

STATE OF ALABAMA
DEPARTMENT OF INSURANCE
MONTGOMERY, ALABAMA

REPORT OF EXAMINATION

OF

TIMBER CREEK CASUALTY INSURANCE COMPANY, INC.
A RISK RETENTION GROUP
MONTGOMERY, ALABAMA

AS OF
JULY 21, 2022

TABLE OF CONTENTS

EXAMINER'S AFFIDAVIT	iv
SALUTATION.....	1
SCOPE OF EXAMINATION.....	2
ORGANIZATION AND HISTORY	2
MANAGEMENT AND CONTROL.....	3
SHAREHOLDERS.....	4
DIRECTORS	6
OFFICERS	7
CORPORATE RECORDS.....	8
HOLDING COMPANY AND AFFILIATE MATTERS	8
HOLDING COMPANY REGISTRATION.....	8
FIDELITY BOND.....	9
EMPLOYEE AND AGENT WELFARE	10
COMPLIANCE WITH 18 U.S.C. § 1033	10
SPECIAL DEPOSITS.....	11
MINIMUM CAPITAL AND SURPLUS REQUIREMENTS.....	12
SERVICE PROVIDERS.....	13
CAPTIVE MANAGER.....	13
ACTUARY	14
CERTIFIED PUBLIC ACCOUNTANT	14
OTHER.....	15
<i>Program Manager</i>	15
<i>Claims Administrator</i>	15
<i>Reinsurance Broker/ Intermediary</i>	16
<i>Legal Counsel</i>	16
<i>Policy Management System</i>	16
<i>ISO Forms</i>	16
MARKET CONDUCT ACTIVITIES.....	16
PLAN OF OPERATION	17
TERRITORY	17

MARKETING.....	18
REINSURANCE.....	18
ACCOUNTS AND RECORDS.....	19
PERMITTED PRACTICES	20
FINANCIAL STATEMENT INDEX	21
NOTES TO FINANCIAL STATEMENTS.....	23
CONTINGENT LIABILITIES.....	24
SUBSEQUENT EVENTS	24
COMMENTS AND RECOMMENDATIONS.....	25
CONCLUSION.....	30

EXAMINER'S AFFIDAVIT

STATE OF ALABAMA

COUNTY OF MONTGOMERY

Jennifer A. Haskell, being duly sworn, states as follows:

I have authority to represent Alabama in the examination of Timber Creek Casualty Insurance Company, Inc. A Risk Retention Group.

The Alabama Department of Insurance is accredited under the National Association of Insurance Commissioners Financial Regulation Standards and Accreditation.



I have reviewed the examination workpapers and examination report, and the examination of Timber Creek Casualty Insurance Company, Inc. A Risk Retention Group was performed in a manner consistent with the standards and procedures required by the State of Alabama.

The affiant says nothing further.



Jennifer A. Haskell, CFE, CPM, PIR

Subscribed and sworn before me by Jennifer A. Haskell on this 22nd day of July 2022.


(SEAL)


(Signature of Notary Public)

My commission expires 3/8/2025



KAY IVEY
GOVERNOR

MARK FOWLER
ACTING COMMISSIONER

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GENERAL COUNSEL
REYN NORMAN

July 22, 2022

Honorable Mark Fowler, Acting Commissioner
Alabama Department of Insurance
201 Monroe Street, Suite 502
Montgomery, Alabama 36104

Dear Commissioner:

Pursuant to your authorization and in compliance with the statutory requirements of the State of Alabama and the resolutions adopted by the National Association of Insurance Commissioners (NAIC), an organizational examination has been conducted of:

**Timber Creek Casualty Insurance Company, Inc. A Risk Retention Group
Montgomery, Alabama**

The examination was conducted remotely from the Alabama Department of Insurance office located in Montgomery, Alabama. The Company's executive office is located at 5151 Hampstead High Street, Suite 200, Montgomery, AL 36116. The Report of Examination is submitted herewith.

This Report of Examination does not contain any significant findings or solvency concerns; however, it includes recommendations related to minor compliance issues and compliance areas that may apply once the Company commences operations.

Where the description "Company" appears herein without qualification, it will be understood to indicate Timber Creek Casualty Insurance Company, Inc. A Risk Retention Group.

SCOPE OF EXAMINATION

An organizational examination was conducted pursuant to the instructions of the Alabama Insurance Commissioner and in accordance with the statutory requirements of the *Alabama Insurance Code* and the regulations and bulletins of the State of Alabama Department of Insurance, in accordance with the applicable guidelines and procedures promulgated by the National Association of Insurance Commissioners (NAIC), and in accordance with generally accepted examination standards.

This examination is made from the period beginning May 11, 2022, the date of the Company's formation as recorded by the Alabama Secretary of State, through July 21, 2022, the date of the Financial Statements. Where deemed appropriate, records and documents subsequent to the as of date, were reviewed.

The examination was made in conjunction with the Company's application for a Certificate of Authority. The Company has not commenced business. The examination included an inspection of the Company's records, confirmation of the Company's assets, and obtaining a signed letter of representation at the examination date.

ORGANIZATION AND HISTORY

The Company made the appropriate filing of its Certificate of Incorporation with the Alabama Secretary of State (SOS) on May 05, 2022. The Certificate was processed by the SOS's Office in Montgomery County under the laws of the state of Alabama, effectively forming the Company, on May 11, 2022.

On July 20, 2022, the Company filed an amendment to its Certificate of Incorporation, which states:

This corporation is organized for the purpose of writing insurance and reinsurance as a captive insurance risk retention group pursuant to the federal Liability Risk Retention Act, 15 U.S.C. § 3901 et seq., and Title 27, Chapters 31A and 31B of the Alabama Insurance Code, the Alabama Risk Retention Act and the Alabama Captive Insurers Act, respectively. The corporation may conduct all activities necessary or incidental to the foregoing and may engage in any other lawful business or activity.

Article V of the Certificate of Formation provides that the corporation is authorized to issue 25,000,000 shares of one dollar (\$1) par value common stock. At the time of the exam, no stock had been issued. Pursuant to the Liability Risk Retention Act, the Company will be owned by its insureds. Therefore, no stock will be issued until such time as the Company has received a Certificate of Authority to engage in the business of insurance.

MANAGEMENT AND CONTROL

The Company's Captive Application listed its Officers and Directors. The list was agreed to the Company's Certificate of Formation. The Officers list in the Captive Application were agreed to a Unanimous Written Consent of the Board, dated July 21, 2022.

The Company is required to report any changes in its Officers and Directors in accordance with ALA. ADMIN. CODE 482-1-138-.12 (2022), which states:

Every company shall report to the commissioner within thirty (30) days after any change in its executive officers or directors, including in its report a statement of the business and professional affiliations of any new executive officer or director. No director, officer, or employee of a company shall, except on behalf of the company, accept, or be the beneficiary of, any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the company but such person may receive reasonable compensation for necessary services rendered to the company in his or her usual private, professional or business capacity. Any profit or gain received by or on behalf of any person in violation of this rule shall inure to and be recoverable by the company. Reports concerning captive risk retention groups shall be in compliance with Chapter 482-1-142.

The Company filed Biographical Affidavits for each Officer and Director with its Captive Application. Should the Company add additional Officers or Directors, in addition to notice, the Company is required to file Biographical Affidavits for new Officers and Directors in accordance with ALA. ADMIN. CODE 482-1-142-.06 (2008), which states:

A report shall be provided by each domestic insurer to which this chapter applies with respect to the appointment or election of any new director, trustee or officer

elected or appointed within fifteen (15) days after such appointment or election. Such report shall be prepared by the company in form and substance substantially in accordance with the current NAIC Biographical affidavit....

Shareholders

The Company was formed and seeks licensure as a risk retention group pursuant to the Liability Risk Retention Act of 1986 (15 USC 3901-3906 (1981, as amended 1986)) (LRRRA), which includes the following in the definition of a risk retention group: "which has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group...." (§ 3901(a)(4)(E)(i)).

Article 2, Section 1 of the Company's Bylaws states:

A person is eligible to become a shareholder of the Corporation if:

- (a) Such person is exposed to liability similar to that of existing shareholders by virtue of their related, similar or common business, trade, product services, premises or operations.
- (b) Such person's application for insurance has been accepted by the Corporation and such person is provided insurance by the Corporation and pays the premium due for such insurance;
- (c) Such person's application for shares of stock is accepted by the Corporation and such person purchases such number of shares of stock at such price as determined by the Corporation; and
- (d) Such person meets such guidelines and standards that may be set from time to time by the Corporation.

As of the date of this report, the Company had not been issued its Certificate of Authority. Therefore, it had no insureds or shareholders. However, based on its Business Plan, it will be owned by its insureds. According to item C of its proposed Subscription and Shareholder Agreement:

In order to be an insured of the Company, the Shareholder is required to purchase common stock of the Company, par value One Dollars (\$1.00), in such quantity and for such price as are set forth below. The total price being paid by

the Shareholder to purchase common stock in the Company shall be called the “Capital Contribution”.

The Subscription and Shareholder Agreement further states:

2. Shares and Capital Contribution. The Capital Contribution and number of shares are calculated based on the initial insurance premium. The formula used by the Company to determine the total amount of shares issued is as follows: initial premium amount x .12.

Article 7, Section 1 of the Company’s Bylaws states:

Issuance of Shares. The Board of Directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the Corporation, including cash, promissory notes, services performed, written contracts for services to be performed or other securities of the Corporation.

Article 7, Section 2 provided that the Board has discretion as to whether to issue certificated or uncertificated shares. Article 7, Section 3 provides the requirements for providing evidence of ownership in accordance with ALA. CODE § 10A-2A-6.26 (1975).

ALA. CODE § 27-31A-3.1(f)(1) (1975) requires a risk retention group’s Board adopt a written policy requiring that the Board: “Assure that all owner/insureds of the risk retention group receive evidence of ownership interest.” The Company’s Governance Standards, adopted by the Board on July 21, 2022, by Unanimous Written Consent include the requirement to provide evidence of ownership in compliance with ALA. CODE § 27-31A-3.1(f)(1) (1975).

Article 2, Section 4 of the Company’s Bylaws states: “An annual meeting of the shareholders shall be held each year on a date and at a time to be set by the Board of Directors in accordance with all applicable notice requirements. At the meeting, the shareholders shall elect directors and transact such other business as may properly be brought before the meeting.”

The Bylaws comply with the requirements of ALA. CODE § 10A-2A-7.01(a) (1975), which states: “...a corporation shall hold a meeting of stockholders annually at a time stated in or fixed in accordance with the certificate of incorporation or bylaws at which directors shall be elected.”

Directors

Article 3, Section 1 of the Company's Bylaws states: "The business and affairs of the Corporation shall be managed by the Board of Directors...." Section 2 states: "The authorized number of directors shall be not less than three nor more than ten, with the precise number thereof being fixed by the Board from time to time. At least one of the members of the Board of Directors must be a resident of the State of Alabama...." Section 3 states: "Directors shall be elected annually by a plurality vote among holders of voting common shares."

The Company's Bylaws comply with the requirements of ALA. CODE § 27-31B-8(h) (1975), including the requirements for one Board member to be a resident of Alabama.

The initial Directors appointed in the Company's Certificate of Formation and serving at the date of this report were as follows:

<u>Name and Place of Residence</u>	<u>Principal Occupation</u>
Doranne Newton* Montgomery, Alabama	Alabama League of Municipalities Underwriting Manager
James Michael Brennan Bogalusa, Louisiana	Brennan Wholesale Inc. Routeman/Entrepreneur
James Russell Pritchard, Jr. Angie, Louisiana	Pritchard Trucking, Inc. Owner
Mark D'Andre Prosper Stone Mountain, GA	Avant Garde Capital, LLC Financial Consultant
Kevin Michael Steele, Jr. Angie, Louisiana	KTS Construction, LLC Contractor/Owner

* Alabama Resident

Article 3, Section 5 states: “Meetings of the Board of Directors, regular or special, may be held either within or without the State of Alabama; provided, however, that, unless and until the Alabama Captive Insurers Act is amended to provide otherwise, at least one meeting of the Board of Directors each year must be held in the State of Alabama.”

This complies with the requirements of ALA. CODE § 27-31B-3(b)(2) (1975), which states: “Its board of directors or managers, or in the case of a reciprocal insurer, its subscribers’ advisory committee, must hold at least one meeting each year in this state.”

Officers

Article 5, Section 1 of the Company’s Bylaws states:

The officers of the Corporation shall consist of a president, treasurer, and secretary.... The Board of Directors shall have the authority to appoint, or may authorize the chief executive officer to appoint, the person(s) who shall hold such offices specified herein and such other offices as may be established by the Board. Any two or more offices may be held by the same person.

Section 2 states:

Each officer shall serve at the pleasure of the Board of Directors (or, if appointed by the chief executive officer of the Corporation pursuant to this Article, at the pleasure of the Board of Directors or the chief executive officer) until his or her death, resignation, or removal, or until his or her replacement is elected or appointed in accordance with this Article 5.

Terms for officers were not specified, however the Company’s Corporate Governance document, adopted by the Board on July 21, 2022, states in item 4 of the Board Responsibilities:

Review and approve, at least annually, all of the following:

- A. Risk retention group’s goals and objectives relevant to the compensation of officers and service providers.
- B. The officers’ and service providers’ performance in light of those goals and objectives.
- C. The continued engagement of the officers and material service providers.

The initial Officers, appointed by the Board on July 21, 2022, via Unanimous Written Consent, and serving at the date of this report were as follows:

<u>Name</u>	<u>Title</u>
Kevin Michael Steele, Jr.	President
Mark D' Andre Prosper	Treasurer
James Russell Pritchard, Jr.	Secretary

CORPORATE RECORDS

The Certificate of Formation filed with the Alabama Secretary of State's Office (SOS) on May 11, 2022; the July 20, 2022 amendment; the Bylaws adopted by the Board on July 16, 2022; the Amended and Restated Bylaws adopted by the Board on July 21, 2022, the governance documents and service provider contracts and numerous actions of the Board were reviewed as part of this exam, and appear to provide for the operation of the Company in accordance with usual corporate practices and applicable requirements of the *Alabama Insurance Code*.

HOLDING COMPANY AND AFFILIATE MATTERS

Holding Company Registration

ALA. CODE § 27-29-1(6) (1975) states: "INSURANCE HOLDING COMPANY SYSTEM. A system which consists of two or more affiliated persons, one or more of which is an insurer."

The Company was formed on behalf of Timber Creek Insurance Services, LLC (TCIS). TCIS provided the initial capitalization through its purchase of a surplus note from the Company. It will have no ownership interest in the Company. TCIS has contracted with the Company to provide Program Management services (see the subsection "Other" in *Service Providers*). According to the Company's filed Business Plan, the Company will be owned by its shareholders, who will determine the Board. ALA. CODE § 27-29-1(3) (1975) defines control as:

... the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with, or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing five percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by subsection (k) of Section 27-29-4 that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making a specific finding of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

At this point, the Company has no shareholders, so it is unclear whether one or more individuals will hold, control, or have the power to vote by proxy five percent of voting shares of the Company. Should any person control five percent or more, then the Company will be subject to the Alabama Holding Company System filing requirements set forth in ALA. CODE § 27-29-1 et seq. (1975) and ALA. ADMIN. CODE 482-1-055 (2016), unless a disclaimer of affiliation is approved by the Commissioner.

FIDELITY BOND

The Company does not currently have any employees, nor does it intend to hire employees. Instead, it employs various service providers. The Company provided a Dishonesty Bond Application for the Company, a blank Authorization to Bind, and calculation of the proposed bond amount. Based on the Company's current assets and no premiums written, the proposed bond will comply with the exposure index provided in "Exhibit R" of the NAIC *Financial Condition Examiners Handbook*.

The Company's Board should proceed with obtaining fidelity bond coverage to protect itself against any loss of money or other property sustained through fraudulent or dishonest act or acts committed by any of its Officers, Directors, and employees (should it have any in the future) including indirect employees, acting alone or in collusion with others. The amount of the bond should be determined using the exposure index provided in "Exhibit R" of the NAIC *Financial Condition Examiners Handbook*.

The Board should also review and ensure its service providers also have adequate fidelity bonds. The Board should annually review its fidelity bond and those of its service providers to ensure adequate protection of the Company when the service providers perform work on its behalf.

EMPLOYEE AND AGENT WELFARE

As of July 21, 2022, the Company had no employees. All day-to-day operations of the Company were handled by employees of the Captive Manager or employees of one of the other service providers with whom the Company was contracted during the examination period. See the *Service Providers* section of this report.

Compliance with 18 U.S.C. § 1033

Section 1033 of Title 18 of the U. S. Code identifies those that have been convicted of a felony as prohibited from engaging in the business of insurance. The prohibition extends to contractors performing duties and responsibilities as well as employees.

ALA. ADMIN. CODE 482-1-146-.03(i) (2009) states: "SECTION 1033 INSURER. An entity engaged in the business of insurance whose activities affect interstate commerce as provided in 18 U.S.C. § 1033(f)."

ALA. ADMIN. CODE 482-1-146-.11(1) (2009) states:

A Section 1033 insurer subject to the Commissioner's examination authority shall have and apply the following:

- (a) An internal procedure for determining, by means of background checks or investigations or otherwise, whether applicants for employment or individuals with whom the insurer intends to contract for activities in the business of insurance, whether or not in a capacity requiring a license, have a felony conviction for a Section 1033 offense.
- (b) An internal procedure after initial employment or contracting, applied on a periodic basis, to ascertain the existence of a felony conviction for a Section 1033 offense.
- (c) An internal procedure for assuring that affected employees or individual contractors have obtained and hold any required Section 1033 consent during the period of employment or contracting.

ALA. ADMIN. CODE 482-1-146-.11 (2009) further states:

- (2) Such procedures shall be maintained in a format capable of being furnished to the Department as part of the examination process or otherwise as requested by the Department.
- (3) As part of an examination or otherwise, the Department may determine the existence of such procedures, whether and how they are being followed, and the effectiveness of the procedures.

The Company's Board adopted formal procedures for compliance on June 23, 2022. The Company will require all employees, officers, directors and contractors to complete an affidavit disclosing whether he or she has ever been convicted of a Section 1033 offense. Background checks will be performed of new hires before employment commences. Officers, directors and contractors will be screened before appointment. The Company will require each employee, contractor, officer, and director to annually attest that they have not been convicted of a Section 1033 offense. If it is determined that someone has been convicted of a Section 1033 offense, within 30-days, the individual is required to obtain a Section 1033 consent from the Commissioner of Insurance or the individual will be terminated.

The Company's Code of Conduct and Ethics. Conflict of Interest Disclosure Policy, and Procedures for compliance with 18 U.S.C. 1033 and ALA. ADMIN. CODE 482-1-146 were filed with the Department accompanied by the Unanimous Written Consent of the Board dated and effective June 23, 2022. The documents and forms were reviewed and found to meet the requirements of ALA. ADMIN. CODE 482-1-146 (2009) as well as the corporate governance requirements of ALA. CODE § 27-31A-3.1 (1975). The Company has not commenced operations; therefore, evidence of compliance with the policies and procedures was not reviewed.

SPECIAL DEPOSITS

ALA. ADMIN. CODE 482-1-138-.08 (2022) states:

Whenever the commissioner deems that the financial condition of the company warrants additional security, the commissioner may require a company to deposit with the Treasurer of this state cash or securities approved by the commissioner

or, alternatively, to furnish the commissioner a clean, irrevocable letter of credit issued by a bank chartered by the State of Alabama or a member bank of the Federal Reserve System and approved by the commissioner....

As of the date of this report, the Commissioner has not found that the financial condition of the Company warrants the requirement of a special deposit with the Treasurer of Alabama.

MINIMUM CAPITAL AND SURPLUS REQUIREMENTS

The Company was capitalized by issuing a surplus note in the amount of \$1,000,000 to Timber Creek Insurance Services, LLC (TCIS). The Company has contracted with TCIS to act as the Company's Program Manager. The surplus note is subject to repayment of principal and interest pursuant to the terms of the note with prior approval of the Commissioner. Once the Company is issued a Certificate of Authority, each insured will be required to annually purchase one dollar (\$1) par value common stock shares equal in number to 12 percent of each insured's initial premium. See the subsection "Shareholders" within the *Management and Control* section of this report.

The initial capitalization of \$1,000,000 complied with ALA. CODE § 27-31B-6(a)(3) (1975), which stipulates the minimum capitalization requirements: "In the case of an association captive insurance company or risk retention group, not less than five hundred thousand dollars (\$500,000) or another amount determined by the commissioner and actuarially supported by a feasibility study."

The Company's proposed retention per insured risk is \$200,000. Based on this retention, the minimum capital and surplus is \$2,000,000 per ALA. CODE § 27-5-11(a) (1975), which states: "No insurer shall retain any risk on any one subject of insurance, whether located or to be performed in this state or elsewhere, in an amount exceeding 10 percent of its surplus to policyholders." The Company filed a feasibility study prepared by Solomon L. Frazier, FSA, FCAS, MAAA and Scott S. Garduno, FCAS, MAAA, of Taylor-Walker Consulting, LLC, which supported the lower capital and surplus amount of \$1,000,000. The Department's Actuary, Charles Hale, found the feasibility study assumptions and projections reasonable. On July 19, 2022, the Chief Examiner approved a temporary permitted practice which allows the Company to deviate from the requirements of ALA. CODE 27-5-11(a) (1975); the Company may

retain maximum risk of \$200,000 with a minimum of \$1,000,000 in policyholder surplus. However, no dividends or surplus note payments will be permitted until surplus reaches a minimum of \$3,300,000. Any changes require prior approval.

SERVICE PROVIDERS

The Company's application and documentation submitted in the application process included engagement with various service providers, some more than two years prior to its formation. After review of the fees and expenses included in the contracts, there are concerns regarding the effects on the Company's expense ratio and thus combined ratio. It also appears there may be overlap in the contracts and in some cases, fees were not in-line with the industry. The Company's corporate records did not specifically identify its service providers, or the specific contracts being approved. The Company should carefully evaluate the need for the service providers, negotiate contracts in the best interest of the Company and ensure there is not unintended overlap between the contracts. The Board should document its review and approval of each service provider and specific contract.

The proposed service providers appear to adequately provide for all aspects of the Company's business. On June 23, 2022, the Company's Board of Directors adopted the "Service Provider Contracts;" however, the document did not list the service providers or titles of the contracts, nor were the contracts attached to the document. The Company should specifically reference documents which are the subject of action by the Board, whether through Unanimous Written Consent or a meeting resulting in a Board Resolution.

The following Alabama approved service providers were listed in the Company's Certificate of Authority application:

Captive Manager

The Company signed a contract for captive management services with Arsenal Insurance Management, LLC (AIM) on June 28, 2022. Some of AIM's responsibilities under the contract include:

- Providing a home office and principal place of business in Alabama;
- Compliance with laws, rules and regulations;
- Maintenance of books and records;

- Maintaining access to the Company's bank accounts for the purpose of preparing financial reports and dispersal of funds to the Alabama Department of Insurance;
- Filing state registrations;
- Advise on the insurance captive industry customs, practices and other technical matters;
- Assist in the preparation of quarterly and annual financial statements;
- Provide services at a standard that reasonably meets the Company's requirements including timely statutory filings and providing service providers necessary filing information 30-days in advance of deadlines.

Actuary

Actuarial services were provided by Solomon L. Frazier, FSA, FCAS, MAAA and Scott S. Garduno, FCAS, MAAA, of Taylor-Walker Consulting, LLC, including preparation of the Company's feasibility study. Pursuant to the Company's Certificate of Authority application Taylor-Walker Consulting, LLC will continue to act as the Company's actuary service provider. It was noted that the current contract did not include preparation of required annual actuarial filings.

Certified Public Accountant

According to the Company's Certificate of Authority application TaylorChandler, LLC (TC) will act as the Company's CPA. According to the engagement letter dated April 12, 2022, and executed on April 14, 2022 (prior to the Company's formation) TC will be responsible for:

- Reconciling bank statements monthly;
- Recording depreciation, income and expenses, deposits, and adjusting entries monthly;
- Preparing the Annual & Quarterly financial statements and perform a compilation engagement with respect to the financial statements;
- Prepare the federal and state tax returns, and related book-keeping entries; and
- Prepare all regulatory forms required with the Annual Statement filing.

RH CPAs, PLLC will be responsible for the Company's audit. The Company provided an engagement letter from RH CPAs, PLLC dated April 12, 2022, which was

subsequently accepted by the Company's proposed President on April 14, 2022, prior to the Company's formation on May 11, 2022.

Other

In addition to the above, the Company had the following service providers, not subject to Department approval. As with the other service providers, it is unclear whether these service providers are approved by the Board.

Program Manager

Timber Creek Insurance Services, LLC (TCIS) will serve as the Program Manager pursuant to the agreement executed on May 13, 2022. TCIS will be responsible for the policyholder and other program management services including:

- Underwriting – Soliciting and accepting risks, issuing and cancelling policies;
- Accounting – Collecting premiums, payment of refunds, and depositing premiums in a separately maintained, segregated account;
- Reinsurance – Arrange reinsurance. Accept a commission from the Reinsurance Broker; and
- Sales & Marketing – Engage in direct or indirect efforts through independent brokers of agents.

The Company should review the contract with its Program Manager to determine if the duties of TCIS meet the definition of a Managing General Agent (MGA) as defined in ALA. CODE § 27-6A-2(3) (1975) or Controlling Producer (CP) as defined in ALA. CODE § 27-6B-2(5) (1975). If TCIS is determined to be an MGA or CP, then the Company should ensure the contract complies with the applicable laws and regulations and that TCIS is appropriately licensed and appointed.

Claims Administrator

US Administrator Claims, LLC will serve as the Claims Administrator pursuant to the agreement effective July 1, 2022. US Administrator Claims, LLC will receive, review and evaluate all claims. It will investigate, adjust and settle qualified claims. It will perform all reasonable and necessary administrative and clerical work, including maintaining an electronic file for each qualified claim and providing the following monthly reports: Claim and Expense Report, Transaction Register, and Itemized hourly

statement of claims adjustment services. The Loss Analysis Report will be provided on a quarterly basis and other miscellaneous reports will be provided as needed.

Reinsurance Broker/Intermediary

The Company's Captive Application and Business Plan list Tatum Reinsurance Intermediary, LLC as both the Reinsurance Broker and Reinsurance Intermediary. As of the date of this report, the Company had not contracted with Tatum Reinsurance Intermediary, LLC

Legal Counsel

According to the Company's Captive Application and Business Plan, Dickinson – Wright, PLLC will act as the Company's attorney. The engagement letter included in with the Captive Application was dated March 2, 2020, more than two years prior to the Company's formation.

The Business Plan also lists J. Robert Wooley as a Regulatory Consultant for the Company and Talley Anthony Hughes and Knight, LLC as its Litigation Management. No contracts were included.

Policy Management System

According to the Company's Business Plan, the Company has engaged CapSys, LLC for its Policy Management System. A contract was included with CapSys, LLC. It was executed on March 30, 2020, more than two years prior to the Company's formation.

ISO Forms

According to the Company's Business Plan, it has entered into an agreement with Verisk to provide ISO forms. The agreement and the Product Supplement addendum were executed by the Company on March 30, 2020, more than two years prior to the Company's formation.

MARKET CONDUCT ACTIVITIES

As previously mentioned, the Company is in the process of applying for a Certificate of Authority. As of the date of this report it had not commenced operations. The

following is a review of the Company's Plan of Operation, which is included in the Company's Business Plan and Feasibility Study filed with its application.

Plan of Operation

The Company is seeking licensure as a captive risk retention group. According to the applicant's Feasibility Study and Business Plan, it seeks approval to offer commercial auto liability policies to small to medium sized commercial transportation companies. The Company intends to write the following liability coverages with a maximum limit of \$1,000,000 per risk:

- Commercial Auto Liability; and
- General Liability

The Company's maximum retention on any one risk is \$200,000.

Any change in the Company's Plan of Operation, including its Business Plan and Feasibility Study, requires prior approval in accordance with ALA. ADMIN. CODE 482-1-138-.16 (2022), which states in pertinent part: "Any change in the nature of the captive business from that stated in the company's plan of operation filed with the commissioner upon application requires prior approval from the commissioner. ..."

Territory

According to the Company's Plan of Operation, submitted with its Certificate of Authority Application, the Company will initially offer its products in:

- Alabama
- Louisiana
- Mississippi

Once fully operational, it will seek registration in:

- Arkansas
- Georgia
- Oklahoma
- Tennessee

Prior to doing business in these states, the Company must register in these states as a foreign risk retention group. The registered states will have limited regulatory authority pursuant to 15 U.S.C. § 3902.

Marketing

Per the Company's filed Plan of Operation, it will wholly rely on its Program Manager; per its contract, it may engage independent agents for marketing and production. The Company will be owned by its insureds. It was formed by its Program Manager, Timber Creek Insurance Services, LLC, (TCIS). The Program Manager agreement indicates that it will comply with the Company's Underwriting Guidelines (UG). The UG were adopted by Unanimous Written Consent on June 23, 2022.

On July 16, 2022, the Company's Board resolved to form an Underwriting Committee consisting of James Brennan and James Pritchard, both members of the Company's Board; and Dennis Neyland and Chris Workman of TCIS, to ensure compliance with the UG. The committee will meet monthly to review the underwriting files for compliance and to monitor the accuracy of the data.

ALA. CODE § 27-3-27(a) (1975) states:

No insurer shall, in this state, directly or indirectly, accept applications for insurance, negotiate for or issue any policy or contract of insurance or assume direct liability as to a subject of insurance resident, located, or to be performed in this state unless through insurance producers duly licensed under the provisions of this title.

Business written by the Company in Alabama must comply with the above. Business produced in other states must comply with the producer requirements of the respective states.

Reinsurance

According to the Company's Business Plan and Feasibility Study, it plans to obtain excess of loss reinsurance with an attachment point of \$200,000. The Feasibility Study further indicated that Timber Creek Reinsurance, Inc. would assume 20 percent of the Company's retention through a quota share agreement that would increase five percent annually until the maximum of 40 percent in year five. Timber Creek Reinsurance, Inc. has an application pending with the Department to be licensed as a pure captive. The Company did not indicate that it would assume business from other insurers.

At the time of this report, the Company had not yet completed its reinsurance negotiations. The Department requests that the Company file its executed reinsurance contract(s) with the Department in accordance with ALA. ADMIN. CODE 482-1-138-.10(b) (2022), which states in pertinent part: “The commissioner in his discretion may require that complete copies of all reinsurance treaties and contracts be filed and/or approved by him.”

ACCOUNTS AND RECORDS

ALA. ADMIN. CODE 482-1-118-.05 (1999) states: “All financial books, records and accounts necessary for the annual statement of an Alabama domestic insurer must be kept in a central location in Alabama in accordance with Section 27-27-29, Code of Alabama 1975.”

ALA. CODE § 27-27-29(a) (1975) states: “Every domestic insurer shall have, and maintain, its principal place of business and home office in this state and shall keep in this state complete records of its assets, transactions, and affairs in accordance with such methods and systems as are customary or suitable as to the kind, or kinds, of insurance transacted.”

Paragraph (e) of the same Code section states:

With the written permission of the commissioner, a domestic insurer may maintain its executive offices outside the State of Alabama and keep there complete records of its assets, transactions, and affairs in accordance with the methods and systems as are customary or suitable for the kind or kinds of insurance transacted. All records kept at the executive offices outside Alabama shall be made available to the commissioner of Alabama upon reasonable notice by the commissioner.

The Company’s captive application indicates that its Principal Place of Business and its Location of Books and Records will be maintained at the office of the Captive Manager in Montgomery, Alabama.

Any change in any information submitted in the Company’s application for a Certificate of Authority must be filed with the Department in accordance with ALA. ADMIN.

CODE 482-1-138-.16 (2022), which states, in pertinent part: "...Any change in any other information filed with the application must be filed with the commissioner but does not require prior approval."

Permitted Practices

As of the date of this report, the Company had requested and received approval of the following permitted practices:

- Permission to Account and Prepare Financial statements in accordance with Generally Accepted Accounting Practices pursuant to ALA. CODE § 27-31B-9(b) (1975) - granted July 19, 2022.
- Deviation from the Surplus Requirement of ALA. CODE § 27-5-11(a) (1975) Based on Net Retained Risk – July 19, 2022.
- Separate Audit Committee of the Board Waiver pursuant to ALA. CODE § 27-31A-3.1(i) (1975) - granted July 19, 2022.

FINANCIAL STATEMENT INDEX

The Financial Statements included in this report were prepared in conformity with those accounting practices prescribed or permitted by the Commissioner of Insurance for the State of Alabama utilizing Company records and is intended to depict the statutory financial condition of the Company as of July 21, 2022. The information reported therein has been verified by the examiner to the extent deemed necessary. The notes immediately following the Financial Statements in this report are an integral part thereof.

Statement of Assets, Liabilities, Surplus and Other Funds.....	22
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TIMBER CREEK CASUALTY INSURANCE COMPANY, INC.
A RISK RETENTION GROUP
Statement of Assets, Liabilities, Surplus and Other Funds
For the Period Ended July 21, 2022

<u>ASSETS</u>	<u>Assets</u>	<u>Non Admitted Assets</u>	<u>Net Admitted Assets</u>
Cash (<i>Note 1</i>)	\$1,004,391	\$0	\$1,004,391
Subtotals, cash and invested assets	<u>\$1,004,391</u>	<u>\$0</u>	<u>\$1,004,391</u>
 TOTAL ASSETS	 <u>\$1,004,391</u>	 <u>\$0</u>	 <u>\$1,004,391</u>

CAPITAL AND SURPLUS

Common capital stock, 25,000,000 shares of \$1 par value authorized	\$0
Gross Paid In and Contributed Surplus	0
Surplus Note	\$1,000,000
Retained Earnings	<u>4,391</u>
Total Capital and Surplus	\$1,004,391
 TOTAL LIABILITIES, CAPITAL AND SURPLUS	 <u>\$1,004,391</u>

THE NOTES IMMEDIATELY FOLLOWING THE FINANCIAL STATEMENTS IN
THIS REPORT ARE AN INTEGRAL PART THEREOF.

NOTES TO FINANCIAL STATEMENTS

Note 1 – Cash, cash equivalents, and short-term investments \$1,004,391

The above captioned amount was confirmed as of July 21, 2022; it was determined to be held unencumbered by SouthPoint Bank. The funds were obtained pursuant to a surplus note issued by the Company to Timber Creek Insurance Services, LLC on May 18, 2022. The surplus note “floor” did not comply with statutory requirements. It was revised and filed on July 20, 2022. It was approved effective July 20, 2022, in accordance with ALA. ADMIN. CODE 482-1-094-.07(1) (2021), which states: “All surplus notes issued by an insurer are subject to the prior approval of the Commissioner, regardless of amount, and shall be filed at least 30 days prior to the proposed date of the loan.” The surplus note, effective, July 20, 2022, replaced the surplus note executed May 18, 2022.

The funds maintained, satisfy the minimum capital and surplus requirements of ALA. CODE § 27-31B-6(a)(3) (1975). See the *Minimum Capital and Surplus* section of this report.

ALA. CODE § 27-41-6(a) (1975) states:

An insurer shall not have at any one time any single investment or combination of investments in or loans upon the security of the obligations, property, or securities of any one person aggregating in cost to the insurer in excess of the greater of 10 percent of such insurer’s assets or the total of its capital and surplus, as shown in the latest annual report of the insurer filed pursuant to subsection (a) of Section 27-3-26 of the Alabama Insurance Code, less the minimum capital and surplus required of said insurer for authority to transact insurance....

The Company is reminded that the above applies to total cash held at a single financial institution.

The Company’s Board adopted an Investment Policy on June 23, 2022. The policy specifies that cash, CDs, and other statutorily permitted investments approved by the Commissioner with other stipulations. The policy also provides that amendments or exceptions may only be made by the Board. In addition to compliance with the Company’s adopted Investment Policy, investment decisions should be approved in accordance with ALA. CODE § 27-41-5 (1975), which states:

An insurer shall not make any investment or loan exceeding 10 percent of the admitted assets of the insurer, other than loans on policies or annuity contracts, unless authorized, approved, or ratified by the board of directors of the insurer or by the committee or person as the board of directors shall expressly authorize. The action of the board of directors, the committee, or other persons so authorized shall be recorded and regular reports thereof shall be submitted to the board of directors.

As the Company's cash increases beyond the amount necessary to meet its immediate liquidity needs, the Company should consider more productive uses of its invested assets. Should the Company make investments which are maintained outside of an FDIC member bank, it should be mindful of the requirement for a written custodial agreement approved by the Commissioner in accordance with ALA. ADMIN. CODE 482-1-077-.04 (2022).

CONTINGENT LIABILITIES

The corporate and accounting records including those filed for initial incorporation and organization were reviewed. There were no contingent liabilities identified. There were no other records to review as the Company has not commenced business.

SUBSEQUENT EVENTS

The review of events subsequent to July 21, 2022, and up to the date of this report included a general review of the meeting minutes and inquiring of management regarding any significant subsequent events. There were no significant subsequent events identified.

COMMENTS AND RECOMMENDATIONS

No significant findings or solvency concerns were identified during this exam. The following recommendations are related to minor compliance issues or compliance areas that may apply once the Company commences operations but are not findings of violations.

Management and Control – Page 3

It is recommended that the Company report any changes to its Officers or Directors in accordance with ALA. ADMIN. CODE 482-1-138-.12 (2022), which states:

Every company shall report to the commissioner within thirty (30) days after any change in its executive officers or directors, including in its report a statement of the business and professional affiliations of any new executive officer or director. No director, officer, or employee of a company shall, except on behalf of the company, accept, or be the beneficiary of, any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the company but such person may receive reasonable compensation for necessary services rendered to the company in his or her usual private, professional or business capacity. Any profit or gain received by or on behalf of any person in violation of this rule shall inure to and be recoverable by the company. Reports concerning captive risk retention groups shall be in compliance with Chapter 482-1-142.

It is further recommended that the Company file Biographical Affidavits for new Officers and Directors in accordance with ALA. ADMIN. CODE 482-1-142-.06 (2008), which states:

A report shall be provided by each domestic insurer to which this chapter applies with respect to the appointment or election of any new director, trustee or officer elected or appointed within fifteen (15) days after such appointment or election. Such report shall be prepared by the company in form and substance substantially in accordance with the current NAIC Biographical affidavit....

Holding Company Registration – Page 8

It is recommended that if control of five percent or more be vested with one “person” that the Company comply with the Alabama Holding Company System filing

requirements set forth in ALA. CODE § 27-29-1 et seq. (1975) and ALA. ADMIN. CODE 482-1-055 (2016), unless a disclaimer of affiliation is approved by the Commissioner in accordance with the same.

Fidelity Bond – Page 9

It is recommended that the Company obtain a fidelity bond to protect itself against loss of money or other property sustained through fraudulent or dishonest act or acts committed by any of its Officers, Directors, and employees (should it have any in the future) including indirect employees, acting alone or in collusion with others in an amount determined using the exposure index provided in “Exhibit R” of the NAIC *Financial Condition Examiners Handbook*.

It is further recommended that the Company’s Board conduct an annual review of its fidelity bond, as well as those of its service providers to ensure adequate protection of the Company when the service providers perform work on behalf of the Company.

Compliance with 18 U.S.C. § 1033 – Page 10

It is recommended that the Company maintain auditable evidence of compliance with its 18 U.S.C. 1033 policy in accordance with ALA. ADMIN. CODE 482-1-146-.11(2) (2009).

Service Providers – Page 13

It is recommended that the Company review its contract with its Program Manager, Timber Creek Insurance Services, LLC (TCIS) to determine whether it is acting as a Managing General Agent (MGA) as defined in ALA. CODE § 27-6A-2(3) (1975) or Controlling Producer (CP) as defined in ALA. CODE § 27-6B-2(5) (1975). If TCIS is determined to be an MGA or CP, then the Company should ensure the contract complies with the applicable laws and regulations and that TCIS is appropriately licensed and appointed.

It is recommended that the Company’s Board review its service provider contracts and negotiate them to ensure they are in the best interest of the Company, there is not unintended overlap in duties and the fees are not excessive.

It is recommended that the Company’s Board document its review and approval of the service providers as well as the contracts.

It is also recommended that should any of the service providers included in the Company's Captive Application or its Plan of Operation change that the Company make the appropriate notice and request for approval, if applicable, in accordance with ALA. ADMIN. CODE 482-1-138-.16 (2022), which states: "Any change in the nature of the captive business from that stated in the company's plan of operation filed with the commissioner upon application requires prior approval from the commissioner. Any change in any other information filed with the application must be filed with the commissioner but does not require prior approval."

Plan of Operation – Page 17

It is recommended that should the Company decide to change its Plan of Operation, including its Business Plan or Feasibility Study, it should obtain prior approval in accordance with ALA. ADMIN. CODE 482-1-138-.16 (2022), which states in pertinent part: "Any change in the nature of the captive business from that stated in the company's plan of operation filed with the commissioner upon application requires prior approval from the commissioner. ..."

Territory – Page 17

It is recommended that the Company make the appropriate registration filings in jurisdictions where it seeks to expand in accordance with 15 U.S.C. § 3902.

Marketing – Page 18

It is recommended that the Company, prior to soliciting business in Alabama, comply with ALA. CODE § 27-3-27(a) (1975), which states: "No insurer shall, in this state, directly or indirectly, accept applications for insurance, negotiate for or issue any policy or contract of insurance or assume direct liability as to a subject of insurance resident, located, or to be performed in this state unless through insurance producers duly licensed under the provisions of this title."

It is further recommended that the Company comply with producer licensing and appointment requirements of its registration states.

Reinsurance – Page 18

It is recommended that upon completion of reinsurance negotiations, the Company file executed copies of its reinsurance contracts with the Department in accordance

with ALA. ADMIN. CODE 482-1-138-.10(b) (2022), which states in pertinent part: “The commissioner in his discretion may require that complete copies of all reinsurance treaties and contracts be filed and/or approved by him.”

Accounts and Records – Page 19

It is recommended that the Company comply with the record requirements of ALA. ADMIN. CODE 482-1-118-.05 (1999), which states: “All financial books, records and accounts necessary for the annual statement of an Alabama domestic insurer must be kept in a central location in Alabama in accordance with Section 27-27-29, Code of Alabama 1975.”

It is also recommended that unless written permission is granted in accordance with ALA. CODE § 27-27-29(e) (1975), that the Company comply with ALA. CODE § 27-27-29(a) (1975), which states: “Every domestic insurer shall have, and maintain, its principal place of business and home office in this state and shall keep in this state complete records of its assets, transactions, and affairs in accordance with such methods and systems as are customary or suitable as to the kind, or kinds, of insurance transacted.”

It is recommended that should any information submitted to the Department in conjunction with its Certificate of Authority application change, that it be filed in accordance with ALA. ADMIN. CODE 482-1-138-.16 (2022), which states, in pertinent part: “...Any change in any other information filed with the application must be filed with the commissioner but does not require prior approval.”

Cash, cash equivalents, and short-term investments - Page 23

It is recommended that the Company comply with the investment limitation of ALA. CODE § 27-41-6(a) (1975), which states:

An insurer shall not have at any one time any single investment or combination of investments in or loans upon the security of the obligations, property, or securities of any one person aggregating in cost to the insurer in excess of the greater of 10 percent of such insurer’s assets or the total of its capital and surplus, as shown in the latest annual report of the insurer filed pursuant to subsection

(a) of Section 27-3-26 of the Alabama Insurance Code, less the minimum capital and surplus required of said insurer for authority to transact insurance...

It is recommended that the Company comply with its adopted Investment Policy.

It is recommended that the Company approve investment decisions in accordance with ALA. CODE § 27-41-5 (1975), which states:

An insurer shall not make any investment or loan exceeding 10 percent of the admitted assets of the insurer, other than loans on policies or annuity contracts, unless authorized, approved, or ratified by the board of directors of the insurer or by the committee or person as the board of directors shall expressly authorize. The action of the board of directors, the committee, or other persons so authorized shall be recorded and regular reports thereof shall be submitted to the board of directors.

It is recommended that should the Company maintain investments outside of an FDIC member bank, it should comply with the requirements for a written custodial agreement approved by the Commissioner in accordance with ALA. ADMIN. CODE 482-1-077-.04 (2022).

CONCLUSION

Acknowledgement is hereby made of the courteous cooperation extended by the Timber Creek Casualty Insurance Company, Inc. A Risk Retention Group, during the examination. Special appreciation is noted for the accurate, complete, and expeditious responses provided by Felicia Workman on behalf of the Company.

The customary insurance examination procedures, as recommended by the National Association of Insurance Commissioners, have been followed to the extent appropriate in connection with the verification and valuation of assets and determination of liabilities set forth in this report.

In addition to the undersigned, Charles Hale, ACAS, MBA, Property and Casualty Actuary, representing the Alabama Department of Insurance, participated in the exam.

Respectfully submitted,



Jennifer A. Haskell, MBA, CFE, PIR
Examiner-in-Charge
State of Alabama
Department of Insurance