

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

Receivership Information/Reference:

Name of Receivership	FIRST COMMERCIAL INSURANCE COMPANY
Receivership Number	523
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 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 INSURANCE COMPANY (FCIC), 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 FCIC is as follows:

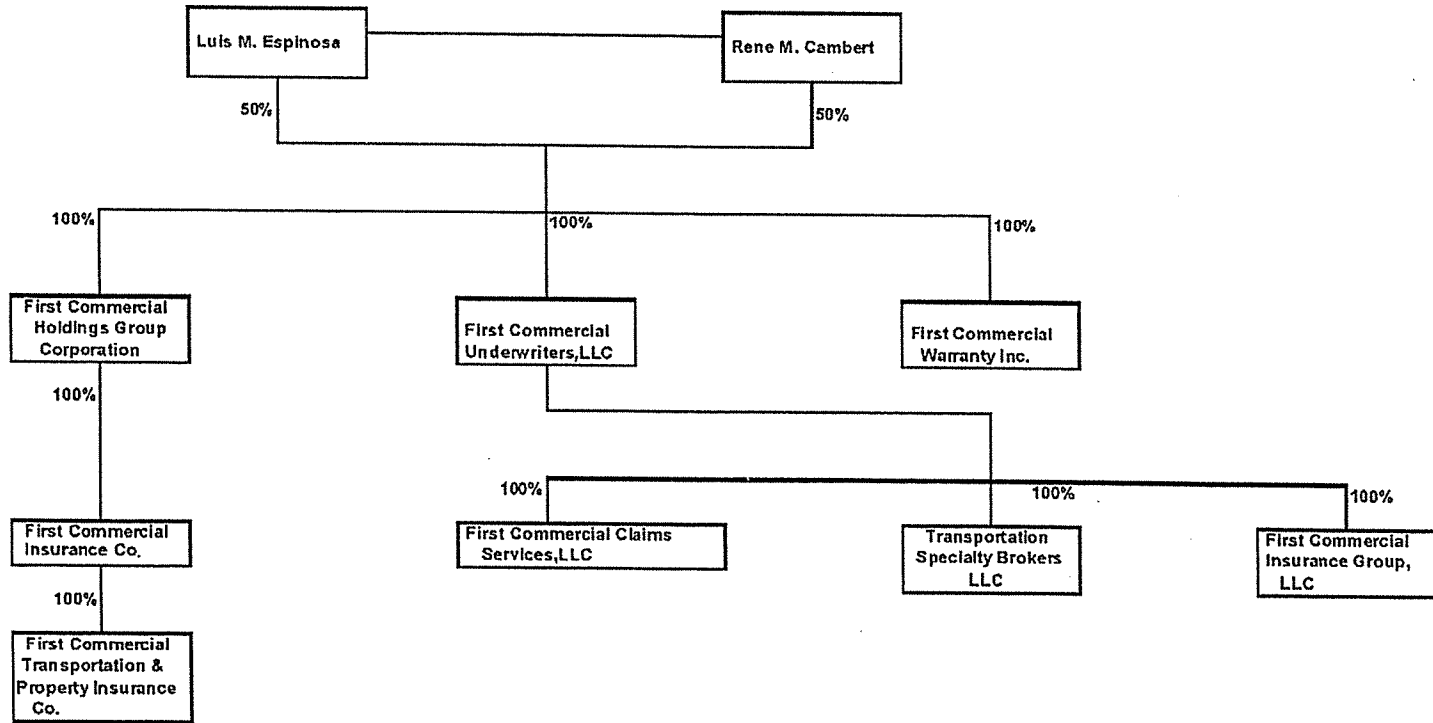
- **Date and Location of Incorporation:** FCIC was originally incorporated as First Commercial Mutual Company, an Assessable Mutual on 11/07/1995 in Miami, Florida.¹ In 2002 FCIC changed its name to First Commercial Insurance Company and received permission to convert to a stock insurer.²
- **Date the Company Began Doing Business in Florida:** FCIC was licensed to begin doing business in Florida as an assessable mutual insurance company on November 15,

1995 and continued to do so through December 31, 2001. In 2003 FCIC began doing business as a stock insurance company.³

- **Lines of Business:** FCIC initially wrote only workers' compensation insurance. In 2003 FCIC expanded its business to include commercial automobile coverage and in 2004 added general liability insurance to its lines of business.⁴
- **Certificates of Authority:** At the time of insolvency, FCIC was operating under certificates of authority issued by the states of Florida⁵ and Georgia⁶.
- **Geographic Areas:** At the time of insolvency, FCIC's area of insurance coverage was Florida and Georgia.⁷
- **Operating Results:** According to FCIC's 2008 NAIC Annual Statement⁸:
 - Premiums earned were \$47,098,846 and \$64,018,233 in 2008 and 2007, respectively.
 - Underwriting income (loss) was (\$9,805,774) and \$9,104,922 in 2008 and 2007, respectively.
 - Net income (loss) was (\$9,506,445) and \$4,375,335 in 2008 and 2007, respectively.
- **Ownership:** FCIC's 2008 NAIC Annual Statement disclosed First Commercial Holdings Group Corp. as the owner of FCIC⁹. FCIC's 2009 Annual Report filed with the Florida Secretary of State listed the following officers and directors at December 31, 2008¹⁰:
 - Luis M. Espinosa, President and Director
 - Rene M. Cambert, Vice President and Director
 - Michael Puchades, Vice President and Secretary
 - Bryan Deutsch, Treasurer and Director
 - Reginald E. Beane, Director
 - Jose L. Delgado, Director
 - Carlos E. Aguero, Director
 - Marcos Gutierrez, Director
- **Affiliates:** FCIC's March 2009 NAIC Quarterly Statement disclosed the following affiliates¹¹:
 - Parent company, First Commercial Holdings Group Corp.
 - 100% owned subsidiary, First Commercial Transportation and Property Insurance Company
 - 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 FCIC'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's NAIC statements for the years ended December 31, 2005 to December 31, 2008 and the quarter ended March 31, 2009¹² reflected the following information regarding FCIC's management:

- Luis Espinosa, Chief Executive Officer (2005 to 2009), President (2008 to 2009), Secretary (2005 to 2007), and Director (2005 to 2009)
- Rene Cambert, Chief Operating Officer (2005 to 2009), Treasurer (2005 to 2007), Executive Vice President (2008 to 2009), and Director (2005 to 2009)
- Reginald Beane, President (2005 to 2007) and Director (2005 to 2009)
- Michael Camilleri, General Counsel and Director (2005 to 2008)
- Michael Puchades, Assistant General Counsel (2005 to 2007), and Vice President, Secretary, and General Counsel (2008 to 2009)
- John Maloney, Chief Financial Officer and Director (2005 and 2006)
- Bryan Deutsch, Chief Financial Officer (2007 to 2009), and Treasurer and Director (2008 and 2009)
- Gloria Alvarez, Vice President, Marketing (2005 to 2007)
- Theodore Werckman, Vice President, Underwriting (2005)
- Joseph Gomez, Vice President, Information Technology (2007 to 2009)
- Michael Jones, VP, Underwriting (2007)
- Awilda Trujillo, VP, Claims (2007 to 2009)
- Alba Diaz, VP, HR (2007 to 2009)
- Harold Thompson, Vice President, Application Development, 2008 and 2009)
- Marcos Gutierrez, Director (2005 to 2009)
- Carlos Aguero, Director (2005 to 2009)
- Jose Delgado, Director (2007 to 2009)

At March 31, 2009, FCIC was 100% owned by First Commercial Holdings Group Corporation (FCHG). FCHG was owned by Luis Espinosa (50%) and Rene Cambert (50%)¹³ who are included with management listed above.

At December 31, 2008, FCIC was 100% owned by FCHG which was owned by Reginald Beane (25%), Luis Espinosa (37.5%), and Rene Cambert (37.5%)¹⁴ who are included with management listed above. Schedule Y included with FCIC's subsidiary FCTPIC's 2008 NAIC Annual Statement¹⁵ reported that FCHG was owned by Luis Espinosa (50%) and Rene Cambert (50%). 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 FCIC was 100% owned by FCHG which was owned by Reginald Beane, (20%), Luis Espinosa (30%), Rene Cambert (30%), and Michael Camilleri (20%)¹⁶ who are included with management listed above.

At December 31, 2006 FCIC was 100% owned by FCHG which was owned by Reginald Beane, (20%), Luis Espinosa (30%), Rene Cambert (30%), and Michael Camilleri (20%)¹⁷ who are included with management listed above. Schedule Y included with FCTPIC's NAIC statement¹⁸ 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%). We were unable to resolve the discrepancy between the schedules Y with regard CEIB Marketing Group LLC/Newport Star, LLC.

At December 31, 2005, FCIC was 100% owned by First Commercial Holdings, LLC which was 100% owned by CEIB Marketing Group, LLC/Newport Star, LLC which was owned by Reginald Beane (25%), Luis Espinosa (25%) Rene Cambert (30%) and Michael Camilleri¹⁹ who are included with management listed above.

FDFC as the Receiver for FCIC brought an action against Colonial Bank to recover certificates of deposits owned by FCIC. Colonial Bank has refused to release these certificates of deposit claiming they were encumbered. The Receiver prevailed in this action and recovered \$4,045,522. A copy of the final order is attached.

Background/Events of Impact:

First Commercial Mutual Company (FCMC) was licensed as an assessable mutual insurer on November 15, 1995 to write workers' compensation insurance in the state of Florida. FCMC wrote fully assessable policies through December 31, 2001. In 2003, pursuant to a Plan of Reorganization approved by its policyholders and the Florida Office of Insurance Regulation, FCMC converted from an assessable mutual insurance company to a stock insurance company and changed its name to First Commercial Insurance Company (FCIC). In 2003 FCIC began writing commercial automobile policies in the state of Florida and in 2004 FCIC began writing general liability insurance policies in the state of Florida.²⁰

FCIC purchased services and leased space from related companies as follows:²¹

- In October 2002, FCIC entered into a Managing General Agent (MGA) agreement with First Commercial Underwriters, LLC (FCU) an entity under common control with common business interests. Under the MGA agreement, FCU provided 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 for the years ended December 31, 2008, 2007, and 2006 were \$5,140,162, \$6,657,209, and \$8,618,401, respectively
- In October 2004, FCIC entered into a claims service agreement with First Commercial Claims Services (FCCS) an affiliated company. Total claims service fees incurred for the years ended December 31, 2008, 2007, and 2006 were \$2,822,250, \$3,588,000, and \$4,063,300, respectively.
- FCIC also leased office space to FCU and FCCS and received \$127,500 and \$94,500 from the respective companies in 2006.

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

In May 2006, FCIC acquired Southern Group Indemnity, Inc. and renamed it First Commercial Transportation and Property Insurance Company (FCTPIC). In November 2006, FCIC merged with Newport Star Reinsurance Company (NSRC) a South Carolina-domiciled insurance company engaged exclusively in the workers' compensation and commercial liability reinsurance businesses.²²

FCIC's primary line of business was high deductible workers' compensation insurance policies sold to professional employer organizations (PEO's). This line of business represented approximately 90%, 76%, 79%, and 59% of FCIC's direct written premiums for the years ended December 31, 2005, 2006, 2007, and 2008, respectively.²³

Many of the PEO's insured by FCIC individually represented a significant percentage of FCIC's revenue each year and gaining or losing a single PEO client would have a significant effect on FCIC's premium revenue. In addition, fluctuations in workers' compensation insurance rates could also significantly impact FCIC's revenue.

Despite these risks, FCIC reported profitable operations for the years 2004 through 2007. However, according to FCIC's 2008 NAIC Annual Statement, FCIC incurred a net loss of approximately \$9.5 million on approximately \$47 million of underwriting revenue in 2008.²⁴ The reported 2008 loss was not entirely attributable to 2008 events – see discussion in Underwriting Results section below.

FCIC's \$9.5 million 2008 loss and other capital and surplus changes reduced FCIC's total capital and surplus by over 60% from approximately \$22.6 million at December 31, 2007 to \$8.2 million at December 31, 2008.

\$8.2million was well under FCIC's required minimum capital and surplus of \$20 million. FCIC attempted to remedy the shortfall by recording a \$12 million reinsurance letter of credit as an admitted asset and contribution to capital.²⁵ This transaction on FCIC's 2008 NAIC Annual Statement drew the attention of the Florida Office of Insurance Regulation (FLOIR) and ultimately led to a FLOIR investigation that resulted in a Consent Order Appointing the Florida Department of Financial Services as Receiver for Purposes of Rehabilitation, Injunction, and Notice of Automatic Stay dated July 10, 2009.²⁶ As the rehabilitation progressed, it became evident that FCIC was insolvent for regulatory purposes which resulted in an Order Appointing the Florida Department of Financial Services as Receiver for Purposes of Liquidation, Injunction, and Notice of Automatic Stay dated August 24, 2009.²⁷

Underwriting Results:

Underwriting results for FCIC's years ended December 31, 2005, 2006, 2007, and 2008 as reported in its annual statement were as follows:²⁸

	Year Ended December 31,			
	2005	2006	2007	2008
Underwriting Income	\$ 80,032,858	\$ 44,755,689	\$ 64,018,233	\$ 47,098,846
Prem. Balances Charged Off (A)	(147,235)	(136,622)	(2,358,812)	(142,762)
Underwriting Expenses.:				
Losses and LAE Incurred	(65,492,893)	(48,368,985)	(35,304,344)	(40,172,290)
Charge on Uncollateralized Deductible Plans (B)	(8,075,093)	(5,092,985)	(2,091,222)	(855,848)
Other Underwriting Expenses.:				
Commission and Brokerage:				
Direct	(15,220,941)	(12,042,047)	(7,178,354)	(5,828,102)
Reinsurance Ceded	34,368,107	42,422,375	3,472,027	3,137,900
Boards, Bureaus, and Assoc.	(537,031)	(727,643)	(492,321)	(454,280)
Audit of Assureds' Records	(278,223)	(383,207)	(684,787)	(606,171)
Payroll and Payroll-Related	(8,827,948)	(5,826,246)	(6,498,996)	(5,534,892)
Rent & Rent Items	(328,764)	(339,960)	(340,746)	(244,386)
Legal and Auditing	(708,367)	(1,401,027)	(589,815)	(1,136,138)
Taxes, Licenses, and Fees	(6,034,240)	(6,568,629)	(3,478,899)	(1,727,769)
Real Estate Expenses	(134,042)	-	-	(1,431,819)
Marketing	(2,505,197)	(1,939,140)	(12,249)	-
Other	(3,717,482)	(3,347,772)	(3,804,914)	(2,763,911)
Net Underwriting Gain (Loss)	\$ 2,393,509	\$ 1,003,801	\$ 4,654,801	\$ (10,661,622)

(A) Included with Underwriting results because of large 2007 charge-off.

(B) Charges pertain to high deductible policies. Included with other income by FCIC. They are loss-related and therefore more appropriately included with underwriting expenses.

The above analysis reveals significant year-to-year fluctuations in FCIC's underwriting income and expenses. This was due to changes in IBNR and other loss liability estimates. Negative prior year claims development would be reflected as a loss expense in a subsequent year making year-to-year loss ratio comparisons inappropriate. For example, the 2007 ratio of loss + LAE expense to 2007 underwriting income, net of premiums charged off, was 57% vs. 86% in 2008.

When compared with prior years, the substantial net underwriting loss incurred in 2008 appeared to be attributable to the following factors:

- A relatively poor year for underwriting revenue

- Significant loss ratio increase. The pre-2008 policy negative development was approximately \$10 million. The remainder of the 2008 losses were on 2008 policies.
- No significant reinsurance ceded commission expense offset in 2008 unlike 2005 and 2006.

The 2005, 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:²⁹

- Commercial Auto Liability and Commercial General Liability:
 - \$900,000, each occurrence excess of \$100,000, each occurrence:
 - Multiple cedant agreements with FCTPIC.
 - Quarterly installments of \$667,500. Premium of 8.9% of the Company's net earned premium.
 - \$4 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 Company's net earned premium.
 - Reinsurer's limit not to exceed \$12 million in all.
 - Two reinstatements at 200%.
- Workers' Compensation Including PEO's and Employer's Liability:
 - \$3 million, each occurrence excess of \$2 million, each occurrence:
 - Not to exceed \$12 million or 450% of the Company's maximum adjusted reinsurance premium in all.
 - Quarterly installments of \$300,000. Provisional premium of 2% of the Company's net earned premium.
 - Adjusted premium equal to reinsurer's losses incurred plus 1.10% of Company's net earned premium, not to exceed 4.5%.
 - \$5 million, each occurrence excess of \$5 million each occurrence:
 - Not to exceed \$20 million in all.
 - Quarterly installments of \$345,000. Premium of 2.3% of the Company's net earned premium subject to a minimum premium of \$1,104,000.
 - One free reinstatement.

The following page shows information related to reinsurance excerpted from FCIC's 2006, 2007, and 2008 NAIC annual statements. Generally the information reflects the volatility that would be expected for an insurance company writing primarily high deductible workers' compensation insurance policies. The net amount recoverable declined substantially from 2006 through 2008 but the decrease appeared to correspond approximately to the decrease in premiums written and ceded.

	2006	2007	2008
Balance Sheet			
Amounts Recoverable from Reinsurers	\$ 4,397,214	\$ 3,537,060	\$ 27,881
Other Rec'ble Under Reins. Contracts (A)	10,676,658	5,278,586	4,772,078
Ceded reinsurance premiums payable	(4,081,880)	(207,207)	(5,419,840)
Funds Held under reinsurance treaties	(4,825,250)	(1,661,847)	-
Net	<u>\$ 6,166,742</u>	<u>\$ 6,946,592</u>	<u>\$ (619,881)</u>
Parts 1 & 1B - Premiums Written/Earned			
Direct Business	\$ 101,418,789	\$ 60,885,588	\$ 51,155,629
Reinsurance Assumed from Non-Affiliates	338,460	-	-
Reinsurance Ceded to Non-Affiliates	(36,590,452)	(4,272,375)	(9,804,252)
Net Premiums Written	65,166,797	56,613,213	41,351,377
Change in Unearned per Part 1	(20,411,108)	7,405,019	5,747,470
Premiums Earned, Part 1, Column 4	<u>\$ 44,755,689</u>	<u>\$ 64,018,232</u>	<u>\$ 47,098,847</u>
Part 2, Column 3, Reinsurance Recovered (Repaid)	<u>\$ (2,568,197)</u>	<u>\$ 285,860</u>	<u>\$ 13,645,371</u>
Schedule F, Part 3			
Reinsurance Premiums Ceded	<u>\$ 36,590,000</u>	<u>\$ 4,272,000</u>	<u>\$ 9,804,000</u>
Paid Losses and LAE	\$ 4,397,000	\$ 3,537,000	\$ 28,000
Known Case Loss and LAE Reserves	1,637,000	1,213,000	598,000
IBNR Loss and LAE Reserves	13,000,000	823,000	3,362,000
Unearned Premiums	3,758,000	1,480,000	7,151,000
Subtotal	22,792,000	7,053,000	11,139,000
Ceded Balances Payable	(4,082,000)	(207,000)	(5,420,000)
Net Recoverable	<u>\$ 18,710,000</u>	<u>\$ 6,846,000</u>	<u>\$ 5,719,000</u>

(A) 2008 is net of erroneous journal entry to record letter of credit as contribution to capital.

Financial:

According to FCIC's 2008 NAIC Annual Statement:

- Total Surplus at 12-31-08 was \$20,202,695 of which \$12 million was from an accounting journal entry and potential adjustment to the valuation of certain assets that would have further diminished FCIC's surplus. In addition, total assets included other questionable assets. See financial flexibility comment below.
- 2008 net loss was \$9,506,445 primarily consisting of \$47,098,846 of premiums earned less \$56,904,620 of underwriting expenses. Other revenue and expenses, excluding income taxes contributed approximately \$325,000 to the net loss and net 2008 income tax benefit reduced the net loss by \$623,184.
- FCIC had little financial flexibility at 12-31-08. Cash and invested assets were approximately \$46.6 million, total net admitted assets were \$82.6 million, and total liabilities were \$63.4 million. Assets included the following questionable assets:
 - Cash and invested assets included stock in FCIC's subsidiary, FCTPIC, valued at approximately \$6.6 million. FCTPIC was placed in receivership for purposes of rehabilitation and subsequently for purposes of liquidation at the same time as FCIC.
 - FCIC's office building valued at approximately \$10.4 million net of \$10.8 million in encumbrances. The building was built at the height of the real estate boom and was ultimately disposed of in a short-sale with no recovery to FCIC.
 - The asset Other Amounts Receivable Under Reinsurance Contracts includes a \$12 million accounting journal entry to record a letter of credit as an admitted asset and contribution to capital. It was neither.
 - See comment in Miscellaneous/Other section below regarding hypothecation of FCIC assets.
- After adjusting assets to remove or reduce the above questionable assets, FCIC would not have any surplus and would be unable to fully satisfy all policyholder claims. FCIC had become dependent on generating new premiums to satisfy policyholder claims.
- We did not note discussion of FCIC's investment plans or activities
- At March 31, 2009, FCIC 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.
- FCIC's primary product was high deductible workers' compensation insurance sold to PEO's; several of which represented a significant concentrate of FCIC revenues. As a consequence, loss of a single large PEO client or incurrence of significant uncollateralized deductible losses could have a severe financial impact on FCIC. The savings realized by FCIC from selling fewer policies was more than offset by the discounts needed to get the PEO business. FCIC was attempting to diversify out of dependence on workers' compensation insurance as its major line of business. In 2005, workers' compensation insurance was responsible for approximately 90% of FCIC's premium revenue. By 2008 the percentage had been reduced to approximately 70%.
- The General Interrogatories identify an actuary being used by FCIC in estimating loss reserves.

- During the period from 12-31-07 to 7-31-09 FCIC made net payments to FCU, its MGA, that were approximately \$6.3 million 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 FCIC.
- The capital deficiency as of the date of the receivership as determined by the Office of Insurance Regulation was \$103,601.

Other

In addition to the matters noted above, the following occurred at FCIC:

- In June 2009, Messrs. Cambert and Espinosa, executed a series of transactions involving FCIC time deposits with one of FCIC's banks that resulted in a \$1,032,275 net reduction in FCIC's admitted assets and surplus in a manner that benefitted them personally either directly or indirectly as owners of FCIC's parent company, FCHG.
- On 12-31-08 (\$2 million) and 5-1-09 (\$2 million), Messrs. Cambert and Espinosa, through a series of hypothecation and other agreements pledged \$4 million of assets of FCIC as security on loans benefitting themselves personally or entities in which they had an ownership interest. These actions reduced admitted assets available to satisfy the claims of FCIC policyholders and reduced FCIC's surplus by a like amount. These transactions were tantamount to distribution to Messrs. Cambert and Espinosa but were not recorded in FCIC's books or reported in FCIC's NAIC statements as such.

Conclusion:

For years FCIC operated as an insurance company the bulk of whose business was from writing PEO high deductible workers' compensation policies. FCIC showed profits until 2008 when a combination of negative loss development and lower premium revenue caused FCIC to incur a \$9.5 million loss. That loss, by itself would have caused FCIC's capital and surplus to shrink to the point that its ability to write insurance would have been sharply curtailed. In response, FCIC attempted to create capital by writing an accounting journal entry to record a letter of credit as an admitted asset and contribution to capital. The purported transaction had no economic substance.

In addition, in 2008, construction of FCIC's office building was completed and the asset was brought on to FCIC's books. The building was valued at approximately \$10.4 million net of \$10.8 million in encumbrances. The building was an illiquid asset which reduced FCIC's capacity to pay claims and the building was built at the height of the real estate boom which raises concern that the value of the building may have been overstated.

Further, FCIC's cash and invested assets at 12-31-08 included stock in FCIC's subsidiary, FCTPIC, valued at approximately \$6.6 million. FCTPIC was placed in receivership for purposes of rehabilitation and subsequently for purposes of liquidation at the same time as FCIC so the reported value of FCTPIC at 12-31-08 probably should have been reduced as well.

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

- During the period 12-31-07 to 7-31-09 FCIC made net payments to FCU, its MGA, that were approximately \$6.3 million 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.
- In June 2009, Messrs. Cambert and Espinosa, executed a series of transactions involving FCIC time deposits with one of FCIC's banks that resulted in a \$1,032,275 net reduction in FCIC's admitted assets and surplus in a manner that benefitted them personally either directly or indirectly as owners of FCIC's parent company, FCHG.
- On 12-31-08 (\$2 million) and 5-1-09 (\$2 million), Messrs. Cambert and Espinosa, through a series of hypothecation and other agreements pledged \$4 million of assets of FCIC as security on loans benefitting themselves personally or entities in which they had an ownership interest. These actions reduced admitted assets available to satisfy the claims of FCIC policyholders and reduced FCIC's surplus by a like amount. These transactions were tantamount to distribution to Messrs. Cambert and Espinosa but were not recorded in FCIC's books or reported in FCIC's NAIC statements.

When combined, these factors rendered FCIC insolvent and unable to continue in business.

References:

- ¹ FCIC Notes to Audited Financial Statements, Note 1, and Years ended December 31, 2007 and 2006.
- ² Application for name change and amendment to articles of incorporation approved by Florida Insurance Commissioner November 7, 2002 and filed with Florida Secretary of State December 12, 2002.
- ³ FCIC Notes to Audited Financial Statements, Note 1, and Years ended December 31, 2007 and 2006.
- ⁴ Ibid.
- ⁵ Note 1 of FCIC's 2008 NAIC Annual Statement.
- ⁶ Printout from Georgia Office of Insurance and Safety Fire Commissioner.
- ⁷ Schedule T of FCIC's 2008 NAIC Annual Statement.
- ⁸ Statement of Income from FCIC's 2008 NAIC Annual Statement.
- ⁹ Schedule Y from FCIC's March 31, 2009 NAIC Quarterly Statement.
- ¹⁰ 2009 For Profit Corporation Annual Report downloaded from Florida Secretary of State web site.
- ¹¹ Schedule Y from FCIC's March 31, 2009 NAIC Quarterly Statement.
- ¹² Page 1 of FCIC's December 31, 2005 to December 31, 2008 NAIC Annual Statements March 31, 2009 NAIC Quarterly Statement
- ¹³ Schedule Y from FCIC's March 31, 2009 NAIC Quarterly Statement.
- ¹⁴ Schedule Y from FCIC's December 31, 2008 NAIC Annual Statement.
- ¹⁵ Schedule Y from FCTPIC's December 31, 2008 NAIC Annual Statement.
- ¹⁶ Schedules Y from FCIC's December 31, 2007 and 2006 NAIC Annual Statements.
- ¹⁷ Schedules Y from FCIC's December 31, 2007 and 2006 NAIC Annual Statements.
- ¹⁸ Schedule Y from FCTPIC's December 31, 2006 NAIC Annual Statement.
- ¹⁹ Schedule Y from FCIC's December 31, 2005 NAIC Annual Statement.
- ²⁰ Excerpted from Note 1, Summary of Significant Accounting Policies, Organization and Description of Company, FCIC audited financial statements, years ended December 31, 2005, 2006, and 2007.
- ²¹ Excerpted from Note 12, Related Party Transactions, FCIC audited financial statements, years ended December 2007.
- ²² Excerpted from Note 5, Business Combination and Investment in Subsidiary, FCIC audited financial statements, year ended December 31, 2007.
- ²³ Excerpted from Note 1, Summary of Significant Accounting Policies, Organization and Description of Company, FCIC audited financial statements, years ended December 31, 2005, 2006, and 2007 and Underwriting and Investment Exhibit, Part 1 – Premiums Earned from FCIC's 2008 NAIC Annual Statement.
- ²⁴ Statement of Income from FCIC's 2008 NAIC Annual Statement.
- ²⁵ FCIC December 31, 2008 General Journal Entry.
- ²⁶ Consent order dated July 10, 2009.
- ²⁷ Court order dated August 24, 2009.
- ²⁸ 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
- ²⁹ 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 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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IN

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.

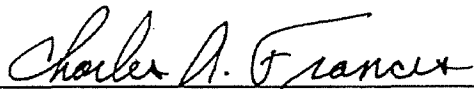
6. Any prior orders of this Court finding BB&T to have a right to the security or to any offset against the CDs in issue are vacated and of no force and effect.

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.



CHARLES A. FRANCIS
Chief Judge

Copies furnished to:

Thomas H. Bateman, III, Esq.
Albert T. Gimble, Esq.
Messer, Caparello & Self, PA
P. O. Box 15579
Tallahassee, FL 32317

Mark R. King, Esq.
Jones, Walker, Waechter, Poitevent, Carrere & Denegre, LLP
601 Brickell Key Drive, Suite 500
Miami, FL 33131

Ben H. Harris, III, Esq.
Jones, Walker, Waechter, Poitevent, Carrere & Denegre, LLP
P. O. Box 46
Mobile, AL 36601

William A. Spillias, Esq.
Bob Elias, Esq.
Jody E. Collins, Esq.
Department of Financial Services
P. O. Box 110
Tallahassee, FL 32302-0110

Aaron R. Wolfe, Esq.
Theodore R. Doran, Esq.
Doran, Sims, Wolfe & Kundid
P. O. Drawer 15110
Daytona Beach, FL 32115

Signed FEB - 8 2013
Original to Clerk FEB - 8 2013
Copies sent FEB - 8 2013

Daniel C. Brown, Esq.
Carlton Fields
P. O. Drawer 190
Tallahassee, FL 32302-0190

Mark D. Sarnoff, Esq.
Sarnoff & Bayer
3000 Shipping Avenue
Miami, FL 33133

Jay H. Solowsky, Esq.
Mason A. Pertnoy, Esq.
Solowsky & Allen, PL
915 Miami Center
201 Biscayne Blvd.
Miami, FL 33131