

**First Commercial Transportation and Property Insurance Company, in Liquidation  
Insolvency Report  
December 28, 2015**

**Receivership Information/Reference:**

	<b>FIRST COMMERCIAL TRANSPORTATION AND PROPERTY INSURANCE COMPANY</b>
<b>Name of Receivership</b>	
Receivership Number	524
Date of Conservation	N/A
Date of Rehabilitation	July 10, 2009
Date of Liquidation	August 24, 2009

**Scope:**

As provided in that Provider Contract between the “Receiver of the Estate of First Commercial Transportation and Property Insurance Company” (the Receiver being the Florida Department of Financial Services, Division of Rehabilitation and Liquidation), hereinafter referred to as “RECEIVER” and Gregory, Sharer & Stuart, P.A., hereinafter referred to as “PROVIDER” effective October 7, 2010, under Section 5, SCOPE OF WORK, states in part:

- 5.1 Prepare an insolvency summary report (“Insolvency Report”), pursuant to the requirements of 631.398 (3), *Florida Statutes*, relating to the history and causes of insolvency, including a statement of the business practices of FIRST COMMERCIAL TRANSPORTATION AND PROPERTY INSURANCE COMPANY (FCTPIC), which led to the company’s insolvency.

- 5.1.1 For the receivership listed in paragraph 5.1, PROVIDER will review the company’s records in the RECEIVER’s possession for information relating to the cause(s) of the company’s insolvency and prepare and submit an approved, written summary report on those causes. The initial review of records should be performed at RECEIVER’s offices; other work may be performed at PROVIDER’s offices.

The document review of the files in the RECEIVER’s possession was conducted from November 9, 2009 through November 13, 2009, inclusive, by Russell Jacques, CPA at the RECEIVER’s warehouse.

The document review of the files in the PROVIDER’s possession was conducted from October 29, 2009 through the date of this report, inclusive, by Daniel J. Hevia, CPA and Russell Jacques, CPA at the PROVIDER’s offices.

The authority under which this insolvency report is written is Section 631.398, Florida Statutes, which states as follows:

Title XXXVII Chapter 631  
INSURER INSOLVENCY; GUARANTY OF INSURANCE PAYMENT

**631.398**

**Prevention of insolvencies.**

To aid in the detection and prevention of insurer insolvencies or impairments:

(1) Any member insurer; agent, employee, or member of the board of directors; or representative of any insurance guaranty association may make reports and recommendations to the department or office upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or germane to the solvency of any company seeking to do an insurance business in this state. Such reports and recommendations are confidential and exempt from the provisions of s. 119.07(1) until the termination of a delinquency proceeding.

(2) The office shall:

(a) Report to the board of directors of the appropriate insurance guaranty association when it has reasonable cause to believe from any examination, whether completed or in process, of any member insurer that such insurer may be an impaired or insolvent insurer.

(b) Seek the advice and recommendations of the board of directors of the appropriate insurance guaranty association concerning any matter affecting the duties and responsibilities of the office in relation to the financial condition of member companies and companies seeking admission to transact insurance business in this state.

(3) The department shall, no later than the conclusion of any domestic insurer insolvency proceeding, prepare a summary report containing such information as is in its possession relating to the history and causes of such insolvency, including a statement of the business practices of such insurer which led to such insolvency.

**History.** ss. 28, 39, ch. 83-38; ss. 187, 188, ch. 91-108; s. 4, ch. 91-429; ss. 2, 6, ch. 93-118; s. 385, ch. 96-406; s. 1351, ch. 2003-261.

**Business:**

Historical information regarding FCTPIC is as follows:

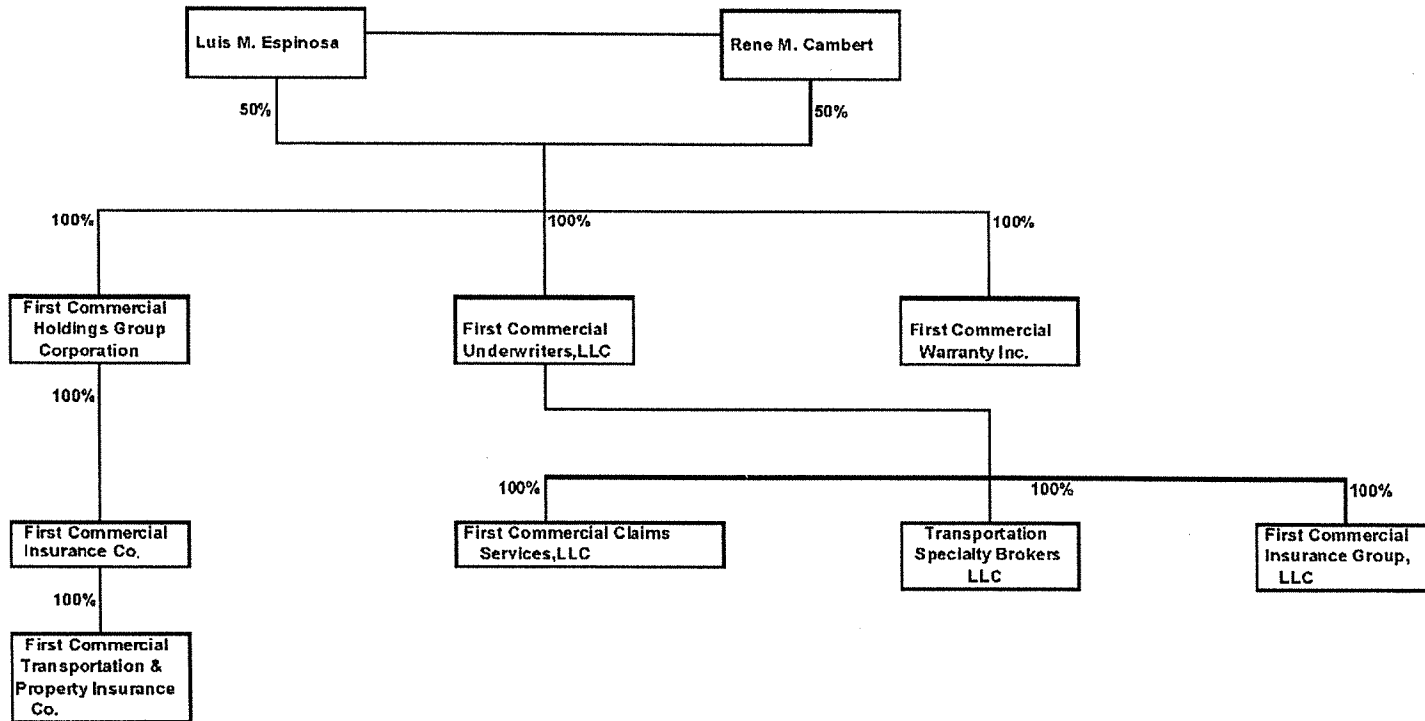
- **Date and Location of Incorporation:** FCTPIC was originally incorporated as Southern Group Indemnity, Inc. (SGI) on October 2, 1990.<sup>1</sup> In 2006 SGI changed its name to First Commercial Transportation and Property Insurance Company<sup>2</sup>.
- **Date the Company Began Doing Business in Florida:** Prior to its acquisition by First Commercial Insurance Company (FCIC) in 2006, FCTPIC (fka SGI) wrote homeowners and nonstandard private passenger and commercial auto policies<sup>3</sup>. When known as SGI, the company was writing personal auto insurance as early as 2001 and homeowners

insurance as early as 2004 but we were unable to determine when that activity began nor were we able to determine what other insurance was written by SGI prior to its acquisition by FCIC<sup>4</sup>. FCTPIC resumed writing business in Florida on January 1, 2007<sup>5</sup>.

- **Lines of Business:** At the time of insolvency, FCTPIC was writing commercial auto liability and auto physical damage policies<sup>6</sup>.
- **Certificates of Authority:** At the time of insolvency, FCTPIC was operating under a certificate of authority issued by the state of Florida<sup>7</sup>.
- **Geographic Areas:** At the time of insolvency, FCTPIC's area of insurance coverage was Florida.<sup>8</sup>
- **Operating Results:** According to FCTPIC's 2008 NAIC Annual Statement<sup>9</sup>:
  - Premiums earned were \$8,154,611 and \$4,901,593 in 2008 and 2007, respectively.
  - Underwriting income (loss) was \$838,096 and \$(1,631,853) in 2008 and 2007, respectively.
  - Net income (loss) was \$681,301 and \$(131,582) in 2008 and 2007, respectively.
- **Ownership:** FCTPIC's 2008 NAIC Annual Statement disclosed FCIC as the owner of FCTPIC<sup>10</sup>. FCTPIC's 2009 Annual Report filed with the Florida Secretary of State listed the following officers and directors at December 31, 2008<sup>11</sup>:
  - Luis M. Espinosa, President, Secretary, and Director
  - Rene M. Cambert, Vice President and Director
  - Bryan Deutsch, Treasurer and Director
  - Reginald E. Beane, Director
  - Jose L. Delgado, Director
  - Carlos E. Agüero, Director
  - Marcos Gutierrez, Director
- **Affiliates:** FCTPIC's March 2009 NAIC Quarterly Statement disclosed the following affiliates<sup>12</sup>:
  - Parent company, FCIC which was 100% owned by First Commercial Holdings Group Corp.
  - Affiliate by common ownership, First Commercial Underwriters, LLC
  - Affiliate by common ownership, First Commercial Claim Services, LLC
  - Transportation Specialty Brokers, LLC
  - First Commercial Insurance Group, LLC
  - First Commercial Warranty, Inc.
- **Organization Chart:** The following Organizational Chart was taken from Schedule Y of FCTPIC's March 2009 NAIC Quarterly Statement.

SCHEDULE Y - INFORMATION CONCERNING ACTIVITIES OF INSURER MEMBERS OF A HOLDING COMPANY GROUP

PART 1 - ORGANIZATIONAL CHART



## Management:

FCIC acquired FCTPIC on May 22, 2006. FCTPIC's NAIC statements for the year ended prior to the acquisition, December 31, 2005, reflected the following management<sup>13</sup>:

- Bryan Deutsch, President
- Mario Vives, Vice President and Secretary
- Caridad Eawaz, Treasurer
- Mario Vives, Donald Carlin, Bryan Deutsch, and Caridad Eawaz, Directors

FCTPIC's management subsequent to the acquisition as reflected in FCTPIC's NAIC statements for the years ended December 31, 2006 to December 31, 2008<sup>14</sup> and the quarter ended March 31, 2009<sup>15</sup> was:

- Luis Espinosa, Chief Executive Officer and Secretary (2006 and 2007), President (2008 and 2009), and Director (2006 to 2009)
- Rene Cambert, Treasurer (2006 and 2007), Chief Operating Officer and Executive Vice President (2008 and 2009), and Director (2006 to 2009)
- Reginald Beane, President (2006 and 2007) and Director (2006 to 2009)
- Michael Camilleri, General Counsel and Director (2006 and 2007)
- Michael Puchades, Vice President, Secretary, and General Counsel (2008 and 2009 )
- John Maloney, Chief Financial Officer and Director (2006)
- Bryan Deutsch, Chief Financial Officer, Treasurer, and Director (2008 and 2009)
- Marco Gutierrez, Director (2006 to 2009)
- Carlos Agüero, Director (2006 to 2009)
- Jose Delgado, Director (2007 to 2009)

At March 31, 2009, FCTPIC was 100% owned by FCIC. FCIC was 100% owned by First Commercial Holdings Group Corporation (FCHG). FCHG was owned by Luis Espinosa (50%) and Rene Cambert (50%)<sup>16</sup> who are included with management listed above.

At December 31, 2008, FCTPIC was 100% owned by FCIC. FCIC was 100% owned by FCHG. Schedule Y included with FCTPIC's NAIC statement<sup>17</sup> reported that FCHG was owned by Luis Espinosa (50%) and Rene Cambert (50%). Schedule Y included with FCIC's NAIC statement<sup>18</sup> reported that FCHG was owned by Reginald Beane (25%), Luis Espinosa (37.5%), and Rene Cambert (37.5%). We were unable to resolve the ownership persons or percentages discrepancy between the FCIC and FCTPIC December 31, 2008 schedules Y. Reginald Beane, Luis Espinosa, and Rene Cambert are included with management listed above.

At December 31, 2007 FCTPIC was 100% owned by FCIC. FCIC was 100% owned by FCHG which was owned by Reginald Beane, (20%), Luis Espinosa (30%), Rene Cambert (30%), and Michael Camilleri (20%)<sup>19</sup> who are included with management listed above.

At December 31, 2006, FCTPIC was 100% owned by FCIC. FCIC was 100% owned by FCHG. Schedule Y included with FCTPIC's NAIC statement<sup>20</sup> reported that FCHG was 100% owned by

CEIB Marketing Group LLC/Newport Star, LLC which in turn was owned by Reginald Beane (20%), Luis Espinosa (30%), Rene Cambert (30%), and Michael Camilleri (20%). Schedule Y included with FCIC's NAIC statement<sup>21</sup> reported that FCHG was owned by Reginald Beane (20%), Luis Espinosa (30%), and Rene Cambert (30%), and Michael Camilleri (20%). We were unable to resolve the discrepancy between the schedules Y with regard CEIB Marketing Group LLC/Newport Star, LLC.

Page 1 of Schedule Y of SGI's (FCTPIC's predecessor)<sup>22</sup> December 31, 2005 NAIC Annual Statement<sup>23</sup> was blank but Note 10 of FTPIC's December 31, 2005 Annual Statement indicated that all outstanding shares of FCTPIC were owned by Statewide Holding Group, Inc.<sup>24</sup>

FDFS as Receiver for FCTPIC brought an action against Colonial Bank to recover certificates of deposit owned by FCTPIC. Colonial Bank had refused to release the certificates of deposit claiming they were encumbered. The Receiver prevailed in this action and recovered \$8,455,829. A copy of the final order is attached.

### **Background/Events of Impact:**

FCTPIC (f/k/a Southern Group Indemnity, Inc.) is a Florida-domiciled property and liability insurance company. On May 22, 2006, the Florida Office of Insurance Regulation approved a stock purchase agreement under which FCIC purchased all the outstanding common stock of FCTPIC and operates it as a wholly-owned subsidiary. FCTPIC is licensed to write property and liability insurance and has written primarily nonstandard private passenger and commercial auto policies. FCTPIC ceased writing homeowners policies during 2004 and nonstandard private passenger and commercial auto policies during 2005. In 2007, the Company began writing commercial auto liability and auto physical damage policies.<sup>25</sup>

FCTPIC purchased services and leased space from related companies as follows:<sup>26</sup>

- Southern Group Insurance Management, Inc. (SGIM), an affiliated entity through common ownership with common business interests, leased office space, computer equipment, and software from FCTPIC during 2006. The lease expired April 2006 and provided the Company with \$42,495 in rental income for the year ended December 31, 2006. In addition, FCTPIC paid a one-time \$50,000 computer fee from SGIM.
- As FCTPIC's Managing General Agent (MGA), SGIM received commissions ranging from 20% to 25% on gross written premiums during the year ended December 31, 2006. The MGA agreement was terminated effective May 10, 2006. Commission expense under the MGA agreement was \$421,078 for the year ended December 31, 2006.
- In May 2006, FCTPIC entered into a MGA agreement with First Commercial Underwriters, LLC (FCU) an entity under common control with common business interests. Under the MGA agreement, FCU provides marketing, underwriting, data processing and reporting, audit, accounting, administration, general claims and loss control, regulatory functions, management functions, and billings and collections. Total MGA fees incurred by FCTPIC for the years ended December 31, 2008 and 2007 were \$924,243 and \$826,320, respectively (none in 2006).

- Until May 2006, FCTPIC had an agreement with Statewide Adjusters, Inc. (SAI), an entity affiliated through common ownership with common business interests, for claims processing and payment services. Under this agreement, FCTPIC paid processing fees to SAI of \$131,375 in 2006.
- In May 2006 FCTPIC entered into a claims service agreement with First Commercial Claims Services (FCCS) an affiliated company. Total claims service fees incurred under this agreement for the years ended December 31, 2008 and 2007 were \$1,188,000 and \$555,750, respectively (none in 2006).

We were unable to determine what the effect on FCTPIC's operating results would have been if FCTPIC had entered into the above transactions with unrelated parties.

### **Underwriting Results:**

Underwriting results for FCTPIC's years ended December 31, 2005, 2006, 2007, and 2008 as reported in its annual statement were as follows:<sup>27</sup>

	Year Ended December 31,			
	2005	2006	2007	2008
Underwriting Income	\$ 8,364,474	\$ 2,776,785	\$ 4,901,593	\$ 8,154,611
Underwriting Expenses.:				
Losses and LAE Incurred	(8,118,122)	(4,641,072)	(4,706,043)	(4,606,439)
Other Underwriting Expenses.:				
Commission and Brokerage:				
Direct	(2,441,538)	(421,078)	(1,078,345)	(1,069,281)
Reinsurance Ceded	419,776	(15,654)	299,786	222,200
Boards, Bureaus, and Assoc.	46,534	(69,181)	(7,559)	(3,558)
Surveys and Underwriting Rpts.	(4,505)	-	(30,771)	(51,037)
Audit of Assureds' Records	(43,011)	(106,741)	(75,904)	(67,951)
Payroll and Payroll-Related	(951,804)	(336,396)	(466,446)	(1,036,802)
Insurance	(106,259)	(2,800)	(59,344)	(59,616)
Travel and Travel Items	(24,974)	(8,810)	(40,291)	(36,772)
Rent & Rent Items	(32,820)	(33,097)	(4,573)	(211)
Equipment and Depreciation	(82,642)	(50,793)	(93,496)	(31,792)
Postage and Telephone	(25,744)	(14,975)	(64,052)	(2,727)
Legal and Auditing	(66,670)	(77,242)	(540)	(54,344)
Taxes, Licenses, and Fees	(123,429)	(40,378)	(44,946)	(239,205)
Other	(186,592)	(127,332)	(160,922)	(278,980)
Net Underwriting Gain (Loss)	\$ (3,377,326)	\$ (3,168,764)	\$ (1,631,853)	\$ 838,096



FCTPIC was acquired by FCIC in 2006. The 2005 and 2006 information above pertains to activity under the former ownership when FCTPIC was known as Southern Group Indemnity, Inc. The 2005 and 2006 information is included for historical purposes but is not directly comparable to the 2007 and 2008 as Southern Group Indemnity, Inc. wrote both private passenger and commercial auto insurance and FCTPIC focused primarily on commercial auto insurance.

The above analysis reveals significant year-to-year fluctuations in FCTPIC's underwriting income which is attributable to the cessation of writing insurance in the period following FCTPIC's acquisition by FCIC through the resumption of writing insurance and subsequent increases as more customers were obtained.

The relative constancy of the dollar amount of FCTPIC's loss and loss adjustment expenses incurred in 2006, 2007, and 2008, is somewhat surprising at approximately \$4.6 to \$4.7 million per year. We prepared an analysis comparing FCTPIC'S 2005, 2006, 2007, and 2008 Schedules P – Part 1 – Summary from the respective FCTPIC NAIC annual statements.<sup>28</sup> That analysis revealed that the loss development on current year premium business was approximately 85%, 74%, and 67% for the years ended December 31, 2006, 2007, and 2008, respectively, a decreasing trend probably explained by FCTPIC's change in business mix. Each year's loss development on prior year premium business varied considerably - approximately \$2.3 million, \$1.1 million, and \$(.9) million for the years ended December 31, 2006, 2007, and 2008, respectively.

The 2006 and 2007 amounts agree to the amounts in the respective audited financial statements. No 2008 audited financial statements were issued.

### **Reinsurance:**

We were unable to determine the reinsurance that was in force at the time of liquidation however the reinsurance in force during 2008 was as follows:<sup>29</sup>

- Commercial Auto Liability and Commercial General Liability:
  - \$900,000, each occurrence excess of \$100,000, each occurrence:
    - Multiple cedant agreements with FCIC.
    - Quarterly installments of \$667,500. Premium of 8.9% of the Companies' net earned premium.
  - \$3 million, each occurrence excess of \$1 million, each occurrence:
    - Multiple cedant agreements with FCTPIC.
    - Quarterly installments of \$50,000. Premium of 0.67% of the Companies' net earned premium.
    - Reinsurer's limit not to exceed \$12 million in all.
    - Two reinstatements at 200%.

The table below shows information related to reinsurance excerpted from FCTPIC's 2006, 2007, and 2008 NAIC annual statements. The fluctuations in amounts in this analysis appear to primarily be due to the cessation of writing insurance in 2006 followed by the resumption of writing in 2007. The 2007 amounts appear reasonable for an entity writing this level of business.

	2006	2007	2008
<b>Balance Sheet</b>			
Amounts Recoverable from Reinsurers	\$ 201,115	\$ 52,870	\$ 289,905
Ceded reinsurance premiums payable	-	-	(561,848)
Funds Held under reinsurance treaties	-	(15,792)	-
Net	<u>\$ 201,115</u>	<u>\$ 37,078</u>	<u>\$ (271,943)</u>
<b>Parts 1 &amp; 1B - Premiums Written/Earned</b>			
Direct Business	\$ (824,048)	\$ 9,189,341	\$ 10,282,438
Reinsurance Ceded to Non-Affiliates	10,439	(508,182)	(1,665,616)
Net Premiums Written	(813,609)	8,681,159	8,616,822
Change in Unearned per Part 1	3,590,394	(3,779,566)	(462,211)
Premiums Earned, Part 1, Column 4	<u>\$ 2,776,785</u>	<u>\$ 4,901,593</u>	<u>\$ 8,154,611</u>
<b>Part 2, Column 3, Reinsurance Recovered (Repaid)</b>	<u>\$ 407,163</u>	<u>\$ 281,218</u>	<u>\$ 322,169</u>
<b>Schedule F, Part 3</b>			
Reinsurance Premiums Ceded	<u>\$ (10,000)</u>	<u>\$ 508,000.0</u>	<u>\$ 1,666,000</u>
Paid Losses and LAE	\$ 201,000	\$ 53,000	\$ 290,000
Known Case Loss and LAE Reserves	187,000	5,000	55,000
IBNR Loss and LAE Reserves	214,000	-	723,000
Unearned Premiums	-	400,000	788,000
Subtotal	602,000	458,000	1,856,000
Ceded Balances Payable	(13,000)	-	(562,000)
Net Recoverable	<u>\$ 589,000</u>	<u>\$ 458,000</u>	<u>\$ 1,294,000</u>

**Financial:**

According to FCTPIC's 2008 NAIC Annual Statement:

- Total Surplus at 12-31-08 was \$6,627,928 of which \$8 million was from capital contributions in 2006 and 2007.
- 2008 net income was \$681,301 primarily consisting of \$8,154,611 of premiums earned less \$7,316,515 of underwriting expenses. Other revenue and expenses, excluding income taxes contributed approximately \$305,000 to net income and net 2008 income tax benefit reduced net income by \$462,207.

- FCTPIC reported cash and invested assets of approximately \$12.8 million and total net admitted assets of \$18.3 million. Cash and invested assets however included the following hypothecated/pledged CD's:
  - A \$3 million CD in the name of FCTPIC pledged as collateral to Colonial Bank via hypothecation on 3-25-08. The hypothecation agreement identified Power One Group, LLC, Reginald Beane, Luis Espinosa, and Rene Cambert as the borrowers on the related loans.
  - A \$2 million CD in the name of FCTPIC pledged as collateral to Colonial Bank via hypothecation on 3-25-08. The hypothecation agreement identified Power One Group, LLC, Reginald Beane, Luis Espinosa, and Rene Cambert as the borrowers on the related loans.
  - A \$3 million CD in the name of FCTPIC assigned as collateral to Colonial Bank on 12-31-08 for a loan to FCHG.
- None of the above hypothecated/pledged CD's were reflected as nonadmitted assets in the NAIC statements filed by FCTPIC for any of the periods during which the above CD's were hypothecated/pledged.
- After adjusting assets to reclassify the above assets as non-admitted, FCTPIC had a negative surplus which would have made it unlikely that FCTPIC would be able to fully satisfy all policyholder claims. FCTPIC had become dependent on generating new premiums to fully satisfy policyholder claims.
- We did not note discussion of FCTPIC's investment plans or activities
- At March 31, 2009, FCTPIC was 100% owned by FCIC which in turn was 100% owned by First Commercial Holdings Group Corporation (FCHG). FCHG was owned by Luis Espinosa (50%) and Rene Cambert (50%) who are included with management listed above.
- FCTPIC's primary product was commercial auto liability insurance.
- The 2008 NAIC Annual Statement General Interrogatories identify an actuary being used by FCTPIC in estimating loss reserves.
- During the period from 12-31-07 to 7-31-09 FCTPIC made net payments to FCU, its MGA, approximately \$729,000 greater than MGA fees earned by FCU during the same period. Those overpayments were used by FCU to benefit FCU's owners directly or to benefit entities owned or partially owned by the owners; Reginald E. Beane, Rene M. Cambert, Michael Camilleri (2008 only), and Luis M. Espinosa.
- FCU's 7-31-09 balance sheet reflected total assets, liabilities, and deficit of approximately \$9 million, \$16 million and \$7 million, respectively which indicates that FCU would not be able to repay FCTPIC.

At December 31, 2008 FCTPIC's annual statement showed a capital surplus of \$6,627,928. However, that report did not correctly reflect the certificates of deposit of \$8,272,209 that had been encumbered. Reclassifying those CDs as non-admitted assets would have resulted in an adjusted capital surplus of negative (\$1,644,281). Therefore, after adjustment, the Company has a capital deficiency of \$(1,644,281).

### Miscellaneous/Other:

- Nothing further noted.

### Conclusion:

FCTPIC was acquired by FCIC in 2006. In the brief period from acquisition to being declared insolvent, FCTPIC appeared to be on track to becoming a profitable insurance company. 2008 loss experience was good and expenses appeared to be well-managed.

However, FCTPIC's officers appear to have been stripping the company of cash by the following actions:

- During the period from 12-31-07 to 7-31-09 FCTPIC made net payments to FCU, its MGA, approximately \$729,000 greater than MGA fees earned by FCU during the same period. Those overpayments were used by FCU to benefit FCU's owners directly or to benefit entities owned or partially owned by the owners; Reginald E. Beane, Rene M. Cambert, Michael Camilleri (2008 only), and Luis M. Espinosa. By 7-31-09 FCU's balance sheet reflected liabilities in excess of its assets which indicated that it was unlikely that FCU would be able to repay FCIC.
- Beginning in March 2008, Messrs. Cambert and Espinosa, through a series of hypothecation and other agreements hypothecated/pledged \$8 million of FCTPIC CD's erroneously reported as admitted assets on FCTPIC's 2008 NAIC Annual Statement. Those CD's were pledged as security on loans benefitting them personally or entities in which they had/have an ownership interest. These actions reduced assets available to satisfy the claims of FCTPIC policyholders and if the actions had been properly accounted for, FCTPIC would have reported a net deficit rather than a surplus. These transactions were tantamount to dividends to Messrs. Cambert and Espinosa but were not recorded in FCIC's books or reported in FCIC's NAIC statements as such.

When combined, the above aggregated nearly \$9 million, an amount sufficiently in excess of FCTPIC's reported \$6.6 million 12-31-08 surplus which rendered FCTPIC insolvent and unable to continue in business.

## References:

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- <sup>1</sup> 1995 Florida Corporation Annual Report
  - <sup>2</sup> Application for name change filed with Florida Secretary of State September 25, 2006.
  - <sup>3</sup> First Commercial Transportation and Property Insurance Company Notes to Audited Financial Statements, Note 1, and Years ended December 31, 2007 and 2006.
  - <sup>4</sup> Page 2 of Report on the Reserve Evaluation of FCTPIC prepared by Huggins Actuarial Services, Inc.
  - <sup>5</sup> Ibid, Page 3.
  - <sup>6</sup> Part 1, Loss Experience and Part 2, Direct Premiums Written from FCTPIC's March 2009 NAIC Quarterly Statement.
  - <sup>7</sup> Page 2 of Report on the Reserve Evaluation of FCTPIC prepared by Huggins Actuarial Services, Inc.
  - <sup>8</sup> Schedule T of FCTPIC's March 2009 NAIC Quarterly Statement.
  - <sup>9</sup> Statement of Income from FCTPIC's 2008 NAIC Annual Statement.
  - <sup>10</sup> Schedule Y from FCTPIC's March 2009 NAIC Quarterly Statement.
  - <sup>11</sup> 2009 For Profit Corporation Annual Report downloaded from Florida Secretary of State web site.
  - <sup>12</sup> Schedule Y from FCTPIC's March 31, 2009 NAIC Quarterly Statement.
  - <sup>13</sup> Page 1 of FCTPIC's December 31, 2005 NAIC Annual Statement
  - <sup>14</sup> Page 1 of FCTPIC's December 31, 2006 to December 31, 2008 NAIC Annual Statements
  - <sup>15</sup> Page 1 of FCTPIC's March 31, 2009 NAIC Quarterly Statement
  - <sup>16</sup> Schedule Y from FCTPIC's March 31, 2009 NAIC Quarterly Statement.
  - <sup>17</sup> Schedule Y from FCTPIC's December 31, 2008 NAIC Annual Statement.
  - <sup>18</sup> Schedule Y from FCIC's December 31, 2008 NAIC Annual Statement.
  - <sup>19</sup> Schedule Y from FCTPIC's December 31, 2008 NAIC Annual Statement.
  - <sup>20</sup> Schedule Y from FCTPIC's December 31, 2006 NAIC Annual Statement.
  - <sup>21</sup> Schedule Y from FCIC's December 31, 2006 NAIC Annual Statement.
  - <sup>22</sup> Application for name change filed with Florida Secretary of State September 25, 2006.
  - <sup>23</sup> Schedule Y from SGI's December 31, 2005 NAIC Annual Statement.
  - <sup>24</sup> Excerpt from Note 10 of SGI's December 31, 2005 NAIC Annual Statement.
  - <sup>25</sup> Excerpted from Note 1, Summary of Significant Accounting Policies, Nature of Business, FCTPIC audited financial statements, years ended December 31, 2006, and 2007.
  - <sup>26</sup> Excerpted from Note 10, Related Party Transactions, FCTPIC audited financial statements, year ended December 31, 2007.
  - <sup>27</sup> Excerpted from FCIC NAIC Annual Statements, Statements of Income and Underwriting and Investment Exhibit Part 3 – Expenses for the years ended December 31, 2005, 2006, 2007, and 2008
  - <sup>28</sup> Excel schedule comparing Schedule P – Part 1 – Summary from FCTPIC's 2005, 2006, 2007, and 2008 NAIC annual statements.
  - <sup>29</sup> 2008 Reinsurance Summary Statements

IN THE CIRCUIT COURT OF THE  
SECOND JUDICIAL CIRCUIT, IN AND  
FOR LEON COUNTY, FLORIDA

IN RE: The Receivership of  
FIRST COMMERCIAL INSURANCE  
COMPANY, a Florida corporation,

CASE NO. 2009 CA 2668  
CASE NO. 2009 CA 2669 ✓

IN RE: The Receivership of  
FIRST COMMERCIAL TRANSPORTATION  
& PROPERTY INSURANCE COMPANY,  
a Florida corporation.

Plaintiff.

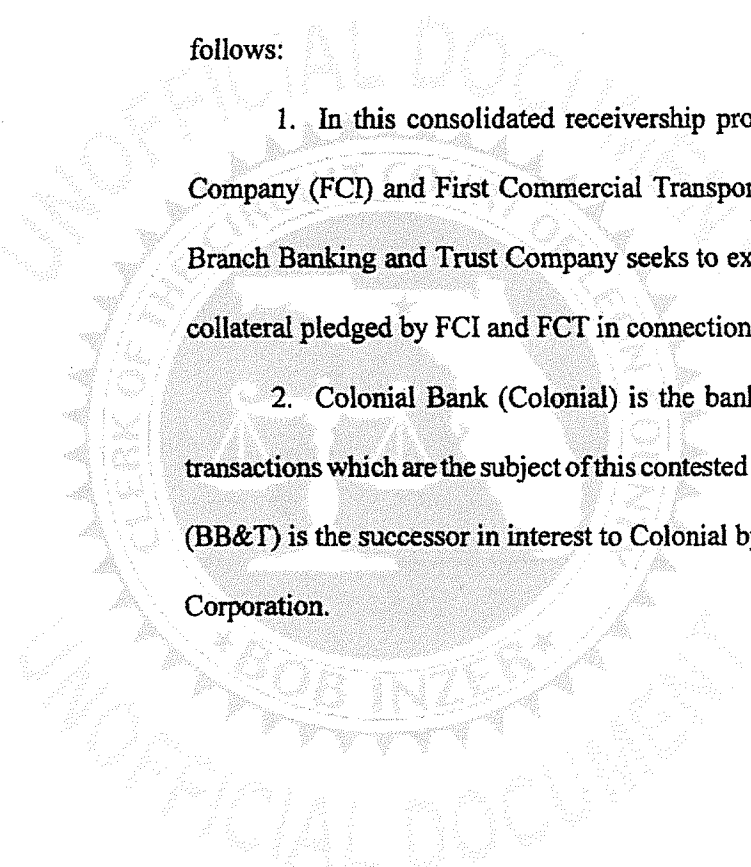
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CLERK OF CIRCUIT COURT  
LEON COUNTY FLORIDA

**AMENDED FINAL ORDER**

THIS CAUSE was tried before the Court without a jury from May 29, 2012, through June 4, 2012. Having considered the testimony of the witnesses, presented live or by video, the witness deposition transcripts, the exhibits introduced into evidence and having weighed and determined the credibility of the witnesses, and being otherwise fully advised in the premises, the Court finds as follows:

1. In this consolidated receivership proceeding relating to First Commercial Insurance Company (FCI) and First Commercial Transportation and Property Insurance Company (FCT), Branch Banking and Trust Company seeks to exercise its claimed secured creditor rights against collateral pledged by FCI and FCT in connection with loans made to affiliated companies.

2. Colonial Bank (Colonial) is the bank which made or engaged in all loan or pledge transactions which are the subject of this contested proceeding, and Branch Bank and Trust Company (BB&T) is the successor in interest to Colonial by acquisition from the Federal Deposit Insurance Corporation.



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CLERK OF CIRCUIT COURT  
LEON COUNTY FLORIDA

3. Pursuant to petition of the Department of Financial Services (Receiver), the Court, by order of July 10, 2009, placed FCI and FCT in receivership for purposes of rehabilitation.

4. The Receiver has identified assets of FCI and FCT, now in the possession of BB&T, which are certificates of deposit (CDs) as follows:

FCI #8051886136	\$2,000,000
FCI #8051885633	\$2,000,000
FCT #8051885625	\$3,000,000
FCT #8048706975	\$3,000,000
FCT #8048706702	\$2,000,000

5. On August 5, 2009, the Receiver sent demands, pursuant to § 631.154, Fla. Stat., demanding the return of the insurers' money, including the CDs.

6. Colonial refused to release the CDs, claiming the same to be encumbered.

7. Thereafter, Colonial filed various motions to enforce its claims and rights as a secured creditor and for offset.

8. In response, the Receiver filed its Emergency Motion Concerning Certificates of Deposit requesting the CDs to be placed in a public depository pending the resolution of Colonial's and the Receiver's claims to the insurers' CDs.

9. On August 14, 2009, Colonial was declared insolvent, and on August 21, 2009, BB&T filed notice of its status as successor in interest to Colonial's assets.

10. The Receiver claims that the various pledges or hypothecation agreements from the insurers are void or voidable pursuant to §§ 631.261 and 631.262, Fla. Stat. on various theories, as well as pursuant to the provisions of Chapter 726, Fla. Stat., the Uniform Fraudulent Transfers Act (UFTA).

11. The principals of FCI are Luis M. Espinosa (Espinosa), Reno M. Cambert (Cambert), Reginald E. Beane (Beane) and Michael Camilleri (Camilleri). They are also principals of FCT, First Commercial Underwriters, LLC (FCU), First Commercial Holdings Group Corp. (FCH), all subsidiaries and/or related entities of the parent company, FCH. These individuals, along with Oscar J. Delgado (Delgado) are also principals of Power One Group, LLC (Power One).

12. Beginning in year 2005 and through May, 2009, Colonial had loaned FCI, FCU, FCH and Power One tens of millions of dollars and received as security for some of the loans made, pledges or hypothecations of the CDs belonging solely to FCI and FCT. It is the entitlement to these CDs that is at issue in the proceeding.

13. On January 31, 2006, Power One executed a Note, Future Advance & Modification of Mortgage and Security Agreement to Colonial. In connection with this transaction none of the CDs at issue were pledged or hypothecated.

14. On January 28, 2007, the Power One construction loan matured and was extended for one year. In connection with this transaction none of the CDs at issue were pledged or hypothecated.

15. On August 17, 2007, the Power One Phase II Restated and Amended Future Advance Promissory Note in the amount of \$5,500,000 was executed. In connection with this transaction, none of the CDs at issue were pledged or hypothecated.

16. By agreement bearing a date of March 25, 2008, FCT CD# 6702 and FCT CD# 6975 were hypothecated as security for the Power One loan.

17. The evidence introduced at trial clearly demonstrates that signatures were placed on the document even after August 19, 2008, but there was no credible evidence introduced to show that it was in fact properly executed prior to July 10, 2009, the date the Receiver was appointed.



18. At all times pertinent to the transactions in question, Espinosa and Cambert were insiders as to the Power One loan while serving as officers and directors of FCI and FCT.

19. BB&T's position that the pledge and/or hypothecation of CD# 6702 and CD# 6975 were given in forbearance of acceleration and/or foreclosure due to default by Power One under the loan documents, is not supported or established by the evidence. There was no evidence of a specific and identifiable forbearance agreement, orally or in writing.

20. There was no default on March 25, 2008. Taxes were not delinquent. There was no default in loan payments. There was insufficient proof to establish a default in the loan to debt ratio. Even if Power One had not maintained a loan to debt ratio, the commitment letter allowed the borrower 180 days to cure the same. The terms of the commitment letter survived the closing by virtue of the terms of the various loan documents.

21. There being no default established, there was no need for a forbearance agreement, or in other words, no consideration established within the meaning of Chapter 631, Fla. Stat. for the hypothecation agreement.

22. The pledge of the FCT CDs was solely for the benefit of the insider principals, and there was no benefit to FCT or FCI.

23. No notice of any default was given by Colonial prior to March 25, 2008.

24. Before March 28, 2008, Colonial knew, or with the exercise of reasonable judgment, should have known, that any reduction in the surplus of FCI or FCT would result in the insolvency of FCT, and the impairment of surplus to FCI in violation of all applicable insurance regulations.

25. At all times after February 2008, Colonial knew or should have known with the exercise of reasonable judgment, that any diminution of the surplus of FCT would cause FCT to be insolvent, and of FCI, would cause FCI to be in violation of minimum surplus insurance requirements.

26. As to FCT CDs # 6702 and #6975, also pledged and hypothecated on June 4, 2008, as security for the FCU loan as a substitute for previously pledged FCI CD# 0140, the Court finds there was not fair equivalent value received by FCT for the same.

27. Although there was testimony that insiders indicated to Colonial that FCI and FCT were to be the beneficiaries of proceeds of releases and exchange of CDs in connection with the shoring up of the Power One and FCU loans, the evidence in fact established that the transactions had the effect of only benefitting Colonial and the insiders in connection with the various loans which were in trouble. It further resulted in FCT being insolvent and FCI in violation of its minimum surplus underwriting insurance regulations and requirements.

28. Neither FCI nor FCT received fair equivalent value for the pledge and/or hypothecation of FCI CD# 5633 and FCT CD# 5625 in connection with the FCH loan in the amount of \$5,000,000 dated December 30, 2008.

29. The pledge and/or hypothecation created a lien upon the property of the insurers between four months and one year to the commencement of the delinquency proceeding, and they inured to the benefit of Espinosa and Cambert as principals and guarantors of the FCH loan.

30. BB&T failed to establish that the proceeds of the FCH loan inured in any way to the benefit of FCI or FCT, or that FCI and FCT received fair equivalent value for the pledge and/or hypothecation of the two CDs.

31. FCI received no fair equivalent value or other consideration for the pledge of CD# 6136 on May 1, 2009.

32. At the time of the pledge or hypothecation of any of the five CDs at issue, there was no default payment or performance of any of the obligations of FCT or FCI under its direct loans from

Colonial except alleged cross defaults by virtue of the alleged defaults of Power One and FCU, which were clearly insider affiliate companies.

33. Colonial did not act in good faith or with the exercise of reasonable judgment as to any pledge or hypothecation of FCI or FCT CDs.

34. At all times after February, 2008, if not before, Colonial knew, or with the exercise of reasonable judgment should have known, that FCI and FCT could not pledge its assets to guarantee the loans of others.

35. Colonial, if acting in good faith, or with the exercise of reasonable judgment, knew or should have known that it had a duty to disclose to the insurance company auditors that the CDs in question were pledged and were not available assets of the insurance companies.

36. Lini Macki's testimony that she relied on Espinosa's and/or Cambert's statements that the surplus of the insurance companies would not be impaired by the various pledges and/or hypothecations of the CDs at issue, was not credible in light of the other evidence concerning the borrower's knowledge of the "underwater" status of the Power One loan, the failure to disclose that the rent rolls were proforma rather than actual, and the failure to exercise any reasonable business judgment to independently verify income and liabilities of her borrowers, as well as the true surplus status of FCI and FCT.

37. The Court expressly finds that Colonial did not act in good faith within the meaning of § 631.011 (11), Fla. Stat. as to the pledge of any of the CDs at issue.

38. Colonial was not a bona fide holder for value prior to the date of commencement of these proceedings as to any of the CDs at issue.

39. BB&T has failed to prove that its security was perfected and its right to proceed against the security had matured as to any of the CDs at issue by July 10, 2009.

40. Receiver has failed to establish that the pledge and/or hypothecation of the CDs were fraudulent within the meaning of Chapter 726, Florida Statutes, the Florida Uniform Fraudulent Transfer Act.

It is therefore, **ORDERED and ADJUDGED** as follows:

1. The pledge and/or hypothecation of FCT CD# 6975 and FCT CD# 6702 are hereby declared to be void pursuant to § 631.261(3), Fla. Stat.

2. The pledge and/or hypothecation of FCT CD# 5625 and FCI CD# 5633 is hereby declared void pursuant to § 631.261(1)(b), Fla. Stat.

3. The pledge and/or hypothecation of FCI CD# 6136 is hereby declared to be void pursuant to § 631.261(1)(a), Fla. Stat.

4. The CD and/or all funds represented by and earned pursuant to all of the CDs shall, within twenty (20) days of the date of this order, be accounted for and deposited with the Receiver in such account or accounts as shall be designated in writing by the Receiver. Said designation shall be made within ten (10) days of the date of this order.


5. BB&T's claim as to the security of the CD's is **DENIED**, and its claim for offset is **DENIED**.

6. Any prior orders of this Court finding BB&T to have a right to the security or to any offset against the CDs in issue are vacated and of no force and effect.

7. Any prior orders of this Court finding BB&T to be entitled to attorneys fees and costs in connection with the litigation over these five CDs are hereby vacated and of no further force and effect.

8. The Court reserves jurisdiction to determine entitlement, if any, to attorneys fees.

**DONE and ORDERED** in Tallahassee, Leon County, Florida, February 8, 2013, *nunc pro tunc* September 25, 2012.

  
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**CHARLES A. FRANCIS**  
Chief Judge

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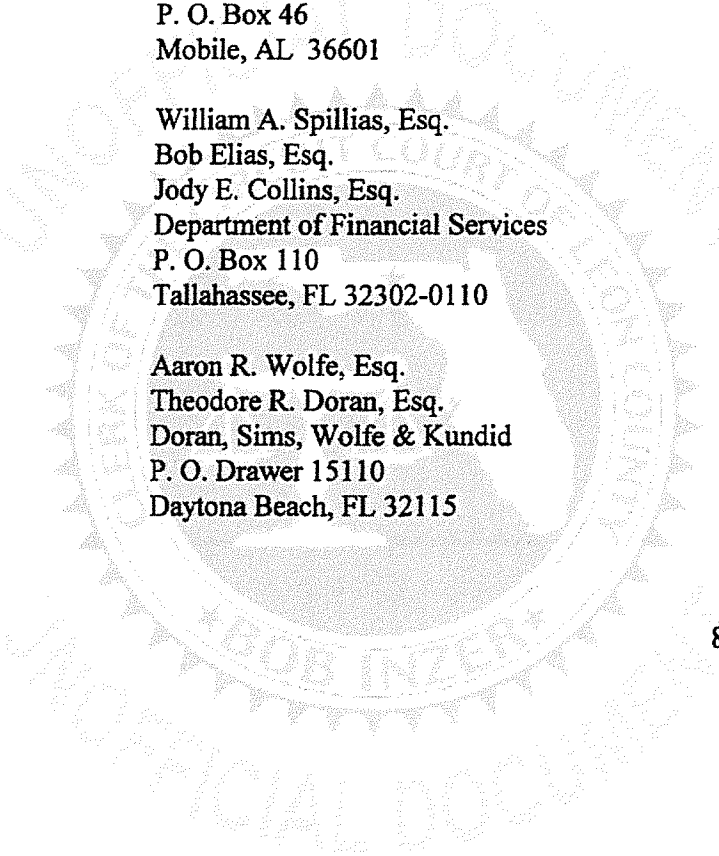
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