders and claimants. It is recommended that the Company recover the above expense amounts paid in 2019, which total \$22,000,060. The Company now contends that it received fair value for the amounts paid to affiliated entities and that total annual compensation to Company executives, including bonus amounts, is in-line with market rate compensation. No documentation was provided to support this contention.

3. FINANCIAL STATEMENTS

A. Balance Sheet

The following shows the assets, liabilities, and surplus as regards policyholders as of December 31, 2019, as reported by the Company:

Assets

	<u>Assets</u>	<u>Assets Not Admitted</u>	<u>Net Admitted Assets</u>
Bonds	\$186,992,443	\$ 0	\$186,992,443
Preferred stock	424,565	0	424,565
Common stocks	24,110,900	0	24,110,900
Real estate - Properties occupied by the Company	4,300,000	0	4,300,000
Cash, cash equivalents and short- term Investments	45,640,949	0	45,640,949
Investment income due and accrued	1,691,908	0	1,691,908
Uncollected premiums and agents' balances in the course of collection	13,125,668	0	13,125,668
Deferred premiums, agents' balances and installments booked but deferred and not yet due	53,706,632	0	53,706,632
Net deferred tax asset	3,988,152	0	3,988,152
Electronic data processing equipment and Software	298,616	298,616	0
Security deposit	645,899	645,899	0
Other receivables	1,018,065	0	1,018,065
Advances to employees	<u>15,193</u>	<u>0</u>	<u>15,193</u>
Total assets	<u>\$335,958,989*</u>	<u>\$944,514*</u>	<u>\$335,014,475</u>

*Rounding difference of \$1

Liabilities, Surplus, and Other FundsLiabilities

Losses and loss adjustment expenses	\$163,000,000
Commissions payable, contingent commissions and other similar charges	3,607,004
Other expenses (excluding taxes, licenses and fees)	5,464,138
Unearned premiums	72,135,994
Amounts withheld or retained by company for account of others	(646,108)
Drafts outstanding	340,488
Payable to parent, subsidiaries and affiliates	<u>6,367</u>
 Total liabilities	 \$243,907,883

Surplus and Other Funds

Common capital stock	\$ 1,000,000
Gross paid in and contributed surplus	111,981,721
Unassigned funds (surplus)	<u>(21,875,130)</u>
 Surplus as regards policyholders	 <u>91,106,592</u>
 Total liabilities, surplus and other funds	 <u>\$335,014,475</u>

Note: The Internal Revenue Service has not audited the Company's consolidated federal income tax return for the examination year. 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 (loss) for the one-year examination period as reported by the Company was \$(6,854,957), as detailed below:

Underwriting Income

Premiums earned		\$339,051,585
Deductions:		
Losses and loss adjustment expenses incurred	\$260,631,121	
Other underwriting expenses incurred	<u>95,508,467</u>	
Total underwriting deductions		<u>356,139,588</u>
Net underwriting gain or (loss)		\$ (17,088,004)*

Investment Income

Net investment income earned	\$ 6,135,920	
Net realized capital gains or (losses)	<u>(609,540)</u>	
Net investment gain or (loss)		5,526,380

Other Income

Finance and service charges not included in premiums	\$ 7,011,120	
Miscellaneous income	194,566	
File copy fees	<u>728,582</u>	
Total other income or (loss)		<u>7,934,268</u>
Net income before federal and foreign income taxes		\$ (3,627,355)*
Federal and foreign income taxes incurred		<u>3,227,602</u>
Net income (loss)		\$ <u>(6,854,957)</u>

*Rounding adjustment of \$1

C. Capital and Surplus

Surplus as regards policyholders decreased \$2,643,135 during the one-year examination period as reported by the Company, detailed as follows:

Surplus as regards policyholders as reported by the Company as of December 31, 2018			\$93,749,728
	<u>Gains in Surplus</u>	<u>Losses in Surplus</u>	
Net income		\$ 6,854,957	
Net unrealized capital gains or losses	\$2,501,906		
Change in net deferred income tax	2,194,876		
Change in non-admitted assets	32,405		
Surplus adjustments paid in	5,000,000		
Prior period adjusting journal entry		1,266,930	
Elimination of receivable	<u>0</u>	<u>4,250,435</u>	
Total gains and losses	\$9,729,187	\$12,372,322	
Net increase (decrease) in surplus			<u>(2,643,135)</u>
Surplus as regards policyholders as reported by the Company as of December 31, 2019			<u>\$91,106,593</u>

At December 31, 2019, capital paid in was \$1,000,000 consisting of 1,000 shares of common stock at \$1,000 par value per share. Gross paid in and contributed surplus was \$111,981,721, which increased by \$5,000,000 during the one-year examination period due to a surplus contribution from the Company's parent.

D. Analysis of Changes to Surplus

Surplus as regards policyholders as of December 31, 2019, as reported by the Company			\$ 91,106,593
	<u>Surplus Increase</u>	<u>Surplus Decrease</u>	
Examination change in loss and loss adjustment expense reserves	\$0	\$787,800,000	
Examination change in net deferred tax asset	0	3,988,152	
CPA adjustments noted in the audited financial Statements	<u>0</u>	<u>6,688,667</u>	
Total increases and decreases	\$0	\$798,476,819	
Net increase (decrease) in surplus			<u>(798,476,819)</u>
Surplus at December 31, 2019, per report on examination			<u>\$(707,370,226)</u>

This examination has determined that, as of December 31, 2019, the Company was insolvent in the amount of \$707,370,226 and its capital was impaired in the amount of \$708,370,226. Additionally, the Company's minimum required to be maintained surplus of \$500,000 was impaired in the amount of \$707,870,226. The Company objects to the magnitude of the examination adjustments referenced in this report. No specific details or documentation were provided to support their objection. Furthermore, the Company's position is contradicted by the Company's own loss reserve development as set forth in section 6 of this report.

E. Analysis of Changes to Income

Net income for the examination period, as reported by the Company			\$ (6,854,957)
	<u>Income Increase</u>	<u>Income Decrease</u>	
Examination change in loss and loss adjustment expense reserves	\$0	\$787,800,000	
CPA adjustments noted in the audited financial statements	<u>0</u>	<u>6,646,730</u>	
Total increases and decreases	\$0	\$794,446,730	
Net increase (decrease) in income			<u>(794,446,730)</u>
Net income (loss) for the examination period, per report on examination			<u>\$(801,301,687)</u>

4. NET DEFERRED TAX ASSET

The Company reported an admitted asset under this caption in the amount of \$3,988,152 as of the examination date. The Company's RBC ratio, based on the financials determined by this examination, is below 200%. The NAIC Accounting Practices and Procedures Manual, Statement of Statutory Principles ("SSAP") No. 101 does not permit an insurer with an RBC ratio of less than 200% to admit any portion of a net deferred tax asset. As such, the captioned admitted asset as of December 31, 2019 has been non-admitted in its entirety.

5. ADJUSTMENTS NOTED IN THE AUDITED FINANCIAL STATEMENTS

The 2019 audited financial statements included various adjustments to the Company's annual statement. These adjustments are noted in the table below:

	Surplus as regards <u>policyholders</u>	<u>Net income (loss)</u>
<u>CPA adjustment:</u>		
Increase in cash	\$11,114,336	--
Increase due from parent and affiliates	2,142,423	\$ 277,325
Decrease in premiums receivable	(15,572,571)	(6,426,516)
Decrease unpaid expenses, taxes, etc.	1,690,107	(59,234)
Decrease in other assets	(1,119,258)	(86,000)
Decrease in subrogation recoverable	4,068,846	(77,580)
Increase in non-admitted assets	--	(400,901)
Increase in deferred tax assets ¹	490,889	--
Increase in drafts outstanding	(9,585,642)	88,541
Decrease in commission payable	2,459,837	(574,566)
Decrease in accrued investment income	170	978,976
Decrease in funds held	(646,107)	--
Decrease in federal taxes payable	3,349,740	4,714,662
Increase in unearned premium	<u>(5,081,437)</u>	<u>(5,081,437)</u>
Total adjustments	<u>\$(6,688,667)</u>	<u>\$(6,646,730)</u>

¹ As noted in section 4 of this report, the Department is not recognizing a deferred tax asset. For simplicity, the examiner is not eliminating the auditor's increase to the net deferred tax asset and the resultant increase in surplus.

As outlined above, Bonamassa, Maietta & Cartelli, LLP (“BMC”), an external audit firm engaged by the Company, decreased the amount that the Company reported as surplus to policyholders by \$6,688,667, and increased the net loss reported by the Company by \$6,646,730. As such, the audited financial statements as of December 31, 2019 reflects surplus to policyholders of \$84,417,925 and a net loss of \$13,501,687. Even after BMC identified the above adjustments in the 2019 audited financial statements, BMC issued a disclaimer of opinion. According to the Statements on Auditing Standards issued by the American Institute of Certified Public Accountants, a disclaimer of opinion is required when “(t)he auditor ... is unable to obtain sufficient appropriate audit evidence on which to base the opinion, and the auditor concludes that the possible effects on the financial statements of undetected misstatements, if any, could be both material and pervasive.” For at least the last four years, any audit report issued relative to the Company included a disclaimer of opinion by the Company’s auditors.

6. LOSSES AND LOSS ADJUSTMENT EXPENSES

The examination liability for the captioned items of \$950,800,000 is \$787,800,000 more than the \$163,000,000 reported by the Company in its filed annual statement as of December 31, 2019. The examination analysis of the loss and loss adjustment expense reserves was conducted in accordance with generally accepted actuarial standards and practices, as well as statutory accounting principles, including SSAP No. 55.

The deficiency in the Company’s carried reserves as of December 31, 2019 is severely material. As the Company’s reported surplus as of December 31, 2019 was \$91,106,592, the \$787,800,000 reserve deficiency implies an insolvency of \$696,693,408 as of December 31, 2019.

Additionally, the reserve analysis completed by the Department as of December 31, 2018 also found the Company’s reported reserves to be severely deficient. The Department concluded that, as of December 31, 2018, the Company’s liability for loss and loss adjustment expenses of \$145,000,000 was understated by \$726,800,000. As the Company’s reported surplus as of December 31, 2018 was \$93,749,728, the \$726,800,000 deficiency indicates that the Company was insolvent by \$633,050,272 as of December 31, 2018.

The Department had also performed an analysis of the Company’s loss and loss adjustment expense reserves as of December 31, 2013. The Department concluded that the Company’s liability for loss and loss adjustment expenses of \$47,100,000 was understated by \$285,100,000. The understatement included

consideration of a premium deficiency liability of \$1,300,000. As the Company's reported surplus as of December 31, 2013 was \$30,702,464, the \$285,100,000 deficiency implied that the Company was insolvent by \$254,397,536 as of December 31, 2013.

The Company's own reported adverse loss and loss adjustment expense reserve development through December 31, 2020 for accident years 2013 and prior was \$279,743,000, which is essentially equivalent to the Department's projected loss and loss adjustment expense deficiency of \$285,100,000 as of December 31, 2013. The total deficiency of \$279,743,000 is comprised of \$274,084,000 of adverse development on loss and defense and cost containment expenses and \$5,659,000 of adverse development on adjusting and other expenses.

If the Company had initially booked reserves for accident year 2013 and prior at year-end 2013 that included the adverse development that was booked as of December 31, 2020, it would have reported itself insolvent in the amount of \$249,040,536 at December 31, 2013. A similar calculation for years 2014 through 2019 reveals that, if the Company had included the self-reported adverse development through December 31, 2020 in its initial reserves, it would have reported itself insolvent each and every year from 2014 through 2019. This is demonstrated in the table below (\$000 omitted).

<u>(1)</u> <u>Year</u>	<u>(2)</u> <u>Reserves *</u> <u>Reported at</u> <u>Year-End</u>	<u>(3)</u> <u>Surplus</u> <u>Reported at</u> <u>Year-End</u>	<u>(4)</u> <u>Adverse Development</u> <u>recorded through</u> <u>December 31, 2020 for</u> <u>relevant accident years</u>	<u>(5) = (3) + (4)</u> <u>Adjusted Surplus</u>
2014	\$ 47,655	\$40,270	\$(324,631)	\$(284,361)
2015	\$ 60,655	\$50,296	\$(357,158)	\$(306,862)
2016	\$ 93,000	\$63,499	\$(385,078)	\$(321,579)
2017	\$135,500	\$76,804	\$(378,464)	\$(301,660)
2018	\$145,000	\$93,750	\$(323,762)	\$(230,012)
2019	\$163,000	\$91,107	\$(188,442)	\$ (97,335)

* "Reserves" include net Losses & Defense and Cost Containment expenses & Adjusting and Other expenses.

It is important to note that the adverse development indicated in the table above only reflects the Company's self-reported adverse development through December 31, 2020. The table serves to demonstrate the Company's consistent pattern of under-reserving. It also serves to demonstrate that, if the Company had reported adequate loss and loss adjustment expense reserves initially, it would have reported itself insolvent each year from 2014 through 2019. It is further noted that the Company consistently suppresses its initial reserve liabilities.

Since 1989, the Company has engaged in a long-term practice of consistently booking unrealistically low initial reserves, especially for the more recent (less mature) years, which results in a consistently overstated surplus. This practice results in material adverse development of its reported reserves as is demonstrated in the Reported-to-date to Initial Reported accident year ratios that range from a low of 130% (the least mature year) to a high of 407%. This is depicted in the table below, with information extracted from the Company's 2020 Annual Statement, Schedule P, Part 2 Summary (\$000 omitted).

(1)	(2)	(3)	(4) = (2) – (3)	(5) = (3)/(2)
<u>Years in which Losses Were Incurred (Accident Year)</u>	<u>Incurred Losses * Initially Reported By Accident Year</u>	<u>Incurred Losses * Reported as of December 31, 2020</u>	<u>Adverse Development by Accident Year(s)</u>	<u>Ratio = (Incurred Losses reported as of December 31, 2020)/ (Incurred Losses initially reported)</u>
All Prior Years	\$83,156	\$204,693	\$(121,537)	246.2%
2011	\$48,701	\$123,703	\$ (75,002)	254.0%
2012	\$44,657	\$126,715	\$ (82,058)	283.8%
2013	\$45,220	\$137,564	\$ (92,344)	304.2%
2014	\$34,367	\$139,875	\$(105,508)	407.0%
2015	\$43,785	\$154,304	\$(110,519)	352.4%
2016	\$58,823	\$178,360	\$(119,537)	303.2%
2017	\$72,002	\$172,043	\$(100,041)	238.9%
2018	\$78,539	\$140,624	\$ (62,085)	179.0%
2019	\$72,586	\$ 94,999	\$ (22,413)	130.9%

* "Incurred Losses" include net losses & defense and cost containment expenses.

The Company's appointed actuary issued an SAO stating that the Company's loss and loss adjustment expense reserve liabilities as of December 31, 2019 were deficient. The SAO stated that the Company's \$163,000,000 provision for unpaid loss and loss adjustment expenses was \$387,000,000 less than the minimum amount necessary to be within the range of reasonable estimates for such unpaid loss and loss adjustment expenses. Had this amount been reported by the Company in its 2019 filed annual statement, the Company would have reported itself insolvent in the amount of \$295,893,408. The Company's appointed actuary issued a deficient opinion in each year from 2014 through 2019.

The Company's independent auditors issued a disclaimer of opinion for the 2019 calendar year and for each year from 2014 through 2018. The reasons for the 2019 disclaimer included a failure to obtain the 2019 independent actuarial report, a rejection of the 2018 independent actuarial report, and the inability to perform sufficient auditing procedures to satisfy themselves of the adequacy of the reserve liabilities. The reasons for the 2018 disclaimer were rejections of the independent 2017 and 2018 actuarial reports, as well

as the inability to perform sufficient auditing procedures. Similarly, the Company's independent auditor issued disclaimer of opinions for 2014 through 2017 for the same reasons. According to the Statements on Auditing Standards issued by the American Institute of Certified Public Accountants, a disclaimer of opinion is required when "(t)he auditor ... is unable to obtain sufficient appropriate audit evidence on which to base the opinion, and the auditor concludes that the possible effects on the financial statements of undetected misstatements, if any, could be both material and pervasive." The consistent issuance of disclaimers of opinion by the Company's independent auditors implies that the Company's financial statements, particularly the reserve liabilities included therein, are not reliable.

The Company's loss and loss adjustment expense liabilities are severely understated and mask a significant insolvency. This statement is supported by the Department's analysis, the opinion of the Company's appointed actuary, the disclaimer opinions of the Company's independent auditor, and the Company's historical reported reserve development. The Company's failure to maintain a reasonable reserve liability is not in compliance with applicable statutory requirements. Section 1303 of the New York Insurance Law states, in part:

"Every insurer shall . . . maintain reserves in an amount estimated in the aggregate to provide for the payment of all losses or claims incurred on or prior to the date of statement, whether reported or unreported, which are unpaid as of such date and for which such insurer may be liable, and also reserves in an amount estimated to provide for the expenses of adjustment or settlement of such losses or claims."

Additionally, SSAP No. 55, Paragraph 10, states in part that:

"The liability for claim reserves and claim liabilities, unpaid losses, and loss/claim adjustment expenses shall be based upon the estimated ultimate cost of settling the claims (including the effects of inflation and other societal and economic factors), using past experience adjusted for current trends, and any other factors that would modify past experience"

It is recommended that the Company immediately address these ongoing reserving inadequacies and increase its carried reserves to an appropriate level, pursuant to the provisions of Section 1303 of the New York Insurance Law and Paragraph 10 of SSAP No. 55.

Subsequent to the examination date, the Company changed its appointed actuary. The newly appointed actuary also issued a deficient opinion on the adequacy of the Company's loss and loss adjustment expense liabilities as of December 31, 2020. The opinion stated that the Company's \$190,000,000 loss and loss adjustment expense reserve is \$508,793,000 less than the minimum amount

necessary to be within the range of reasonable estimates. An increase in the reserve liabilities by the \$508,793,000 deficiency results in an insolvency of \$430,981,515 as of December 31, 2020.

7. SUBSEQUENT EVENTS

On March 11, 2020, the World Health Organization declared an outbreak of a novel coronavirus (“COVID-19”) pandemic. The pandemic presented significant uncertainty to the U.S. and global insurance and reinsurance industry, with the full effect of COVID-19 still unknown. The Department has been in communication with the Company regarding the impact of COVID-19 on its operations and financial position.

8. CONCLUSION

This examination has determined that, as of December 31, 2019, the Company was insolvent in the amount of \$707,370,226 and its capital was impaired in the amount of \$708,370,226. Additionally, the Company’s minimum required to be maintained surplus of \$500,000 was impaired in the amount of \$707,870,226.

The Company is directed to provide a remediation plan within 30 days of receipt of this report on examination that is acceptable to the Superintendent and that will cure the Company’s insolvency in a timely manner.

9. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Insolvency</u>	
i. This examination has determined that as of December 31, 2019 the Company was insolvent in the amount of \$707,370,226 and its capital was impaired in the amount of \$708,370,226. Additionally, the Company's minimum required to be maintained surplus of \$500,000 was impaired in the amount of \$707,870,226.	23, 29
ii. The Company is directed to provide a remediation plan within 30 days of receipt of this report on examination that is acceptable to the Superintendent and that will cure the Company's insolvency in a timely manner.	29
B. <u>Corporate Governance</u>	
i. It is recommended that ATIC maintain a minimum of 13 board members at all times to comply with its corporate by-laws.	4
ii. It is recommended that ATIC's board of directors adopt a conflict of interest policy in accordance with NAIC guidelines and its own corporate by-laws.	5
iii. It is recommended that ATIC procure adequate fidelity bond coverage to properly safeguard its assets.	5
C. <u>Holding Company System</u>	
i. It is recommended that, on a prospective basis, the Company identify all related parties in its holding company registration statement, as required by Part 80-1.4 of Regulation 52.	7
ii. It is recommended that the Company annually file a consolidated balance sheet and the audited financial statements of the ultimate holding company and significant entities within the holding company system, in accordance with Section 80-1.4(c) of Department Regulation 52.	8
iii. It is recommended that the Company take appropriate measures to assure its separate operating identity from its affiliates, in accordance with Section 1507(a) of the New York Insurance Law.	8
iv. It is recommended that, if the Company's employees are to provide services to multiple companies within the American T holding company system, or if the Company receives services from affiliated entities, a cost sharing agreement be filed with the Superintendent, pursuant to Section	9

<u>ITEM</u>	<u>PAGE NO.</u>
1505(d)(3) of the New York Insurance Law and Department Regulation 52.	
v. It is recommended that the Company comply with Section 1505(d)(4) of the New York Insurance Law.	10
vi. It is recommended that the Company comply with the terms of its commission agreement with ASI.	10
vii. It is recommended that a maintenance agreement between Transit Maintenance Corporation and the Company be committed to writing and submitted to the Superintendent, pursuant to Section 1505(d)(3) of the New York Insurance Law and Department Regulation 52.	12
viii. It is recommended that an agreement between GBS and the Company be committed to writing and submitted to the Superintendent, pursuant to Section 1505(d)(3) of the New York Insurance Law and Department Regulation 52.	12
D. <u>Accounts and Records</u>	
i. It is recommended that the Company’s board of directors, or its investment committee, approve all of the Company’s investment transactions, as required by Section 1411(a) of the New York Insurance Law.	13
ii. It is recommended that the Company comply with all the filing requirements of Section 4117(g) of the New York Insurance Law.	14
Subsequent to the examination period, the Company has complied with the filing requirements of Section 4117(g) of the New York Insurance Law.	
E. <u>Risk Management and Internal Controls</u>	
i. The Company should take appropriate measures to both adopt and document a fully functioning enterprise risk management system and submit the requisite enterprise risk report to the Superintendent, as required by Section 1503 of the New York Insurance Law and Regulation 203.	15
ii. The Company should enhance its internal control structure to ensure proper and accurate financial reporting.	17

<u>ITEM</u>		<u>PAGE NO.</u>
F.	<u>Affiliated Expenses and Officer Bonuses</u>	
	It is recommended that the Company recover the expense amounts paid in 2019, which total \$22,000,060.	18
G.	<u>Losses and Loss Adjustment Expenses</u>	
	It is recommended that the Company immediately address these ongoing reserving inadequacies and increase its carried reserves to an appropriate level, pursuant to the provisions of Section 1303 of the New York Insurance Law and Paragraph 10 of SSAP No. 55.	28

Respectfully submitted,

_____/S/_____

Joseph Rome, CFE
Consulting Examiner-in-Charge

STATE OF LOUISIANA)

)ss:

PARISH OF LIVINGSTON)

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

_____/S/_____

Joseph Rome

Subscribed and sworn to before me

this _____ day of _____, 2024.

APPOINTMENT NO. 32164

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:

Joseph Rome

as a proper person to examine the affairs of the

American Transit 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*

3rd day of December, 2020

*LINDA A. LACEWELL
Superintendent of Financial Services*



By:

Joan Riddell

*Joan Riddell
Deputy Bureau Chief*

KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

May 17, 2024

Cisca Hung, Chief Compliance and Risk Officer
American Transit Insurance Company
5 Broadway
Freeport, NY 11520

Re: American Transit Insurance Company (“ATIC” or the “Company”)
Addendum to the Report on Examination as of December 31, 2019 (“Report”)

Dear Ms. Hung:

On April 3, 2024, pursuant to Section 311 of the Insurance Law, the Department of Financial Services (the “Department”) transmitted the Report to ATIC. By an email dated April 12, 2024, ATIC requested permission to submit a statement and records to clarify only the findings in the Report regarding the amounts paid, directly or indirectly, by ATIC to ATIC Security Inc. (“ASI”) and Global Biomechanical Solutions Inc. (“GBS”) during the examination period (“Supplemental Submission”). ATIC indicated that it would provide that information by April 26, 2024. Although such clarifying information should have been provided during the examination, in response to the draft Report provided to ATIC on January 26, 2024, or in connection with the closing conference held on February 26, 2024, the Department agreed to accept the Supplemental Submission. The Department conditioned its agreement to ATIC’s proposal on ATIC’s providing a comprehensive Supplemental Submission that addressed specific issues with supporting documentation by April 26, 2024.

ATIC failed to provide the Supplemental Submission by that date and, three days later, on April 29, 2024, the Department advised ATIC that the Report was final and not subject to further revision. A copy of the final Report was provided to ATIC at that time. After the Report was finalized, ATIC submitted the Supplemental Submission and requested that the Department revise the now final Report to reflect the additional information.

As the Department previously advised ATIC, the Report is final and not subject to further revision. This letter reflects the Department’s assessment of the Supplemental Submission and will be appended to the Report as an addendum to reflect the clarifications to the Report findings regarding ATIC’s payments to ASI and GBS that are warranted, in the Department’s assessment, by the Supplemental Submission.

The Supplemental Submission was not comprehensive, omitting a substantial amount of the support for the disposition of the funds ATIC paid to its affiliates. Although ATIC provided a spreadsheet representing how ATIC's payments to its affiliates were ultimately used, supporting documentation for many of these payments was missing.

The Report concluded that ATIC paid ASI substantial commissions throughout the examination period in addition to the 8-10% commissions ATIC paid to originating brokers for the same business. As such, the Report questioned whether ASI performed any work to earn the commissions it received from ATIC or whether the commission agreement was just a vehicle to divert money from ATIC to ATIC's executives or affiliates either owned by ATIC's parent or directly owned by executives of ATIC.

The Supplemental Submission does not change the core findings regarding ATIC's affiliate payments. At best, the Supplemental Submission represents that some of the money paid to ATIC's affiliates was used to pay for ATIC's expenses or ultimately used by American T. Inc. ("American T") to make capital contributions to ATIC. While this portion of expenses remain insufficiently documented and unverified, even if accurate, there remains no reasonable business justification for the balance of the substantial payments to ASI or GBS. While some of the money ATIC paid to affiliates may ultimately have been used to pay for ATIC's expenses, some portion of the money ATIC paid to its affiliates was used to benefit its affiliates and management. For example, based on the information provided by ATIC, American T used \$1,013,063 from the commissions ASI shared with American T to pay dividends to the owners of American T. Those dividends were funded by ATIC but could not be directly paid out of ATIC due to the Company's financial condition; specifically, because Section 4105 of the Insurance Law only allows property insurance companies to pay dividends from earned surplus. Because ATIC has been in a negative earned surplus position for decades, it was prohibited from paying any dividends to American T.

Similarly, nearly \$2 million dollars was paid to employees of ASI and American T for unspecified services while another \$2.8 million was paid to consultants for unspecified data processing or information technology services. After reviewing the information contained in the Supplemental Submission, the Department found that four of these consultants appear to be affiliated with ATIC employees or executives, raising additional questions about the nature of the services provided by these consultants and about the justification for the substantial payments they received.

Overall, given that ATIC pays 8-10% commissions to the originating brokers for the same business for which ATIC paid a commission to ASI, the finding in the Report remains unchanged that ASI appears to exist to allow management to remove funds from ATIC that the Company should be using to pay policyholder claims. The Department will continue to investigate these payments.

In addition to those commissions, ATIC paid \$1,560,504 to GBS, a company that is 70% owned by two of American T's controlling shareholders, Ralph Bisceglia and Catherine McGettigan. While the Supplemental Submission represents that no payments were made to Mr.

Bisceglia or Ms. McGettigan out of the money paid to GBS, and that GBS has saved ATIC a substantial amount of money, ATIC does not explain why it outsources these services to a company owned by two of American T's controlling shareholders or why ATIC is unable to perform these services without paying another company. ATIC's assertion that it has limited information on the operations of GBS when 70% of GBS is owned by two of American T's controlling shareholders is unpersuasive.

The Report recommended that the Company recover the affiliate payments made by ATIC as well as the bonuses paid to Company officers, totaling \$22,000,060.¹ While some documentation was provided indicating that some of the affiliate payments were ultimately used to pay for ATIC's expenses, the Supplemental Submission does not alter the conclusion in the Report that the affiliate payments took money out of ATIC that the Company cannot afford to lose and that was used, in some part, to benefit ATIC's affiliates and management. The Department recommends that ATIC recover the bonuses paid to Company officers and all affiliate payments made by ATIC during the examination period that do not reflect actual, documented, and verifiable expenses attributable to ATIC.

Remedial action taken by ATIC relative to each and every Report comment and recommendation will be reviewed and assessed during the next examination of the Company.

Very truly yours,



Bernard Ganley
Deputy Superintendent for Insurance
New York State Department of Financial Services

¹ According to the information in the Supplemental Submission, the total bonuses and affiliate payments is \$22,776,308, more than was identified in the Report.