

**REPORT ON EXAMINATION  
OF  
FIRST COMMERCIAL INSURANCE  
COMPANY**

**MIAMI LAKES, FLORIDA**

**AS OF  
DECEMBER 31, 2005**

**BY THE  
OFFICE OF INSURANCE REGULATION**

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Tallahassee, Florida

September 18, 2006

Kevin M. McCarty  
Commissioner  
Office of Insurance Regulation  
State of Florida  
Tallahassee, Florida 32399-0326

Dear Sir:

Pursuant to your instructions, in compliance with Section 624.316, Florida Statutes, and in accordance with the practices and procedures promulgated by the National Association of Insurance Commissioners (NAIC), we have conducted an examination as of December 31, 2005, of the financial condition and corporate affairs of:

**FIRST COMMERCIAL INSURANCE COMPANY  
7900 NW 155<sup>th</sup> STREET, STE. 201  
MIAMI LAKES, FLORIDA 33016**

Hereinafter referred to as the "Company". Such report of examination is herewith respectfully submitted.

## **SCOPE OF EXAMINATION**

This examination covered the period of January 1, 2003 through December 31, 2005. The Company was last examined by representatives of the Florida Office of Insurance Regulation (Office) as of December 31, 2002. This examination commenced with planning at the Office on March 21, 2006 to March 25, 2006. The fieldwork commenced on March 28, 2006 and was concluded on September 18, 2006.

This financial examination was a statutory financial examination conducted in accordance with the Financial Condition Examiners Handbook, Accounting Practices and Procedures Manual and annual statement instructions promulgated by the NAIC as adopted by Rules 69O-137.001(4) and 69O-138.001, Florida Administrative Code, with due regard to the statutory requirements of the insurance laws and rules of the State of Florida.

In this examination, emphasis was directed to the quality, value and integrity of the statement assets and the determination of liabilities, as those balances affect the financial solvency of the Company.

The examination included a review of the corporate records and other selected records deemed pertinent to the Company's operations and practices. In addition, the NAIC IRIS ratio report, the A.M. Best Report, the Company's independent audit reports and certain work papers prepared by the Company's independent certified public accountant (CPA) were reviewed and utilized where applicable within the scope of this examination.

The examination included any material transactions and/or events occurring subsequent to the examination date and noted during the course of the examination.

We valued and/or verified the amounts of the Company's assets and liabilities as reported by the Company in its annual statement as of December 31, 2005. Transactions subsequent to year-end 2005 were reviewed where relevant and deemed significant to the Company's financial condition.

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

Based on the review of the Company's control environment and the materiality level set for this examination, reliance was placed on work performed by the Company's CPAs, after verifying the statutory requirements, for the following accounts:

- Unearned Premiums
- Advanced Premiums
- Commissions Payable
- Aggregate Write Ins for Liabilities
- Amounts Recoverable from Reinsurers
- Ceded Reinsurance Premiums Payable
- Funds Held by the Company under Reinsurance Treaties
- Other Amounts Receivable under Reinsurance Contracts
- Bonds, Stocks and Short Term Investments
- Cash on Hand and on Deposit
- Real Estate and Mortgage Loans
- Net Deferred Tax Asset
- Current Federal and Foreign Income Tax Recoverable
- Other Expenses
- Taxes, Licenses and Fees
- Related Party Transactions

## **Status of Adverse Findings from Prior Examination**

The following was a summary of significant adverse findings contained in the Office's prior examination report as of December 31, 2002, along with resulting action taken by the Company in connection therewith.

### **Management**

The Company did not have an Audit Committee.

**Resolution:** The Company established an Audit Committee to comply with Section 624.424(8)(c), Florida Statutes.

### **Corporate Records**

The minutes failed to document the authorization of investments in accordance with Section 625.304, Florida Statutes.

**Resolution:** The Company documented the authorization of investments and was in compliance with Section 625.304, Florida Statutes.

There was no documentation in the minutes provided that the Company directors reviewed the examination report for the three year period ending December 31, 1999.

**Resolution:** The Company did not document in the minutes that the previous examination report for the three year period ending December 31, 2002 was reviewed until April 5, 2005.

## **MGA Agreement**

The Company was using an unlicensed managing general agent.

**Resolution:** The MGA received its license and the Company complied with Section 626.112(5), Florida Statutes.

The MGA did not adjust claims or negotiate reinsurance on behalf of the insurer.

**Resolution:** The Company amended the MGA contract to comply with Sections 626.015(16) and 626.7451(5), Florida Statutes by having the MGA adjust claims and negotiate reinsurance on behalf of the insurer.

The MGA contract included additional compensation not based upon the volume of written premiums.

**Resolution:** The Company amended the MGA contract to comply with Section 626.015(16)(a)(3), Florida Statutes.

## **Fidelity Bond**

The Company did not maintain the suggested minimum amount of fidelity bond coverage as recommended by the NAIC and provided by Rule 69O-142.011(11)(b)(16), Florida Administrative Code.

**Resolution:** The Company maintained at least the minimum amount of bond coverage as recommended by the NAIC.

## **Statutory Deposits**

The Company neglected to identify special deposits held for the benefit of Florida policyholders and creditors on Schedule E.

**Resolution:** The Company prepared the annual statements in accordance with the NAIC annual statement instructions.

## **Reinsurance**

The reinsurance agreements did not specifically provide for reports of premiums and losses no less frequently than on a quarterly basis.

**Resolution:** This prior examination finding was not resolved. The Company again has not complied with the NAIC Accounting Practices and Procedures Manual.

The treaties failed to specify that the agreement should constitute the entire contract between the parties.

**Resolution:** This prior examination finding was not resolved. The Company again has not complied with the NAIC Accounting Practices and Procedures Manual.

The Company failed to engage a Florida licensed reinsurance intermediary.

**Resolution:** The Company complied with Section 626.7492, Florida Statutes and engaged a Florida licensed reinsurance intermediary.

The Company was acting as a “fronting company” by ceding premiums to Aldrostar, an unauthorized reinsurer, which represented more than 55% of gross written premiums.

**Resolution:** The Company complied with Section 624.404(4)(b), Florida Statutes by discontinuing from acting as a “fronting company”.

A quota share reinsurance agreement effective January 1, 2002 was amended at year-end, yet the Company failed to account for the amended portion as retroactive.

**Resolution:** The Company had no retroactive reinsurance to record at year end 2005.

The Company inadvertently reported an unauthorized reinsurer as authorized.

**Resolution:** The Company prepared Schedule F in accordance with the NAIC Annual Statement Instructions.

## **Cash**

### **Amounts Retained or Withheld for Account of Others**

The Company reported funds erroneously in the balance of Amounts retained or withheld for account of others. These funds belong to the policyholder, not the Company, and were not held in a fiduciary capacity.

**Resolution:** The Company excluded the funds from the balance sheet, and fully disclosed the amount in the Notes to the annual statement.

### **Agents Balance – Earned but Unbilled**

The Company failed to non-admit 10% of the earned but unbilled premiums.

**Resolution:** The Company complied with SSAP No. 53 and correctly non-admitted 10% of the earned but unbilled premiums.

### **Electronic Data Processing Equipment**

The Company erroneously capitalized purchases of less than \$25,000 for EDP equipment as well as amortized the assets for periods in excess of three years.

**Resolution:** The Company complied with Section 625.012(11), Florida Statutes.

### **Unearned Premium**

The Company failed to maintain unearned premium reserves for all policies in force.

**Resolution:** The Company complied with Section 625.051, Florida Statutes and maintained unearned premium reserves for all policies in force.

## **HISTORY**

### **General**

The Company was organized November 7, 1995, under the laws of the State of Florida, as an assessable mutual insurer. The Company commenced business on November 14, 1995, with the name of First Commercial Mutual Company, an Assessable Mutual. Effective September 16, 2002, the Office approved the conversion to a stock insurer and the name of the Company was changed to First Commercial Insurance Company (FCIC).

In accordance with Section 624.401(1), Florida Statutes, the Company was authorized to transact the following insurance coverage in Florida on December 31, 2005:

Workers Compensation  
Commercial Automobile Liability  
Commercial Auto Physical Damage  
Other Liability

The Company had not reported any premium in the Commercial Auto Physical Damage line of business in the last three years. On May 4, 2007, the Company stated that the Company wrote a small amount of Auto Physical Damage in 2005 and 2006 but did not segregate this line from premiums reported as Commercial Auto Liability; and that the Company would amend the annual statement accordingly.

The articles of incorporation and the bylaws were not amended during the period covered by this examination.

### **Capital Stock**

As of December 31, 2005, the Company's capitalization was as follows:

Number of authorized common capital shares	20,000
Number of shares issued and outstanding	10,000
Total common capital stock	\$1,000,000
Par value per share	\$100.00

Control of the Company was maintained by its parent, First Commercial Holdings LLC (FCH), who owned 100% of the stock issued by the Company. FCH was 100% owned by CEIB Marketing Group LLC, which in turn, was owned by Reginald Beane (25%), Rene Cambert (25%), Luis Espinosa (25%) and Michael Camilleri (25%).

### **Profitability of Company**

The following table shows the profitability trend (in dollars) of the Company for the period of examination, as reported in the filed annual statement of the Company.

	<b>2005</b>	<b>2004</b>	<b>2003</b>
Premiums Earned	68,767,601	57,480,349	43,724,194
Net Underwriting Gain/(Loss)	8,942,852	6,219,251	6,192,327
Net Income	1,187,401	3,686,538	3,560,076
Total Assets	127,715,532	111,403,509	77,259,633
Total Liabilities	107,775,371	91,715,570	60,609,009
Surplus As Regards Policyholders	19,940,161	19,687,939	16,650,624

### **Dividends to Stockholders**

The Company paid \$2,000,000 in dividends to its stockholders during 2005.

### **Management**

The annual shareholder meeting for the election of directors was held in accordance with Sections 607.1601 and 628.231, Florida Statutes. Directors serving as of December 31, 2005, were:

#### **Directors**

##### **Name and Location**

##### **Principal Occupation**

Reginald Beane  
Coral Springs, Florida

President  
First Commercial Insurance Company

Luis Espinosa  
Coral Gables, Florida

Vice President  
First Commercial Insurance Company

Rene Cambert  
Miami Lakes, Florida

Chief Operating Officer  
First Commercial Insurance Company

Michael Camilleri  
Boca Raton, Florida

Chief General Counsel  
First Commercial Insurance Company

John Maloney  
Bridgewaters, New York

Chief Financial Officer  
First Commercial Insurance Company

Marco Guttierrez  
Miami, Florida

Chief Executive Officer  
Markwell of Florida

Carlos Agüero, CPA  
Cranford, New Jersey

President  
Metalico, Inc

The Board of Directors in accordance with the Company's bylaws appointed the following senior officers:

### Senior Officers

<b>Name</b>	<b>Title</b>
Reginald Beane	President
Luis Espinosa	CEO/Secretary
Rene Cambert	COO/Treasurer
John Maloney	CFO/Vice president
Michael Camilleri	General Counsel
Michael Puchades	Assistant General Counsel
Gloria Alvarez	Vice President – Marketing
Theodore Werckman	Vice President - Underwriting

The Company's Board appointed several internal committees in accordance with Section 607.0825, Florida Statutes. Following were the principal internal board committees and their members as of December 31, 2005:

<b>Audit Committee</b>	<b>Investment Committee</b>
Reginald Beane <sup>1</sup>	Luis Espinosa <sup>1</sup>
Luis Espinosa	Rene Cambert
Rene Cambert	Michael Camilleri
Michael Camilleri	

<sup>1</sup> Chairman

The Company maintained an audit committee, as required by Section 624.424(8), Florida Statutes.

### **Conflict of Interest Procedure**

The Company adopted a policy statement requiring annual disclosure of conflicts of interest, in accordance with Section 607.0832, Florida Statutes. No exceptions were noted during this examination period.

### **Corporate Records**

The recorded minutes of the shareholder, Board of Directors, and certain internal committees were reviewed for the period under examination. The recorded minutes of the Board adequately documented its meetings and approval of Company transactions in accordance with Section 607.1601, Florida Statutes, including the authorization of investments as required by Section 625.304, Florida Statutes.

There was no documentation in the minutes reviewed that the Company's directors reviewed the previous examination report for the period ending December 31, 1999; and the report for the period ending December 31, 2002 was not documented as reviewed until April 5, 2005.

### **Acquisitions, Mergers, Disposals, Dissolutions, and Purchase or Sales Through Reinsurance**

The Company had no acquisitions, mergers, disposals, dissolutions and purchase, or sales through reinsurance during the period under examination.

### **Surplus Debentures**

The Company had three surplus notes totaling \$2,750,000 as of December 31, 2005.

On December 1, 1997, the Company received a subordinated surplus debenture in the amount of \$250,000 from Comprehensive Employer Insurance Brokers, Inc., an affiliated company. This note was amended on September 6, 2002 to extend the maturity date to December 1, 2003.

On July 31, 1998, the Company received a subordinated surplus debenture for \$500,000 from Southeastern Insurance Corporation, an affiliated company.

The Company received the final subordinated surplus debenture for \$2,000,000 on August 24, 2001 from Aldrostar SA, an unauthorized reinsurer, to whom the company ceded 45% of gross written premiums.

All surplus notes required advance approval from the Office prior to payment of any principal or interest in accordance with Section 628.401, Florida Statutes.

## **AFFILIATED COMPANIES**

The Company was a member of an insurance holding company system as defined by Rule 69O-143.045(3), Florida Administrative Code. The latest holding company registration statement was filed with the State of Florida on February 6, 2006, as required by Section 628.801, Florida Statutes, and Rule 69O-143.046, Florida Administrative Code.

The following agreements were in effect between the Company and its affiliates:

### **MGA Agreement**

The Company entered into a managing general agency (MGA) agreement with its affiliate, First Commercial Underwriters LLC (FCU) effective October 1, 2002. The agreement granted FCU authority to manage and administer the affairs of the Company including, but not limited to, marketing, underwriting, billing claims administration, policy issuance, accounting, investment and general administration. This agreement met all of the required contract provisions in accordance with Section 626.7451, Florida Statutes.

### **Claims Service Agreement**

The Company entered into a claims service agreement with its affiliate, First Commercial Claims Servicing (FCCS), effective August 1, 2004. The agreement stipulated that FCCS evaluate, handle, adjust, approve or deny each on-the-job accident, illness or other claims reported. The contract also indicated that FCCS had a settling authority for claims in amounts \$500,000 or less.

### **Commercial Lease Agreement**

The Company entered into a commercial lease agreement with its affiliate, FCCS effective October 1, 2004. The agreement granted FCCS office space rental from the Company for a period of two years.

### **Lease Agreement**

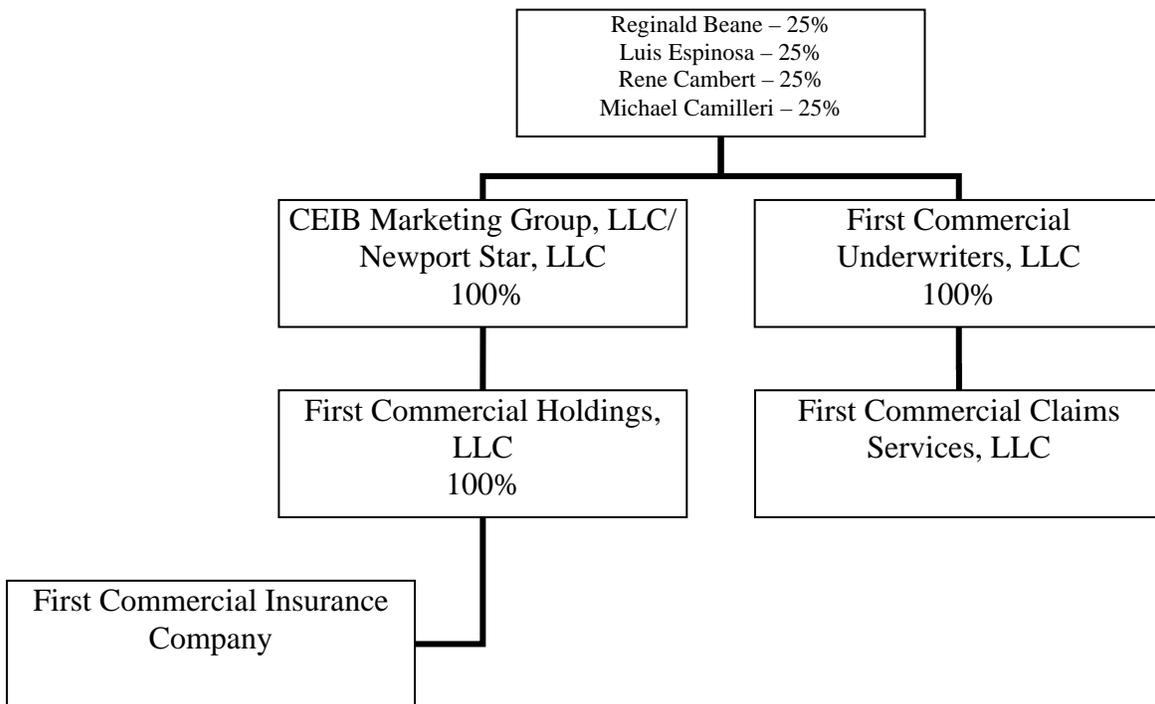
The Company entered into a commercial lease agreement with its affiliate, FCU effective January 1, 2004. The agreement granted FCU office space rental from the Company for a

period of one year. The Contract had not been renewed formally but continued on a month by month basis.

An organizational chart as of December 31, 2005, reflecting the holding company system, is shown below. Schedule Y of the Company's 2005 annual statement provided a list of all related companies of the holding company group.

**FIRST COMMERCIAL INSURANCE COMPANY, INC.  
ORGANIZATIONAL CHART**

**DECEMBER 31, 2005**



## FIDELITY BOND

The Company maintained fidelity bond coverage up to \$1,000,000 with a deductible of \$25,000, which adequately covered the suggested minimum amount of coverage for the Company as recommended by the NAIC.

## PENSION AND INSURANCE PLANS

The Company provided a 401K plan and health insurance to all eligible employees.

## STATUTORY DEPOSITS

The following securities were deposited with the State of Florida as required by Section 624.411, Florida Statutes, and with various state officials as required or permitted by law:

<b>State</b>	<b>Description</b>	<b>Par Value</b>	<b>Market Value</b>
FL	CD, 1.98%, 8/7/07	<u>\$ 1,000,000</u>	<u>\$ 1,000,000</u>
	TOTAL FLORIDA DEPOSITS	<u>\$ 1,000,000</u>	<u>\$ 1,000,000</u>
	TOTAL SPECIAL DEPOSITS	<u>\$ 1,000,000</u>	<u>\$ 1,000,000</u>

## **INSURANCE PRODUCTS**

### **Territory**

The Company was authorized to transact insurance only in the State of Florida.

### **Writing Ratios**

The Company's Net written premium to Surplus as regards to policyholders (SARP) as of December 31, 2005, was not in compliance with Section 624.4095, Florida Statutes, which requires the Company to maintain its ratio of actual or projected annual written premiums as adjusted in accordance with subsection (4) to current or projected SARP. The ratio should be within 4 to 1 for Net written premiums to Surplus as regards to policyholders.

### **Treatment of Policyholders**

The Company established procedures for handling written complaints in accordance with Section 626.9541(1)(j), Florida Statutes.

The Company maintained a claims procedure manual that included detailed procedures for handling each type of claim.

## **REINSURANCE**

The reinsurance agreements reviewed were found to comply with NAIC standards with respect to the standard insolvency clause, arbitration clause, transfer of risk, reporting and settlement information deadlines.

## **Assumed**

The Company entered into agreements with two companies to provide excess of loss reinsurance to cover losses in excess of \$250,000 up to statutory limits on a per occurrence basis. Assumed earned premium during 2005 relating to those agreements was \$31,839. There were no assumed incurred losses during 2005 relating to those agreements. The ceding company held no deposits at year end 2005.

## **Ceded**

Effective from January 1, 2003 through June 30, 2004, the Company ceded 45% of written premiums under a quota share contract with Aldrostar SA. Under this contract, the Company received a ceding commission equal to the greater of 28% of ceded premium or 45% of actual acquisition and underwriting expenses. Aldrostar was unauthorized in the State of Florida.

Effective continuously as of January 1, 2003, the Company ceded 10% of written premiums under a quota share contract with Newport Star Reinsurance Company. Under this contract, the Company received a ceding commission equal to the greater of 28% of ceded premium or 10% of actual acquisition and underwriting expenses. Newport was unauthorized in the State of Florida.

Effective July 1, 2005, the Company executed an excess of loss reinsurance agreement that reinsured all losses on a per occurrence basis from \$100,000 of ultimate net losses continuously up to \$1 million for all workers' compensation, employers liability, commercial auto liability and commercial general liability policies (\$400,000 excess \$100,000 under Section A and \$500,000 excess \$500,000 under section B).

Professional Employer Organization (PEO) policies with deductibles were not covered under Section A of the agreement. PEO policies with deductibles greater than \$250,000 were not covered under Section B unless otherwise agreed by the participating reinsurers. The agreement did not cover any policy with a deductible of \$50,000 or greater without prior written consent of the reinsurers. The reinsurer's liability was limited to 185% (Section A) and 300% (Section B) of the Company's ceded subject premium (gross of ceding commissions) in the aggregate during any underwriting year (July 1 through June 30). Both sections of the agreement were effective continuously until cancelled by either party on any June 30 or December 31, 2006, or any December 31 thereafter, by giving the other party not less than 45 days prior notice. Quanta Indemnity Company (Denver, Colorado) participated 40% and nSpire Re Limited (Dublin, Ireland) participated 60%. Quanta was authorized in the State of Florida, nSpire was unauthorized.

Effective January 1, 2005, the Company executed an excess of loss reinsurance agreement that reinsured all losses on a per occurrence basis from \$1 million of ultimate net losses continuously up to \$5 million for all workers' compensation and employers liability policies. This agreement was effective continuously until cancelled by either party on any December 31st by giving the other party not less than 90 days prior notice. Aspen Insurance UK Limited (Aspen) participated 30% and Lloyd's Syndicates (UK) participated 70%. All Lloyds syndicates were authorized in the State of Florida, Aspen was not authorized in the State of Florida.

Effective January 1, 2005, the Company executed a second excess of loss reinsurance agreement that reinsured all losses on a per occurrence basis from \$5 million of ultimate net losses continuously up to \$10 million for all workers' compensation and employers

liability policies. This agreement was effective continuously until cancelled by either party on any December 31st by giving the other party not less than 90 days prior notice. Aspen Insurance UK Limited participated 30% and Lloyd's Syndicates (UK) participated 70%.

Effective January 1, 2005, the Company executed a third and fourth excess of loss reinsurance agreement that reinsured all losses on a per occurrence basis from \$10 million of ultimate net losses continuously up to \$30 million for all workers' compensation, employers liability, commercial auto liability and commercial general liability policies (\$10 million excess \$10 million under the third excess and \$10 million excess \$20 million under the fourth excess). This agreement was effective through December 31, 2005.

Effective continuously July 1, 2002, the Company executed an excess of loss (XOL) reinsurance agreement that reinsured all specific losses on a per occurrence basis from \$500,000 continuously up to \$5 million for all workers' compensation policies. The Company's ultimate net loss was deemed to be a maximum of \$5 million on any one life. Max Re Ltd participated 100% in the 1st XOL layer, \$500,000 excess \$500,000. Max Re Ltd participated 80% in the 2nd XOL layer, \$4 million excess \$1 million, and Lloyd's Underwriters participated 20%. Both Max Re Ltd and Lloyd's were unauthorized in the State of Florida.

Effective January 1, 2003, the Company executed an excess of loss reinsurance agreement that reinsured all specific losses on a per occurrence basis from \$1 million of ultimate net losses continuously up to \$10 million for all workers' compensation policies. This agreement expired on December 31, 2003. The Company's ultimate net loss was

deemed to be a maximum of \$2 million on any one life. ACE Tempest Re USA, Inc. participated 100% and was authorized in the State of Florida.

The reinsurance contracts were reviewed by the Company's appointed actuary and were utilized in determining the ultimate loss opinion.

All unauthorized reinsurers utilized letters of credit, which were reviewed and deemed adequate.

### **ACCOUNTS AND RECORDS**

An independent CPA audited the Company's statutory basis financial statements annually for the years 2003, 2004 and 2005, in accordance with Section 624.424(8), Florida Statutes. Supporting work papers were prepared by the CPA as required by Rule 69O-137.002, Florida Administrative Code.

The Company's accounting records were maintained on a computerized system. The Company's balance sheet accounts were verified with the line items of the annual statement submitted to the Office.

The Company maintained its principal operational offices in Miami Lakes, Florida, where this examination was conducted.

The Company and non-affiliates had the following agreements:

### **Custodial Agreement**

The Company utilized the investment and custodial services of Wachovia Bank. The custodial agreement between the Company and Wachovia did not address the request for forms OIR-D0-341 A, B or C or the issue of the custodian's responsibility to indemnify securities in the event of a robbery, employment mishandling or other disappearance of such items. The custodial agreement did not provide the proper safeguards and controls indemnifying the Company as provided by Rule 69O-143.042, Florida Administrative Code.

### **Medical Management Service Agreement**

The Company entered into a medical management service agreement with Choice Medical Management Services, Inc. (Choice). The agreement authorized Choice to provide managed care, network provider, medical billing and schedule charging services to the Company workers compensation insureds.

### **Lease Agreement**

The Company entered into a lease agreement with Power One Associates, LLC (Power One). The agreement authorized Power One to occupy a section of the Company's building and pay rental charges to the Company.

### **Investment Advisory Agreement**

The Company entered into an investment advisory agreement with Blue Granite Capital, LLC (Blue Granite). The agreement authorized Blue Granite to supervise, invest and direct the Company's portfolio in accordance with the Company's financial objectives.

## **Settlement Agreement**

The Company entered into a settlement agreement with Presidion Solutions Incorporated (PSI) to resolve a dispute between the parties regarding deductible recoveries. This settlement agreement stipulated PSI shall repay to the Company an amount equal to \$10,000,000 in monthly installments of \$100,000 on the 1<sup>st</sup> of each month, beginning on September 2005 until the balance was paid in full.

## **Risk-Based Capital**

The Company reported its risk-based capital at an adequate level.

## **Information Technology (IT) Report**

An IT examination was performed for the Company by Computer Aid, Inc. (CAI), Tallahassee, Florida during the period under examination. Three out of the twelve areas that were tested and rated by CAI were given a poor rating. The three areas were:

### Change Control:

The Company's Change Control was given a poor rating because change control was only monitored by one person (VP of Information Systems) and there was no change control software package in use at the Company.

### Data Center Security:

The Company's Data Center Security was given a poor rating because the equipment was enclosed in an office with poor temperature controls and poor security access. The computer room was located in the office along side one of the main corridors which was

not cooled adequately. A door was kept open during business hours to augment the individual air conditioner inside the room.

Contingency Planning:

The Company's Contingency Planning was given a poor rating because the IT Department had not tested the disaster recovery plan and back up procedures. Additionally, the Company did not have a business contingency plan in place.

**FINANCIAL STATEMENTS PER EXAMINATION**

The following pages contain financial statements showing the Company's financial position as of December 31, 2005, and the results of its operations for the year then ended as determined by this examination. Adjustments made as a result of the examination are noted in the section of this report captioned, "Comparative Analysis of Changes in Surplus."

**FIRST COMMERCIAL INSURANCE COMPANY**  
**Assets**

**DECEMBER 31, 2005**

	Per Company	Examination Adjustments	Per Examination
Bonds	\$27,875,823		\$27,875,823
Stocks:			
Preferred	207,335		207,335
Common	1,153,944		1,153,944
Mortgage Loans:			
First Liens	1,598,081		1,598,081
Real Estate:			
Properties occupied by the Company	8,629,711		8,629,711
Properties held for sale	836,833		836,833
Cash:			
On hand	37,213,731		37,213,731
Receivable for securities	775,000		775,000
Investment Income due and accrued	332,060		332,060
Agents' Balances:			
Uncollected premium	3,339,677		3,339,677
Deferred premium	27,297,960		27,297,960
Reinsurance:			
Amounts recoverable from reinsurers	3,373,356		3,373,356
Other amount recievable under reinsurance contracts	10,066,200		10,066,200
Amounts recievable relating to uninsured plans	477,550		477,550
Current Federal & Foreign Income Tax	1,298,746		1,298,746
Net deferred tax asset	1,948,538		1,948,538
Electronic data processing equipment	266,368		266,368
Receivable from parents, subsidiaries and affiliates	1,000,000		1,000,000
Aggregate write ins for other than invested assets	24,619		24,619
Totals	\$127,715,532	\$0	\$127,715,532

**FIRST COMMERCIAL INSURANCE COMPANY**  
**Liabilities, Surplus and Other Funds**

**DECEMBER 31, 2005**

	Per Company	Examination Adjustments	Per Examination
Losses	\$46,157,563		\$46,157,563
Loss adjustment expenses	7,687,243		7,687,243
Commissions payable	1,581,537		1,581,537
Other expenses	2,928,852		2,928,852
Taxes, licenses and fees	1,419,550		1,419,550
Unearned premium	10,239,131		10,239,131
Advanced premium	258,089		258,089
Ceded reinsurance premiums payable	3,044,372		3,044,372
Funds held by Company under reinsurance treaties	32,230,996		32,230,996
Aggregate write ins for liabilities	<u>2,228,038</u>		<u>2,228,038</u>
Total Liabilities	\$107,775,371		\$107,775,371
Common capital stock	\$1,000,000		\$1,000,000
Surplus notes	2,750,000		2,750,000
Gross paid in and contributed surplus	10,625,000		10,625,000
Unassigned funds (surplus)	<u>5,565,161</u>		<u>5,565,161</u>
Surplus as regards policyholders	<u>\$19,940,161</u>		<u>\$19,940,161</u>
Total liabilities, capital and surplus	<u>\$127,715,532</u>	<u>\$0</u>	<u>\$127,715,532</u>

**FIRST COMMERCIAL INSURANCE COMPANY**  
**Statement of Income**

**DECEMBER 31, 2005**

**Underwriting Income**

Premiums earned	\$68,767,601
DEDUCTIONS:	
Losses incurred	44,327,886
Loss expenses incurred	14,806,088
Other underwriting expenses incurred	690,775
Aggregate write-ins for underwriting deductions	0
Total underwriting deductions	<u>\$59,824,749</u>
Net underwriting gain or (loss)	\$8,942,852

**Investment Income**

Net investment income earned	\$1,819,953
Net realized capital gains or (losses)	<u>(46,063)</u>
Net investment gain or (loss)	\$1,773,890

**Other Income**

Net gain or (loss) from agents' or premium balances charged off	(\$147,235)
Finance and service charges not included in premiums	363,602
Aggregate write-ins for miscellaneous income	<u>(8,075,093)</u>
Total other income	(\$7,858,726)
Net income before dividends to policyholders and before federal & foreign income taxes	\$2,858,016
Dividends to policyholders	<u>0</u>
Net Income, after dividends to policyholders, but before federal & foreign income taxes	\$2,858,016
Federal & foreign income taxes	<u>1,670,615</u>
Net Income	\$1,187,401

**Capital and Surplus Account**

Surplus as regards policyholders, December 31 prior year	\$19,687,939
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**Gains and (Losses) in Surplus**

Net Income	\$1,187,401
Net unrealized capital gains or losses	(32,436)
Change in net deferred income tax	(402,933)
Change in non-admitted assets	1,243,590
Change in provision for reinsurance	256,600
Dividend to stockholders	(2,000,000)
Examination Adjustment	0
Change in surplus as regards policyholders for the year	<u>\$252,222</u>
Surplus as regards policyholders, December 31 current year	<u><u>\$19,940,161</u></u>

## COMMENTS ON FINANCIAL STATEMENTS

### Assets

**Premiums Receivable** \$3,339,677

The Company did not have an aging detail for its Premiums receivables in accordance with Rule 69O-138.024(2), Florida Administrative Code which states that all agents' balances shall be aged on a separate policy by policy basis.

### Liabilities

**Losses and Loss Adjustment Expenses** \$53,844,806

An outside actuarial firm appointed by the Board of Directors, rendered an opinion that the amounts carried in the balance sheet as of December 31, 2005, made a reasonable provision for all unpaid loss and loss expense obligations of the Company under the terms of its policies and agreements.

The Office actuary reviewed work papers provided by the Company and was in concurrence with this opinion.

**FIRST COMMERCIAL INSURANCE COMPANY  
COMPARATIVE ANALYSIS OF CHANGES IN SURPLUS**

**DECEMBER 31, 2005**

The following is a reconciliation of Surplus as regards policyholders between that reported by the Company and as determined by the examination.

Surplus as Regards Policyholders per December 31, 2005, Annual Statement	\$19,940,161
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	<u>PER COMPANY</u>	<u>PER EXAM</u>	<u>INCREASE (DECREASE) IN SURPLUS</u>
<b>ASSETS:</b>			
No adjustment needed.			\$0
<b>LIABILITIES:</b>			
No adjustment needed.			\$0
Net Change in Surplus:			0
Surplus as Regards Policyholders December 31, 2005, Per Examination			\$19,940,161

## SUMMARY OF FINDINGS

### **Compliance with previous directives**

The Company had not taken the necessary actions to comply with the comments made in the 2002 examination report issued by the Office.

### **Board of Director Meeting Minutes**

It was noted again while reviewing the Corporate Board Minutes, the Board failed to document the review of the 2002 triennial financial examination report issued by the Office until April 5, 2005. **We recommend that Board minutes timely document the review of the most recent examination report.**

### **Current examination comments and corrective action**

The following is a brief summary of items of interest and corrective action to be taken by the Company regarding findings in the examination as of December 31, 2005.

### **Custodial Agreement**

The custodial agreement between the Company and the investment agency did not address the request for Forms OIR-D0-341 A, B or C or the issue of the custodian's responsibility to indemnify securities in the event of a robbery, employment mishandling or other disappearance of such items. **We recommend that the Company amend its custodial agreement to comply with Rule 690-143.042, Florida Administrative Code.**

### **Writing Ratios**

The Company's Net written premium to Surplus as regards policyholders as of December 31, 2005, was not in compliance with Section 624.4095, Florida Statutes. An insurer is required to maintain its ratio of actual or projected annual written premiums as adjusted in accordance with subsection (4) to current or projected surplus as to policyholders. **We recommend that the Company submit to the Office a plan to subsequently maintain the amount of written premiums within the written ratio requirements. Subsequent event: The net premium to surplus ratio for 2006 was in compliance with Section 624.4095, Florida Statutes.**

### **Lines of Business**

The Company's Certificate of Authority allowed for the writing of Commercial auto physical damage, yet the Company has not reported premium in this line of business in the last three years. On May 4, 2007, the Company stated that the Company wrote a small amount of auto physical damage in 2005 and 2006, but did not segregate this line from premiums reported as commercial auto liability. **We recommend that the Company correctly report the auto physical damage premium in all future filings with the Office.**

### **Premiums Aging Detail**

The Company did not have an aging detail for its premiums receivables in accordance with Rule 69O-138.024(2), Florida Administrative Code, which states that all agents' balances shall be aged on a separate policy by policy basis. **We recommend that the Company adhere to Rule 690-138.024(2), Florida Administrative Code by aging all of its agents balances on a separate policy by policy basis.**

## **Reinsurance**

It was noted in the previous examination and it was noted again, that the reinsurance agreements did not specifically provide for reports of premiums and losses no less frequently than on a quarterly basis. The treaties also failed to specify that the agreement should constitute the entire contract between the parties. **We recommend that the Company negotiate reinsurance treaties that contain the minimum terms required by NAIC.**

Subsequent event: As evidenced by an Addendum No. 2 signed by the Company on May 22, 2007, the Company is working with its reinsurance broker to include the "Entire Agreement" clause in its reinsurance agreements.

## **Information Technology (IT) Report**

An IT examination was performed for the Company by Computer Aid, Inc. Tallahassee, Florida during the period under examination. Three out of the twelve areas that were tested and rated by CAI as poor. Three areas were:

Change Control: The change control was monitored by only one person. There was no change control software package in use at the Company.

Data Center Security: The equipment used for data center security was enclosed in an office with poor temperature controls and poor security access. The computer room was located in the office along the main corridors which was not cooled adequately. The door was kept open during business hours to augment the individual air conditioner inside the room.

Contingency Planning: The IT Department has not tested the disaster recovery plan and back up procedures. Additionally, the Company did not have a business contingency plan in place.

**We recommend the following:**

- **The Company use a change control package to guard against unauthorized system changes.**
- **The Company supply additional air conditioning in the computer room, and that the Company restrict access to the computer room to permit only authorized personnel.**
- **The Company provide a chemical fire retardant to ensure adequate fire suppression and protection to the computer room. The water sprinkler system in the computer room should be disabled.**
- **The Company periodically test the disaster recovery plans and backup procedures, and establish and document a business contingency plan.**

**Subsequent event:** The Company stated on May 4, 2007, that it has and continues to address the aforementioned IT recommendations.

## CONCLUSION

The customary insurance examination practices and procedures as promulgated by the NAIC have been followed in ascertaining the financial condition of **First Commercial Insurance Company, Inc.** as of December 31, 2005, consistent with the insurance laws of the State of Florida.

Per examination findings, the Company's Surplus as regards policyholders was \$19,940,161 which was in compliance with Section 624.408, Florida Statutes.

In addition to the undersigned, Computer Aid, Inc., Donna Letterio, Financial Examiner/Specialist, Jay Ambler, Financial Examiner/Analyst II, Tina Hancock, Financial Examiner/Analyst I, Kethessa Carpenter, Financial Examiner/Analyst Supervisor, and Joseph Boor, FCAS, Office Actuary, participated in the examination.

Respectfully submitted,

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Owen A. Anderson  
Financial Examiner/Analyst II  
Florida Office of Insurance Regulation