

DONALD W. ABSHIRE, ET AL.

19TH JUDICIAL DISTRICT COURT

-versus-

CIV. ACTION NO. 377713, DIV. "M"

THE STATE OF LOUISIANA, ET AL.

**EAST BATON ROUGE PARISH,
LOUISIANA**

CONSOLIDATED WITH

ARTHUR A. LEWIS, ET AL.

19TH JUDICIAL DISTRICT COURT

-versus-

CIV. ACTION NO. 412265, DIV. "M"

THE STATE OF LOUISIANA, ET AL.

**EAST BATON ROUGE PARISH,
LOUISIANA**

FILED: _____

**_____
DEPUTY CLERK**

PETITIONERS' EIGHTH AMENDED PETITION

NOW INTO COURT, through undersigned counsel, come the Petitioners in the above referenced matter, as described in Paragraph 1 of the 7th Amended and Supplemental Petition, all being either persons of the full age of majority or entities authorized by law to maintain legal actions, and all being either policyholders, annuity holders, note holders, equity owners, or holders of some other financial interest in, or affected by, Public Investors Life Insurance Company and/or Midwest Life Insurance Company and/or Public Investors, Inc., who respectfully amend the Seventh Amended Petition by adding the following paragraphs:

ADDITIONAL DEFENDANTS

167.

Also made Defendants herein are:

- A) The State of Louisiana, through the Office of Risk Management Self Insurance Fund ("ORM");
- B) International Insurance Company;
- C) Admiral Insurance Company;
- D) Lexington Insurance Company;
- E) National Union Fire Insurance Company of Pittsburgh, PA;

- F) Aetna Casualty Surety Company;
- G) American Home Assurance Company;
- H) Continental Casualty Company;
- I) Federal Insurance Company;
- J) Continental Insurance Company;
- K) United States Fire Insurance Company;
- L) General Star National Insurance Company
- M) The Home Insurance Company;
- N) Insurance Company of North America;
- O) Maryland Casualty Company;
- P) NAC Reinsurance Company;
- Q) Royal Insurance Company of America;
- R) The Travelers Indemnity Company, US Branch;
- S) Zurich Insurance Company, US Branch; and
- T) American Excess Insurance Association.

JURISDICTION AND VENUE

168.

Jurisdiction and venue against the State of Louisiana through the ORM are proper in East Baton Rouge Parish, as established by Order of the Court of Appeal for the Third Circuit in *Abshire v. State through Department of Insurance*, 636 So.2d 627 (La.App. 3rd Cir.), *writ denied* (La. 1994). Pursuant to La.R.S. 22:655(B)(1), venue as to the insurance Defendants listed in paragraph 167, all of which provided insurance coverage at varying relevant time periods to the State of Louisiana, DOI, OFI, and ORM, is proper in East Baton Rouge Parish since this venue is proper as to these companies' insureds (*i.e.*, the State Defendants).

169.

The Office of Risk Management is an agency of the State of Louisiana, which operates through the Office of the Governor, Division of Administration. Upon information and belief, the Office of Risk Management ("ORM") provided general liability insurance coverage to the

State of Louisiana, including the DOI and OFI, through the Self Insurance Fund for all relevant periods of time. Upon further information and belief, at some or all of the times relevant to the Petition, this Defendant had in full force and effect insurance policies in the name of the State of Louisiana, which policies make this Defendant contractually responsible for certain financial amounts associated with the potential liability of the other State Defendants in this case. Pursuant to La. R.S. 22:655, the Plaintiffs have the right to sue ORM directly and recover damages upon establishing the liability of the State of Louisiana, by and through the OFI and DOI, as insureds of ORM.

170.

According to the records of the DOI, International Insurance Company ("IIC") is domiciled at 250 Commercial Street, Suite 5000, Manchester New Hampshire. Upon information and belief, IIC provides (or provided) insurance coverage to the State of Louisiana, including the DOI and the OFI. Upon further information and belief, at some or all of the times relevant to the Petition, this Defendant had in full force and effect insurance policies in the name of the State of Louisiana, which policies make this Defendant contractually responsible for certain financial amounts associated with the potential liability of the State Defendants in this case. Pursuant to La. R.S. 22:655, the Plaintiffs have the right to sue IIC directly and recover damages upon establishing the liability of the State of Louisiana, by and through the OFI and DOI, as insureds of IIC.

171.

According to the records of the DOI, Admiral Insurance Company ("Admiral") is domiciled at 1255 Caldwell Road, Cherry Hill, New Jersey. Upon information and belief, Admiral provides (or provided) insurance coverage to the State of Louisiana, including the DOI and the OFI. Upon further information and belief, at some or all of the times relevant to the Petition, this Defendant had in full force and effect insurance policies in the name of the State of Louisiana, which policies make this Defendant contractually responsible for certain financial amounts associated with the potential liability of the State Defendants in this case. Pursuant to La. R.S. 22:655, the Plaintiffs have the right to sue Admiral directly and recover damages upon establishing the liability of the State of Louisiana, by and through the OFI and DOI, as insureds of Admiral.

172.

According to the records of the DOI, Lexington Insurance Company (“Lexington”) is domiciled at 200 State Street, Boston, Massachusetts. Upon information and belief, Lexington provides (or provided) insurance coverage to the State of Louisiana, including the DOI and the OFI. Upon further information and belief, at some or all of the times relevant to the Petition, this Defendant had in full force and effect insurance policies in the name of the State of Louisiana, which policies make this Defendant contractually responsible for certain financial amounts associated with the potential liability of the State Defendants in this case. Pursuant to La. R.S. 22:655, the Plaintiffs have the right to sue Lexington directly and recover damages upon establishing the liability of the State of Louisiana, by and through the OFI and DOI, as insureds of Lexington.

173.

According to the records of the DOI, National Union Fire Insurance Company of Pittsburgh, PA (“Union”) is domiciled at 70 Pine Street, New York, New York. Upon information and belief, Union provides (or provided) insurance coverage to the State of Louisiana, including the DOI and the OFI. Upon further information and belief, at some or all of the times relevant to the Petition, this Defendant had in full force and effect insurance policies in the name of the State of Louisiana, which policies make this Defendant contractually responsible for certain financial amounts associated with the potential liability of the State Defendants in this case. Pursuant to La. R.S. 22:655, the Plaintiffs have the right to sue Union directly and recover damages upon establishing the liability of the State of Louisiana, by and through the OFI and DOI, as insureds of Union.

174.

Upon information and belief, Aetna Casualty Surety Company (“Aetna”) is domiciled at One Tower Square, Hartford, Connecticut. (Upon further information and belief, Aetna has changed its name to Travelers Casualty and Surety Company since the issuance of the insurance policy at issue herein.) Upon information and belief, Aetna provides (or provided) insurance coverage to the State of Louisiana, including the DOI and the OFI. Upon further information and belief, at some or all of the times relevant to the Petition, this Defendant had in full force and

effect insurance policies in the name of the State of Louisiana, which policies make this Defendant contractually responsible for certain financial amounts associated with the potential liability of the State Defendants in this case. Pursuant to La. R.S. 22:655, the Plaintiffs have the right to sue Aetna directly and recover damages upon establishing the liability of the State of Louisiana, by and through the OFI and DOI, as insureds of Aetna.

175.

According to the records of the DOI, American Home Assurance Company (“American Home”) is domiciled at 70 Pine Street, New York, New York. Upon information and belief, American Home provides (or provided) insurance coverage to the State of Louisiana, including the DOI and the OFI. Upon further information and belief, at some or all of the times relevant to the Petition, this Defendant had in full force and effect insurance policies in the name of the State of Louisiana, which policies make this Defendant contractually responsible for certain financial amounts associated with the potential liability of the State Defendants in this case. Pursuant to La. R.S. 22:655, the Plaintiffs have the right to sue American Home directly and recover damages upon establishing the liability of the State of Louisiana, by and through the OFI and DOI, as insureds of American Home.

176.

According to the records of the DOI, Continental Casualty Company (“Continental Casualty”) is domiciled in CNA Plaza, Chicago, Illinois. Upon information and belief, Continental Casualty provides (or provided) insurance coverage to the State of Louisiana, including the DOI and the OFI. Upon further information and belief, at some or all of the times relevant to the Petition, this Defendant had in full force and effect insurance policies in the name of the State of Louisiana, which policies make this Defendant contractually responsible for certain financial amounts associated with the potential liability of the State Defendants in this case. Pursuant to La. R.S. 22:655, the Plaintiffs have the right to sue Continental Casualty directly and recover damages upon establishing the liability of the State of Louisiana, by and through the OFI and DOI, as insureds of Continental Casualty.

177.

According to the records of the DOI, Federal Insurance Company (“Federal”) is domiciled at 15 Mountain View Road, Warren, New Jersey. Upon information and belief,

Federal provides (or provided) insurance coverage to the State of Louisiana, including the DOI and the Office OFI. Upon further information and belief, at some or all of the times relevant to the Petition, this Defendant had in full force and effect insurance policies in the name of the State of Louisiana, which policies make this Defendant contractually responsible for certain financial amounts associated with the potential liability of the State Defendants in this case. Pursuant to La. R.S. 22:655, the Plaintiffs have the right to sue Federal directly and recover damages upon establishing the liability of the State of Louisiana, by and through the OFI and DOI, as insureds of Federal.

178.

According to the records of the DOI, Continental Insurance Company (“Continental”) is domiciled in CNA Plaza, Chicago, Illinois. Upon information and belief, Continental provides (or provided) insurance coverage to the State of Louisiana, including the DOI and the OFI. Upon further information and belief, at some or all of the times relevant to the Petition, this Defendant had in full force and effect insurance policies in the name of the State of Louisiana, which policies make this Defendant contractually responsible for certain financial amounts associated with the potential liability of the State Defendants in this case. Pursuant to La. R.S. 22:655, the Plaintiffs have the right to sue Continental directly and recover damages upon establishing the liability of the State of Louisiana, by and through the OFI and DOI, as insureds of Continental.

179.

According to the records of the DOI, United States Fire Insurance Company (“U.S. Fire”) is domiciled at 350 Madison Avenue, Morristown, New Jersey. Upon information and belief, U.S. Fire provides (or provided) insurance coverage to the State of Louisiana, including the DOI and the OFI. Upon further information and belief, at some or all of the times relevant to the Petition, this Defendant had in full force and effect insurance policies in the name of the State of Louisiana, which policies make this Defendant contractually responsible for certain financial amounts associated with the potential liability of the State Defendants in this case. Pursuant to La. R.S. 22:655, the Plaintiffs have the right to sue U.S. Fire directly and recover damages upon establishing the liability of the State of Louisiana, by and through the OFI and DOI, as insureds of U.S. Fire.

180.

According to the records of the DOI, General Star National Insurance Company (“General”) is domiciled at 695 East Main Street, Stamford, Connecticut. Upon information and belief, General provides (or provided) insurance coverage to the State of Louisiana, including the DOI and the OFI. Upon further information and belief, at some or all of the times relevant to the Petition, this Defendant had in full force and effect insurance policies in the name of the State of Louisiana, which policies make this Defendant contractually responsible for certain financial amounts associated with the potential liability of the State Defendants in this case. Pursuant to La. R.S. 22:655, the Plaintiffs have the right to sue General directly and recover damages upon establishing the liability of the State of Louisiana, by and through the OFI and DOI, as insureds of General.

181.

Upon information and belief, Home Insurance Company (“Home”) is domiciled at 59 Maiden Lane New York, New York. Upon information and belief, Home provides (or provided) insurance coverage to the State of Louisiana, including the DOI and the OFI. Upon further information and belief, at some or all of the times relevant to the Petition, this Defendant had in full force and effect insurance policies in the name of the State of Louisiana, which policies make this Defendant contractually responsible for certain financial amounts associated with the potential liability of the State Defendants in this case. Pursuant to La. R.S. 22:655, the Plaintiffs have the right to sue Home directly and recover damages upon establishing the liability of the State of Louisiana, by and through the OFI and DOI, as insureds of Home.

182.

According to the records of the DOI, Insurance Company of North America (“ICNA”) is domiciled at 1601 Chestnut Street, Philadelphia, Pennsylvania. Upon information and belief, ICNA provides (or provided) insurance coverage to the State of Louisiana, including the DOI and the OFI. Upon further information and belief, at some or all of the times relevant to the Petition, this Defendant had in full force and effect insurance policies in the name of the State of Louisiana, which policies make this Defendant contractually responsible for certain financial amounts associated with the potential liability of the State Defendants in this case. Pursuant to

La. R.S. 22:655, the Plaintiffs have the right to sue ICNA directly and recover damages upon establishing the liability of the State of Louisiana, by and through the OFI and DOI, as insureds of ICNA.

183.

According to the records of the DOI, Maryland Casualty Company ("Maryland") is domiciled at 1400 American Lane Tower 1, 19th Floor, Schaumburg, Illinois. Upon information and belief, Maryland provides (or provided) insurance coverage to the State of Louisiana, including the DOI and the OFI. Upon further information and belief, at some or all of the times relevant to the Petition, this Defendant had in full force and effect insurance policies in the name of the State of Louisiana, which policies make this Defendant contractually responsible for certain financial amounts associated with the potential liability of the State Defendants in this case. Pursuant to La. R.S. 22:655, the Plaintiffs have the right to sue Maryland directly and recover damages upon establishing the liability of the State of Louisiana, by and through the OFI and DOI, as insureds of Maryland.

184.

Upon information and belief, NAC Reinsurance Company ("NAC") is domiciled at 70 Seaview Avenue, Stamford, Connecticut. Upon information and belief, NAC provides (or provided) insurance coverage to the State of Louisiana, including the DOI and the OFI. Upon further information and belief, at some or all of the times relevant to the Petition, this Defendant had in full force and effect insurance policies in the name of the State of Louisiana, which policies make this Defendant contractually responsible for certain financial amounts associated with the potential liability of the State Defendants in this case. Pursuant to La. R.S. 22:655, the Plaintiffs have the right to sue NAC directly and recover damages upon establishing the liability of the State of Louisiana, by and through the OFI and DOI, as insureds of NAC.

185.

According to the records of the DOI, Royal Insurance Company of America ("Royal") is domiciled at 1240 East Diehl Road, suite 500, Naperville, Illinois. Upon information and belief, Royal provides (or provided) insurance coverage to the State of Louisiana, including the DOI and the OFI. Upon further information and belief, at some or all of the times relevant to the Petition, this Defendant had in full force and effect insurance policies in the name of the State of

Louisiana, which policies make this Defendant contractually responsible for certain financial amounts associated with the potential liability of the State Defendants in this case. Pursuant to La. R.S. 22:655, the Plaintiffs have the right to sue Royal directly and recover damages upon establishing the liability of the State of Louisiana, by and through the OFI and DOI, as insureds of Royal.

186.

According to the records of the DOI, The Travelers Indemnity Company, US Branch (“Travelers”), is domiciled at One Tower Square, Hartford, Connecticut. Upon information and belief, Travelers provides (or provided) insurance coverage to the State of Louisiana, including the DOI and the OFI. Upon further information and belief, at some or all of the times relevant to the Petition, this Defendant had in full force and effect insurance policies in the name of the State of Louisiana, which policies make this Defendant contractually responsible for certain financial amounts associated with the potential liability of the State Defendants in this case. Pursuant to La. R.S. 22:655, the Plaintiffs have the right to sue Travelers directly and recover damages upon establishing the liability of the State of Louisiana, by and through the OFI and DOI, as insureds of Travelers.

187.

According to the records of the DOI, Zurich Insurance Company, US Branch (“Zurich”) is domiciled at One Tower Square, Hartford, Connecticut. Upon information and belief, Zurich provides (or provided) insurance coverage to the State of Louisiana, including the DOI and the OFI. Upon further information and belief, at some or all of the times relevant to the Petition, this Defendant had in full force and effect insurance policies in the name of the State of Louisiana, which policies make this Defendant contractually responsible for certain financial amounts associated with the potential liability of the State Defendants in this case. Pursuant to La. R.S. 22:655, the Plaintiffs have the right to sue Zurich directly and recover damages upon establishing the liability of the State of Louisiana, by and through the OFI and DOI, as insureds of Zurich.

188.

Upon information and belief, American Excess Insurance Association (“Excess”) provides (or provided) insurance coverage to the State of Louisiana, including the DOI and the OFI, through many of the above listed insurance entities. Upon further information and belief, at

some or all of the times relevant to the Petition, this Defendant had in full force and effect insurance policies in the name of the State of Louisiana, which policies make this Defendant contractually responsible for certain financial amounts associated with the potential liability of the State Defendants in this case. Pursuant to La. R.S. 22:655, the Plaintiffs have the right to sue Excess directly and recover damages upon establishing the liability of the State of Louisiana, by and through the OFI and DOI, as insureds of Excess.

FACTUAL ALLEGATIONS

189.

The entirety of the Seventh Amended and Supplemental Petition is hereby incorporated by reference for all purposes.

190.

The facts and allegations articulated in the 7th Amended and Supplemental Petition demonstrate that the State Defendants were negligent in the following non-exclusive particulars: (a) the State Defendants negligently enforced the rules and regulations pertaining to insurance companies, insurance holding companies, financial institutions, and sellers of securities; (b) the State Defendants negligently failed to enforce the rules and regulations pertaining to insurance companies, insurance holding companies, financial institutions, and sellers of securities; (c) the State Defendants failed to exercise proper oversight and supervision over those persons directly responsible for administering and enforcing the rules and regulations pertaining to insurance companies, insurance holding companies, financial institutions, and sellers of securities.

191.

These negligent acts and repeated failures to act directly and proximately caused the damages to these Petitioners. The Defendants are solidarily liable for these damages.

192.

By way of example, the negligence of the State Defendants (*i.e.*, the DOI and OFI) arises, in part, as a result of the following facts and allegations, which are neither exclusive nor exhaustive of the facts and circumstances giving rise to the liability of the Defendants:

The Overleveraged Purchase

(A) Public Investors Life Insurance Company ("PILICO") was established in 1965. Under its original owners the company was financially successful, and became respected by

rating companies such as A.M. Best. Public Investors, Inc. ("PICO) was the holding company which owned the family of insurance companies at issue herein. The PICO companies, including PILICO, were healthy and successfully run up to the time PICO was sold to new owners in 1987.

(B) In August 1987, Mark Herman and Robert Billbruck purchased PICO and its several subsidiaries, by and through Bomar Investment Co. (later called Riverside Holding Company). The purchase of PICO, as the holding company which owned several Louisiana domiciled insurance companies, was 100% leveraged. This over-leveraged purchase plan was approved by the DOI. The impact of the purchase was to pull over \$5 million in cash out of PICO, and add \$7,300,000 to PICO's (and its affiliates') liabilities.

(C) While these companies were initially successful, the withdrawal of this much cash changed the financial structure of the companies and put the policy holders at high risk. These negligent actions directly and proximately caused the collapse of these companies to the direct detriment of the Plaintiffs. It was negligent of the State Defendants to allow this completely over-leveraged purchase.

Illegally Excessive Dividends

(D) PILICO declared a dividend to its holding company, PICO, on December 29, 1986, in the amount of \$1 million, without seeking prior approval from the DOI. Since this dividend exceeded the threshold of 15% of policyholder surplus, prior regulatory approval was required. This dividend was reported on PILICO's financial statements, which were filed with the DOI. The DOI's lack of regulatory oversight in this transaction, like the over-leveraged purchase of PICO, set the stage for numerous other infractions, which together allowed this company to threaten its own solvency by shifting assets to other affiliates, and then out to the owners. It was negligent of the State Defendants to fail to take appropriate regulatory actions in regard to this illegal dividend and the subsequent harmful actions.

The Draining Of Liquidity

(E) Also in 1986, PILICO listed as assets \$4.2 million in bonds issued by its holding company, PICO. With total assets of \$33.9 million, this investment in an affiliated company represented approximately 12.5% of PILICO's assets, well over the 5% statutory limitation on investments by an insurance company in a single entity. It was negligent of the State Defendants to fail to take appropriate regulatory actions in regard to this illegal investment.

(F) Investment restrictions as set forth in the Louisiana insurance statutes are intended to limit an insurer's financial risk and trigger regulatory action if insurers fail to comply with these requirements. Monitoring investment activity is a primary responsibility in the financial regulation of insurers. The State Defendants' failure to take corrective action was negligent.

Obvious Flaws In The FF&C Rate Structure

(G) FF&C's rate structure was set up in such a way that FF&C could never be financially successful. The profit margin available to FF&C was 40% or less, before liabilities associated with payments under the policies. This rate of return was insufficient to support an insurance company selling property and casualty insurance, primarily auto insurance. The substantial amount of cash generated in the short term due to this low premium pricing was actually *de minimis* in relation to the associated risk of claims against the insureds. The DOI had immediate access to this data. As regulators trained in the regulation of insurance companies, it was negligent for the DOI not to identify this rate structure as a serious problem and take corrective or protective actions in order to protect the policy holders.

**Authorization Of IPAC To Function As A
Limited Function Financial Institution;
Issuance of CD's; and the Debenture for CD swap.**

(G) Between 1986 and 1991 the DOI allowed the asset mix of the PICO insurance companies to become less diversified and liquid. That is to say, lower risk, long-term investments were replaced with higher risk investments like real estate. By mid-1988, based on the consultation of Jerry Willis ("Willis"), the Bomar owners decided that they wanted to model themselves after the Champion Insurance Company, for which Willis was also a consultant. To this end, and with the help of Willis, Bomar applied for a Limited Function Financial Institution License ("LFFI"), through one of PICO's subsidiaries, Insurance Premium Assistance Corporation ("IPAC"). Just as he had been for the Champion applicant, Willis was the primary negotiator with the OFI on behalf of the Bomar applicant.

(H) IPAC was negligently approved by Commissioner Dent of the OFI in December of 1988 as a LFFI, in spite of the applicable statute which required Dent to do the following:

D. The commissioner may issue a license to applicants under Subsection B of this Section if after investigation he determines that the proposed activities are merely incidental to the other business activities of the applicant, that the public interest will be served by permitting the proposed activity, that the financial responsibility and general fitness of the applicant are such as to

command the confidence of the community to be served, that there is a need for such additional facilities in the community to be served, and that the applicant proposes to conduct such activities in a safe and sound manner.

La.R.S. 6:451(D) (emphasis added). It was negligent of the OFI to grant this license based on the facts and circumstances surrounding IPAC and its affiliated companies, which were or should have been known or discovered by the OFI during the mandated investigation.

(I) This LFFI license allowed IPAC to take cash deposits from the other insurance companies in the PICO family. In its previous annual financial statement (December 31, 1987), IPAC had listed only \$51,802 in cash, \$4.6 million in current assets, and \$57,615 in net income. Days after the license was granted by the OFI, IPAC accepted over \$43 million in cash and notes from PILICO, Universal Guarantee Life (another PICO affiliate) and FF&C. At the 10% interest rates assigned, IPAC had to come up with \$200,000 in cash by the June 28, 1989 maturity date of the CD's – which was four times its previous year's net income. It was negligent of the OFI to fail, or improperly, regulate IPAC's use of the LFFI license.

(J) PILICO and FF&C listed this intercompany debt as a "CD" on its financial statements. Contrary to custom and usage of the word "certificate of deposit" in the insurance industry, these "CD's" were not protected by any federal insurance or otherwise protected in any way. It was negligent of the DOI to allow these "CD's" to be listed as such, without requiring that they be properly identified as intercompany debt.

(K) It was negligent of the OFI and DOI to authorize this movement of policyholder funds into IPAC, out of PILICO and FF&C. This transactions should have never been allowed, due to (1) the size of the companies, (2) the scale of the money movement, (3) the very short corporate track record of IPAC, and (4) the failure of IPAC's LFFI application to meet the requirements of La.R.S. 6:451(D). Further, once allowed, the OFI and DOI negligently failed in their duty and responsibility to act together to very closely regulate IPAC and the insurance companies, as these "CD's" immediately represented the most significant assets on the books of either PILICO or FF&C. This obviously created an enormous amount of risk to the policy holders, as this asset not only lacked diversification, it was with an affiliate. It was negligent of the OFI to grant IPAC the LFFI as it was clearly not in the public's best interest.

(L) By the middle of 1989, less than six months after the OFI and DOI allowed the movement of assets out of PILICO and FF&C into IPAC, it had been conclusively determined by

the OFI and DOI that IPAC could not repay these CDs, which were then due and owing. The National Association of Insurance Commissioners ("NAIC") valued the CD's at "five cents on the dollar" (5% of face value). This meant that PILICO and FF&C were now **insolvent**, since without this "asset" on their books, their liabilities greatly exceeded their assets. The OFI and DOI each negligently failed to take proper regulatory action to prevent the insolvencies, and further negligently failed to reduce the detrimental effects of that insolvency on the Petitioners.

(M) By June 5, 1989, the Champion scandal was public, and its liquidation proceedings were already underway. It was ultimately proven that the Champion family of insurance companies and premium finance companies, including the "LFFI" United Financial, were in fact a "single business enterprise" which moved money around to their affiliates for the ultimate benefit of the owners. *See, Green v. Champion Ins.*, 577 So.2d 249 (La.App. 1 Cir. 1991), *writ denied*, 580 So.2d 668. Commissioner of Insurance Douglas Green was convicted for bribery and mail fraud in connection with his assistance in the theft of the Champion policyholder funds. *See, U.S. v. Green, supra*. Upon public knowledge of the potential for fraud and abuse associated with LFFI's and other intercompany transactions, the DOI and OFI negligently failed to properly apply regulatory oversight to the PICO companies (now owned by Bomar), like PILICO and FF&C, which they knew were using similar intercompany methods.

(N) Soon after the Champion scandal became public, the OFI and DOI worked out a multifaceted plan with the owners of Southshore, which had purchased Bomar/Riverside, that would allegedly address the "CD" issue. They agreed to take the money invested by the Petitioners in PILICO and PICO, and move those funds to FF&C. This agreement was finalized and reduced to writing on December 15, 1989. The details of these transactions can be extremely tedious, but the plan generally worked as follows:

1. OFI allowed the "CD's", now known to be worthless since IPAC could not repay them, to be "rolled over" for another six months. "Rolling them over" meant simply allowing the "CD's" to be renewed on PILICO and FF&C's books as if they were assets of real value.
2. PICO would sell one of the insurance companies that it owned to a third party. The funds from that purchase would go, not to PICO, but to FF&C, even though top level personnel at the Defendant agencies admit that FF&C had no actual right to these funds.
3. On December 8, 1989, a series of transactions between the affiliated companies was effected (the "Agreement"). In section 1 of the Agreement, PICO agrees to buy the Parkway Plaza ("Parkway"), an uncompleted construction project in Texas, from Southshore (its parent) in exchange for PICO's 100% ownership of

FF&C and its 54% ownership of Universal Guaranty Life Insurance Co. As the DOI was aware, Parkway had been purchased only weeks before for \$500,000, plus liens, by a shell corporation owned by one of the owners of Southshore. The final price, after settlement of the liens was approximately \$1.2 million.

4. In section 2 of the agreement, PICO agrees to buy back the 54% of Universal Guaranty, from Southshore, for \$7,000,000 in cash. In short, PICO gave up \$7,000,000 in cash, plus the entire FF&C company, in exchange for a building which the DOI knew had just been purchased for \$1.2 million.
5. After a few more transactions, Parkway was then specifically allowed by the DOI to be listed on FF&C's books at a stated value of \$10 million.
6. By use of the cash siphoned out of PICO, FF&C would have its \$11 million IPAC "CD's" repaid with real money and property. PILICO, by contrast, would get a worthless corporate "debenture" from IPAC in exchange for its equally worthless "CD's". This "debenture" would then be allowed as an admitted assets on PILICO's financial statements.
7. On December 15, 1989, the Deputy Commissioner of Insurance signed an agreement on behalf of the Commissioner of Insurance, Doug Green, approving the transactions outlined above in the December 8, 1989 agreement.

This agreement and its terms represent negligent regulatory behavior by the OFI and the DOI.

(O) The "CD for debenture" swap had zero effect on IPAC's inability to pay the \$28 million it owed to PILICO; it simply changed the name of the debt. While the OFI and DOI knew the "debenture" was worthless, they negligently allowed it to be placed at full face value on the PILICO financial statements. The OFI was aware of these facts and negligently failed to object, or take any appropriate actions to prevent the listing of the "debenture" as an asset of worth.

Another Overleveraged Purchase - The Southshore Group

(P) As part of an agreement between the OFI, DOI and owners of the Riverside Holding Company, new owners were brought in to buy the PICO family of companies (by purchasing the Riverside assets). These new owners were Bobby Shamburger and Gary Jackson, by way of the Southshore Holding Company ("Southshore"). These new owners did not have sufficient personal wealth to pay the roughly \$300,000 purchase price for the family of insurance companies and affiliates, and had to "borrow" IPAC assets to use as collateral for a loan to pay the purchase price. This loan of IPAC assets was facilitated by Mark Herman, the owner/seller of the Bomar/Riverside companies. Here again, the purchase of the family of companies was 100% leveraged for the second time in two (2) years.

(Q) It was negligent of the DOI to allow this purchase by owners lacking sufficient assets to support the companies. It was further negligent of the DOI to allow yet another

overleveraged purchase of these companies. The OFI was also aware of these facts and it was negligent of OFI to fail to object, or take any appropriate actions, upon knowledge that terms of the above described purchase was wholly insufficient to address the risk to the investing public, including the Petitioners.

(R) While the purpose of bringing in new ownership was stated to be an effort to help cure the financial woes of the Riverside family of companies, including FF&C and PILICO, no significant assets were added as a result of the change in ownership. The only new capital that was added to the PICO family of companies was Parkway Plaza – a shell of a building that had just been purchased for around \$1.2 million. The rest of the “funds” were simply worthless intercompany “paper” transaction. It was negligent of the DOI to authorize the transfer of ownership without an infusion of real and substantial assets. The OFI attended the approval hearing, and it was negligent of OFI to fail to object, or take any appropriate actions, upon knowledge that terms of the above described agreement were wholly insufficient to address the risk to the investing public, including the Petitioners.

Louisiana Regulation Of Midwest

(S) Midwest Life Insurance Company (“Midwest”) was a successful insurance company domesticated in Nebraska for many years. In November of 1987, it was purchased by Bomar and added to the PICO family. While it sold policies in Louisiana, it remained domesticated in Nebraska. The Bomar owners had started to conduct intercompany fund movement with Midwest similar to that described above, but were caught and stopped by the Nebraska DOI. By 1989, the Nebraska DOI had forced the owners to clean up the illegal transactions and to replace assets that had been removed. By the end of 1989, the Midwest financial statements accurately reflected that Midwest was in compliance with all statutory requirements.

(T) With the Nebraska DOI watching Midwest closely, the Bomar owners could not continue to misappropriate Midwest assets. As part of the December 1989 agreement between the State Defendants and the owners of Midwest, the Commissioner of Insurance, Douglas Green, met with the Nebraska Commissioner of Insurance, William McCartney, and convinced him that Midwest should be allowed to redomesticate to Louisiana – thereby putting the Louisiana DOI in charge of regulating Midwest. Upon redomestication to Louisiana, Midwest

had approximately \$100 million in assets, with several million less in liabilities. Once under Louisiana regulation, the new Southshore owners began massive movements of cash out of Midwest. The Nebraska DOI allowed the re-domestication due to Green's personal assurance that he and the Louisiana DOI would watch Midwest very closely, to be certain that no more improper transactions were conducted. This assurance by Green was negligent if the Louisiana DOI was actually unwilling or unable to closely monitor Midwest and promised. If the DOI was willing and able to closely monitor Midwest, its oversight and regulation were negligent as is apparent from the scale of the theft that occurred upon redomestication of Midwest to Louisiana.

The Abuses Of Midwest Assets

(U) The number and dollar value of fraudulent transactions by the owners of Midwest that occurred over the next one year period are revealing of the DOI's negligent regulation and oversight of the Southshore owners "operation and management" of Midwest. The U.S. Court of Appeals for the Eleventh Circuit detailed the criminal actions that took place in Florida, where Midwest money was used to fund the Tops'L project. *See, U.S. v. Ross*, 131 F.3d 970 (C.A. 11 1997). The DOI's negligent failure to properly regulate the Southshore owners operation of Midwest allowed these events to happen, and is the direct and proximate cause of the resulting loss to the Petitioners.

(V) The Master Holding 98 purchase of \$16 million of mortgages ("Grant Street Mortgages") is a prime example of post redomestication fraud undertaken by the owners of Midwest while under the negligent regulatory eye of the Louisiana DOI. Master Holding 98 ("Master"), a shell company owned by the Southshore owners and located in the same office suite as Midwest, PILICO and FF&C, bought the Grant Street Mortgages (hundreds of individual low grade mortgages) for half of their \$16 million face value - approximately \$8 million. One half of these individual mortgages were then sold to Midwest for full face value - \$8 million. In truth, Master used \$8 million from Midwest accounts to buy the mortgages and then paper transactions were created to look as if Master had bought the mortgages first and then sold half to Midwest. In sum, Midwest policy owners lost \$8 million in cash, and received \$4 million in low grade mortgages in exchange. The \$4 million "profit" disappeared into the ownership structure. The DOI's negligent failure to properly regulate and oversee the Southshore owners operation of Midwest allowed these events to occur, and is the direct and proximate cause of the

resulting loss to the Petitioners.

(W) The remaining mortgages held by Master were systematically sold to Midwest and other affiliates as cash was desired by the owners. Of course, Midwest had already paid for all of these mortgages. This type of transaction occurred over and over, transferring some worthless or semi-worthless property as a “fig leaf” for siphoning huge amounts of cash out of these companies. The DOI’s negligent failure to properly regulate the Southshore owners operation of Midwest allowed these events to occur, and is the direct and proximate cause of the resulting loss to the Petitioners.

(X) When more money was desired by the owners, Parkway Plaza was sold by FF&C to Midwest for \$17 million. FF&C needed to replace Parkway as an assets on its books, so about \$1 million of the \$17 million paid by Midwest was used to buy Young Ranch, a parcel of land in Colorado. Thomas Bentley, Deputy Commissioner of the DOI, specifically approved the placement of this Young Ranch property on FF&C’s books at a stated value of \$13.6 million. The DOI’s negligent failure to properly regulate the Southshore owners operation of Midwest allowed these events to occur, and is the direct and proximate cause of the resulting loss to the Petitioners.

(Y) Soon, the owners realized they had to hide Parkway on the books of Midwest, because this “\$17 million real estate asset” was far beyond the investment limits set by every state in which Midwest sold policies. Multiple state regulatory departments, as well as industry reporting and rating groups, were questioning the investment. The Nebraska Department of Insurance attempted to investigate the investment in Parkway, but was unable to get assistance or responses from the company or the Louisiana DOI. The DOI’s negligent failure to properly regulate the Southshore owners operation of Midwest, specifically the negligent failure to take appropriate regulatory steps to cure the excessive investments in a single overpriced parcel of real estate, are the direct and proximate cause of the resulting loss to the Petitioners.

(Z) Feeling pressure from non-Louisiana DOI’s, and industry reporting and rating organizations, the Southshore owners wanted to remove Parkway Plaza from financial statement of Midwest. To hide Parkway, the owners split the property into three (on the books) so that it looked like three smaller mortgages (owned by Southshore shell companies) instead of one large white elephant real estate investment on the books. This occurred after the Louisiana DOI

already agreed that Parkway was going to stay on FF&C's books for at least two years at an agreed value of \$10 million. Doug Green then personally went to Texas to convince the Texas DOI not to take action against Midwest and its owners, and to instead take \$5 million in cash from Midwest to cover the Texas policy holders. The "sale" of Parkway to the shell companies was "canceled" in April of 1991, at which point Parkway was back on Midwest's books. The DOI's negligent failure to properly regulate the Southshore owners operation of Midwest, specifically including their failure to track the intercompany movement of Parkway, allowed the owners to continue their theft, and is the direct and proximate cause of the resulting loss to the Petitioners.

193.

This is by no means an exclusive or exhaustive list of the actions or inactions which give rise to the insuring Defendants solidary liability for the negligence of the State regulatory Defendants.

**COUNT III: THE DEFENDANTS ARE
LIABLE FOR THE STATE DEFENDANTS'
NEGLIGENCE PURSUANT TO La.C.C. Art. 2315**

194.

The foregoing paragraphs and the entirety of the Seventh Amended and Supplemental Petition are hereby incorporated by reference for all purposes.

195.

Based on the above and foregoing, the Defendants are liable to the Plaintiffs for damages caused by the State Defendants' negligence, pursuant to the dictates of La.C.C. Art. 2315.

**COUNT IV: THE DEFENDANTS ARE
LIABLE FOR THE STATE DEFENDANTS'
NEGLIGENCE PURSUANT TO La.C.C. Art. 2316**

196.

The foregoing paragraphs and the entirety of the Seventh Amended and Supplemental Petition are hereby incorporated by reference for all purposes.

197.

Based on the above and foregoing, the Defendants are liable to the Plaintiffs for damages caused by the State Defendants' negligence, pursuant to the dictates of La.C.C. Art. 2316.

**COUNT V: THE DEFENDANTS ARE
LIABLE FOR THE STATE DEFENDANTS'
NEGLIGENCE PURSUANT TO La.C.C. Art. 2317**

198.

The foregoing paragraphs and the entirety of the Seventh Amended and Supplemental Petition are hereby incorporated by reference for all purposes.

199.

Based on the above and foregoing, the Defendants are liable to the Plaintiffs for damages caused by the State Defendants' negligence, pursuant to the dictates of La.C.C. Art. 2317.

**COUNT VI: THE DEFENDANTS ARE
LIABLE FOR THE STATE DEFENDANTS'
NEGLIGENCE PURSUANT TO La.C.C. Art. 2320**

200.

The foregoing paragraphs and the entirety of the Seventh Amended and Supplemental Petition are hereby incorporated by reference for all purposes.

201.

Based on the above and foregoing, the Defendants are liable to the Plaintiffs for damages caused by the State Defendants' negligence, pursuant to the dictates of La.C.C. Art. 2320.

PRAYER FOR RELIEF

202.

The acts and omissions of the Defendants, as described herein, entitle the Petitioners to a Judgment against the Defendants jointly, severally, and in solido, as follows:

- a. Rescinding their purchases of insurance policies, annuities, and notes, as the case may be, awarding them restitution of all monies tendered and consideration paid therefore, and ordering legal interest from the date the consideration was paid by each Petitioner; and
- b. Alternatively, for all damages, including, but not limited to, the following:

- (i) Loss of insurability by certain Petitioners who became uninsurable over an extended period of time during which Defendants continued to engage in acts and omissions as herein alleged, and concealment by the Defendant of the financial condition of the insurance companies named herein;
- (ii) Loss of payment of insurance and annuity proceeds and other amounts due and payable, as a consequence of the occurrence of events covered by insurance and annuity contracts between certain Petitioners and the insurance companies referred to herein;
- (iii) Loss of cash values and any other amounts (together with any and all additions thereto, including, but not limited to, dividends and interest) accrued under and in accordance with insurance and annuity contracts between certain Petitioners and the insurance companies referred to herein;
- (iv) Loss of premiums and any other consideration paid for all insurance and annuity contracts that were in fact worthless when purchased or which became worthless during such time periods that the companies named herein were hopelessly insolvent and during which time period such insolvency was concealed by the Defendants and/or such companies were misrepresented by the Defendants to be solvent thereby causing and/or inducing Petitioners to pay said premiums;
- (v) Loss of principal and any other consideration invested in annuity contracts and income and additions accrued and accumulated on said amount or amounts invested in annuity contracts issued by the insurance companies referred to herein to certain Petitioners;
- (vi) Loss of principal and any other consideration invested in notes and other securities, instruments, and contracts together with all income and additions accrued and accumulated on or in connection with same, between certain Petitioners and companies referred to herein;
- (vii) Impairment of the financial condition and credit worthiness of certain Petitioners;
- (viii) Losses of homes, farms, businesses, income, profits and any and all immovable and movable property by certain Petitioners resulting from the

financial ruin of these certain Petitioners due to the failure and collapse of the companies named herein;

- (ix) Damages to financial standing and reputation of certain of the Petitioners;
- (x) Pain, suffering, embarrassment, humiliation, emotional distress, and mental anguish resulting from the financial from the financial chaos and ruin experienced by the Petitioners;
- (xi) Any and all other damages of every nature and kind suffered and to be suffered by Petitioners as a consequence of the acts and omissions of the Defendants.

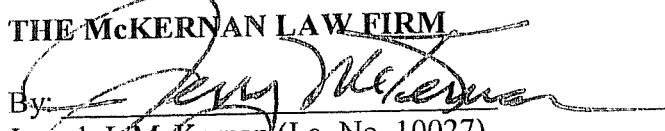
203.

Petitioners also pray for Judgment against the Defendants jointly, severally, and in solido for attorneys' fees, judicial interest, costs, and all expenses of these proceedings and for any and all other general and equitable relief.

WHEREFORE, the Petitioners pray that there be judgment for monetary damages in their favor and against the Defendants, that the Petitioners be awarded their reasonable attorneys' fees and costs, and for such other and further relief as law, equity and the nature of the case may require.

Respectfully submitted, this 24th day of March, 2003, at Baton Rouge, Louisiana.

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COUNSEL FOR ALL PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served on all counsel of record by telecopier (without exhibits) and United States mail, postage prepaid and properly addressed, this 24 day of March, 2003.


Jerry McKernan

PLEASE SERVE THE INSTANT 8TH AMENDED PETITION ON THE FOLLOWING DEFENDANTS:

1. **The State of Louisiana**, through the Department of Insurance by serving James Robert Wooley, its Acting Commissioner, Baton Rouge, Louisiana.
2. **The Department of Insurance of the State of Louisiana**, by serving James Robert Wooley, its Acting Commissioner, Baton Rouge, Louisiana.
3. **The State of Louisiana**, through the Office of Financial Institutions, by serving John D. Travis, its Commissioner, Baton Rouge, Louisiana.
4. **The Office of Financial Institutions**, by serving John D. Travis, its Commissioner, Baton Rouge, Louisiana.
5. **The State of Louisiana**, by serving its Attorney General, Richard Ieyoub, Baton Rouge, Louisiana.

PLEASE SERVE THE INSTANT 8TH AMENDED PETITION, ALONG WITH THE PRIOR SEVEN PETITIONS AND EXHIBITS THERETO, ON THE FOLLOWING :

6. **The State of Louisiana, through the Office of Risk Management Self Insurance Fund**, by serving its Director, J. S. "Bud" Thompson, Jr., Room 400, 624 N. 4th Street, Baton Rouge, Louisiana.
7. **International Insurance Company**, by serving its agent for service of process, Walter Fox McKeithen, Louisiana Secretary of State, 3851 Essen Lane, State Archives Building, Baton Rouge, Louisiana;
8. **Admiral Insurance Company**, by serving its agent for service of process, Walter Fox McKeithen, Louisiana Secretary of State, 3851 Essen Lane, State Archives Building, Baton Rouge, Louisiana;
9. **Lexington Insurance Company**, by serving its agent for service of process, Walter Fox McKeithen, Louisiana Secretary of State, 3851 Essen Lane, State Archives Building, Baton Rouge, Louisiana;
10. **National Union Fire Insurance Company of Pittsburgh, PA**, by serving its agent for service of process, Walter Fox McKeithen, Louisiana Secretary of State, 3851 Essen Lane, State Archives Building, Baton Rouge, Louisiana;

11. **Aetna Casualty Surety Company**, by serving its agent for service of process, Walter Fox McKeithen, Louisiana Secretary of State, 3851 Essen Lane, State Archives Building, Baton Rouge, Louisiana,;
12. **American Home Assurance Company**, by serving its agent for service of process, Walter Fox McKeithen, Louisiana Secretary of State, 3851 Essen Lane, State Archives Building, Baton Rouge, Louisiana;
13. **Continental Casualty Company**, by serving its agent for service of process, Walter Fox McKeithen, Louisiana Secretary of State, 3851 Essen Lane, State Archives Building, Baton Rouge, Louisiana;
14. **Federal Insurance Company**, by serving its agent for service of process, Walter Fox McKeithen, Louisiana Secretary of State, 3851 Essen Lane, State Archives Building, Baton Rouge, Louisiana;
15. **Continental Insurance Company**, by serving its agent for service of process, Walter Fox McKeithen, Louisiana Secretary of State, 3851 Essen Lane, State Archives Building, Baton Rouge, Louisiana;
16. **United States Fire Insurance Company**, by serving its agent for service of process, Walter Fox McKeithen, Louisiana Secretary of State, 3851 Essen Lane, State Archives Building, Baton Rouge, Louisiana;
17. **General Star National Insurance Company**, by serving its agent for service of process, Walter Fox McKeithen, Louisiana Secretary of State, 3851 Essen Lane, State Archives Building, Baton Rouge, Louisiana;
18. **The Home Insurance Company**, by serving its agent for service of process, Walter Fox McKeithen, Louisiana Secretary of State, 3851 Essen Lane, State Archives Building, Baton Rouge, Louisiana;
19. **Insurance Company of North America**, by serving its agent for service of process, Walter Fox McKeithen, Louisiana Secretary of State, 3851 Essen Lane, State Archives Building, Baton Rouge, Louisiana;
20. **Maryland Casualty Company**, by serving its agent for service of process, Walter Fox McKeithen, Louisiana Secretary of State, 3851 Essen Lane, State Archives Building, Baton Rouge, Louisiana;
21. **NAC Reinsurance Company**, by serving its agent for service of process, Walter Fox McKeithen, Louisiana Secretary of State, 3851 Essen Lane, State Archives Building, Baton Rouge, Louisiana;
22. **Royal Insurance Company of America**, by serving its agent for service of process, Walter Fox McKeithen, Louisiana Secretary of State, 3851 Essen Lane, State Archives Building, Baton Rouge, Louisiana;
23. **The Travelers Indemnity Company, US Branch**, by serving its agent for service of process, Walter Fox McKeithen, Louisiana Secretary of State, 3851 Essen Lane, State Archives Building, Baton Rouge, Louisiana;
24. **Zurich Insurance Company, US Branch**, by serving its agent for service of process, Walter Fox McKeithen, Louisiana Secretary of State, 3851 Essen Lane, State Archives Building, Baton Rouge, Louisiana; and
25. **American Excess Insurance Association**, by serving its agent for service of process, Walter Fox McKeithen, Louisiana Secretary of State, 3851 Essen Lane, State Archives Building, Baton Rouge, Louisiana.