

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

v.

SOUTHERN TITLE INSURANCE
CORPORATION, in Receivership

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CASE NO. INS-2011-00239

REPORT OF ALEXANDER F. SKIRPAN, JR., SENIOR HEARING EXAMINER

June 12, 2014

The Deputy Receiver seeks an Order of Liquidation that among other things: (i) declares Southern Title to be insolvent; (ii) authorizes use of funds in the UPR; and (iii) establishes a claims filing deadline. Based on the record developed in this proceeding I find that Southern Title is insolvent and that further efforts to rehabilitate Southern Title would be futile. In addition, I find that the Commission should grant the Deputy Receiver's Application and enter a Liquidation Order as requested by the Deputy Receiver.

HISTORY OF THE CASE

On December 20, 2011, the Circuit Court of the City of Richmond entered an order appointing the State Corporation Commission ("Commission") as Receiver of Southern Title Insurance Corporation ("Southern Title" or "Company").¹ That order granted the Commission authority to proceed with rehabilitation or liquidation of Southern Title and to take whatever steps were reasonably necessary or advisable for the protection of interested parties.

Also on December 20, 2011, the Commission entered its Order Appointing Deputy Receiver for Conservation and Rehabilitation,² in which the Commission appointed Commissioner Jacqueline K. Cunningham as Deputy Receiver of Southern Title ("Deputy Receiver").

On October 4, 2013, the Deputy Receiver filed her application ("Application") for the Commission's entry of a scheduling order ("Scheduling Order"): (i) setting a hearing ("Liquidation Hearing") on the Deputy Receiver's proposed liquidation of Southern Title; (ii) establishing response dates for those persons wishing to oppose the Application; (iii) approving

¹ *Commonwealth of Virginia ex rel. State Corporation Commission v. Southern Title Insurance Corporation and Manju S. Ganeriwala, Treasurer of Virginia*, Case No. CL11-5660-RDT, Final Order Appointing Receiver for Rehabilitation or Liquidation (Cir. Ct. of the City of Richmond, Dec. 20, 2011).

² *Commonwealth of Virginia ex rel. State Corporation Commission v. Southern Title Insurance Corporation*, Case No. INS-2011-00239, Order Appointing Deputy Receiver for Conservation and Liquidation, 2011 S.C.C. Ann. Rep. 200.

notice procedures for the Liquidation Hearing and other receivership proceedings; and (iv) after the Liquidation Hearing, entering an Order of Liquidation declaring Southern Title to be insolvent, approving the proposed claims filing deadline, authorizing use of the unearned premium reserve (“UPR”) in accordance with § 38.2-4613 of the Code of Virginia (“Code”), and addressing all related matters.

On October 18, 2013, the Commission entered its Scheduling Order. Among other things, the Commission scheduled the Liquidation Hearing to begin on February 4, 2014; directed the Deputy Receiver to provide direct written notice of the Liquidation Hearing to all creditors, claimants, and policyholders for whom Southern Title’s records provided a valid mailing address; and appointed a Hearing Examiner to conduct all further proceedings in this matter.

On November 19, 2013, the Deputy Receiver, by counsel, filed her motion for Andrea L. Bos, Esquire; Kristen W. Johnson, Esquire; Joshua O. Lively, Esquire; and Jose M. Rangel, Esquire, to be admitted to practice *Pro Hac Vice*. The Deputy Receiver’s motion was granted by a Hearing Examiner’s Ruling dated January 2, 2014.

On January 6, 2014, the Texas Title Insurance Guaranty Association (“TTIGA”), by Virginia counsel, filed its motion for Burnie Burner, Esquire, and Bruce McCandless, Esquire, to be admitted to practice *Pro Hac Vice*. TTIGA’s motion was granted by a Hearing Examiner’s Ruling dated January 10, 2014.

On January 27, 2014, the Deputy Receiver, by counsel, filed her Motion for Continuance. The Deputy Receiver reported that many current claimants inadvertently did not receive notice of the scheduled Liquidation Hearing. Therefore, the Deputy Receiver sought a continuance of seventy-five (75) days to provide notice and an opportunity for these parties to make objections. The Deputy Receiver’s Motion for Continuance was granted in a Hearing Examiner’s Ruling dated January 29, 2014, which rescheduled the hearing in this matter for April 23, 2014.

On February 3, 2014, the Deputy Receiver, by counsel, filed her Motion for Amended Scheduling Order. Due to scheduling conflicts, the Deputy Receiver requested that the Liquidation Hearing be reset for May 13, 2014. The Motion for Amended Scheduling Order was granted by a Hearing Examiner’s Ruling dated February 4, 2014.

On April 14, 2014, TTIGA filed its Objection to Suggestion of Extended Filing Deadline (“Objection”). TTIGA stated that it supports the claim filing deadline proposed by the Special Deputy Receiver and objected to any suggestion that the claim filing deadline be extended.

On May 13, 2014, the hearing in this matter was held as scheduled. Joseph West, Esquire, and Michael P. Marcin, Esquire, appeared on behalf of the Deputy Receiver. John O. Cox, Esquire, appeared on behalf of the Commission’s Bureau of Insurance (“Bureau”).

SUMMARY OF THE RECORD

The Deputy Receiver presented its case for liquidation of Southern Title through four witnesses: (i) Susan E. Roehm, director of information services for Palomar Financial;

(ii) Donald Beatty, Esquire, senior counsel in the Commission's Office of General Counsel; (iii) Joel Vaag, principal for Oliver Wyman Actuarial Consultants; and (iv) Clark Thomson, CPA, managing partner for Calhoun, Thomson & Matza, LLP. The testimony of each witness is summarized below.

Susan E. Roehm testified that her firm was hired by the Deputy Receiver to handle accounting and various other tasks for the receivership including providing notice to all creditors, claimants, and policy holders for whom Southern Title's records provide valid mailing addresses.³ Ms. Roehm stated that she searched all databases and extracted all the available policy holder names and addresses.⁴ Ms. Roehm affirmed that the address list was sent to Merrill Corporation to verify the list with the use of United States Postal Service software.⁵ Ms. Roehm reported that approximately 93,000 parties received direct written notice with this mailing.⁶

Ms. Roehm advised that after the initial mailing, an additional list was provided by one of the Southern Title agents.⁷ Ms. Roehm confirmed that to provide these claimants the required notice, the Deputy Receiver sought a continuance and an additional mailing to approximately 26,000 parties was made in February 2014.⁸

In addition, Ms. Roehm attested to the provision of published notice of the liquidation hearings and presented an affidavit from Fogel Advertising for the publication of the notice.⁹ Ms. Roehm noted that affidavits were provided for the individual publications.¹⁰

Donald Beatty stated that as the Special Deputy Receiver, he was responsible for the day-to-day operations of Southern Title during the receivership, and appeared as the "authorized representative of the Deputy Receiver."¹¹ Mr. Beatty asserted that the Deputy Receiver seeks: (i) a finding that Southern Title is insolvent; (ii) authorization to use funds in the UPR; and (iii) establishment of a claim filing deadline.¹²

Mr. Beatty reported that the audited financial statements for Southern Title for the year ended December 31, 2012, showed that as of December 31, 2012, the Company had admitted assets of \$12,989,671 and total liabilities of \$43,428,653, for a deficit of \$30,438,982.¹³ Mr. Beatty confirmed that the unaudited financial statements for Southern Title for the year

³ Roehm, Tr. at 8.

⁴ *Id.*

⁵ *Id.* at 8-9.

⁶ *Id.* at 9; Exhibit No. 1, at 1.

⁷ Roehm, Tr. at 9.

⁸ *Id.* at 9-11; Exhibit No. 1, at 4.

⁹ *Id.* at 11-12; Exhibit No. 2.

¹⁰ *Id.* at 12; *Id.*

¹¹ Beatty, Tr. at 14.

¹² *Id.* at 15.

¹³ *Id.* at 16-17; Exhibit No. 3, at 2-3.

ended December 31, 2013, as of December 31, 2013, the Company continued to be insolvent with a deficit of \$25,446,699.¹⁴

Mr. Beatty maintained that “Southern Title is currently unable to pay its obligations as they come due in the ordinary course of business.”¹⁵ Moreover, Mr. Beatty contended that “efforts to rehabilitate the Company would be futile due to the deep insolvency of the Company.”¹⁶ Mr. Beatty testified that in October 2013, the Deputy Receiver issued a request for proposals seeking a purchaser of the Company, or reinsurance, or any other possible arrangements.¹⁷ Mr. Beatty reported that no proposals were received.¹⁸ Because further efforts to rehabilitate the Company would be futile, Mr. Beatty recommended that Southern Title be liquidated.¹⁹

Mr. Beatty advised that the UPR is an account established by § 38.2-4610.1 of the Code to protect policy holders.²⁰ Mr. Beatty calculated that as of December 20, 2011, or the date the Company was placed into receivership, the UPR was \$9,974,279.²¹ Mr. Beatty cited to § 38.2-4613 C of the Code and testified that the UPR can be used for: (i) the payment of expenses of administration; (ii) policy holder claims filed before the claims filing deadline; and (iii) if there are any remaining funds, the UPR late filed claims, filed and perfected within twenty years.²² In addition, Mr. Beatty requested that the Commission permit Southern Title to discontinue reporting the UPR on its financial statements, as outlined in § 38.2-4610.1 of the Code, and report the amount as frozen, less whatever’s paid out of the UPR.²³

Mr. Beatty took the position that the assets of Southern Title must be segregated into two distinct categories, the first consisting of non-UPR funds subject to the distribution in accordance with § 38.2-1509 of the Code, and the second consisting of UPR funds subject to distribution in accordance with § 38.2-4613 B and C of the Code.²⁴ Mr. Beatty maintained that the costs of administration that are to be paid out of both non-UPR and UPR funds include the costs of curative actions taken in regard to title defects that left uncured might give rise to claims.²⁵ Mr. Beatty affirmed that the cost of administration will be allocated between non-UPR and UPR assets based on the relationship between the assets on a pro rata basis. Mr. Beatty advised that if any UPR funds remain available for distribution after December 31, 2031, such funds will be transferred to the general assets of the UPR account.²⁶

¹⁴ *Id.* at 17; Exhibit No. 4, at 3.

¹⁵ Beatty, Tr. at 17-18.

¹⁶ *Id.* at 18.

¹⁷ *Id.* at 19.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 20.

²¹ *Id.* at 21; Exhibit No. 5.

²² Beatty, Tr. at 24.

²³ *Id.* at 24-25.

²⁴ *Id.* at 25.

²⁵ *Id.* at 26.

²⁶ *Id.*

Mr. Beatty testified that a claim filing deadline was needed because such a deadline is required by § 38.2-4613 of the Code, and to establish the universe of claims for the making of orderly payments.²⁷ Mr. Beatty stated that the Deputy Receiver seeks a claim filing deadline of six months after the date of the Commission's order.²⁸ Mr. Beatty acknowledged a letter from Realty Title,²⁹ questioning the claim filing deadline, but maintained that the proposed six-month claim filing deadline period provides policy holders with a reasonable opportunity to review title for covered property and file a claim, if appropriate.³⁰ Mr. Beatty noted that claims filed after the deadline would not be able to be paid until all timely filed claims were paid.³¹

Mr. Beatty testified that the Deputy Receiver proposed that contingent claims and unliquidated claims must become non-contingent and liquidated within one year after the claim filing deadline.³² Claims that remain contingent or unliquidated after the end of the additional liquidation period would be treated as a late filed claim.³³

Mr. Beatty stated that the Deputy Receiver also requested authority to extend the claim filing deadline for up to a year.³⁴ Mr. Beatty advised that the Deputy Receiver is not seeking authority at this time to pay policy holder claims arising under insurance policies issued by Southern Title.³⁵ Mr. Beatty testified that the Deputy Receiver requested authority to: (i) deliver unclaimed funds to the custody of the state, or if not permitted by law, create a trust to hold such funds; (ii) contract with third parties to assume remaining obligations and contingencies of the Company; (iii) obtain an independent opinion from an actuarial or accounting firm regarding the reasonableness of consideration paid for the assumption of Company obligations and contingencies; and (iv) take reasonable steps to conclude the liquidation of the Company.³⁶ Finally, Mr. Beatty asked the Commission to declare "that all rights and interests of contingent claims for all policy holders and creditors of the Company are fixed as of the date of entry of the liquidation order."³⁷

Joel Vaag affirmed that he has served as the appointed actuary for Southern Title since 2012.³⁸ Mr. Vaag stated that he has been engaged by the Deputy Receiver to opine on the unpaid loss and loss adjustment expense for Southern Title.³⁹ Mr. Vaag reported that as of December 31, 2012, the range of reasonable unpaid loss and loss adjustment expense liabilities, net of reinsurance, was from \$38,467,000 to \$46,670,000, with a central estimate of

²⁷ *Id.* at 27.

²⁸ *Id.* at 28.

²⁹ Exhibit No. 6.

³⁰ Beatty, Tr. at 28.

³¹ *Id.* at 29.

³² *Id.* at 31.

³³ *Id.*

³⁴ *Id.* at 32.

³⁵ *Id.*

³⁶ *Id.* at 32-33.

³⁷ *Id.* at 33.

³⁸ Vaag, Tr. at 34.

³⁹ *Id.* at 35.

\$42,569,000.⁴⁰ Mr. Vaag testified that as of December 31, 2013, the range of reasonable unpaid loss and loss adjustment expense liabilities, net of reinsurance, was from \$33,547,000 to \$40,009,000, with a central estimate of \$36,778,000.⁴¹

Clark Thomson testified that his firm was engaged to audit the statutory basis financial statements for the year ended December 31, 2012.⁴² Mr. Thomson affirmed that as of December 31, 2012, Southern Title was insolvent by \$30,438,982.⁴³ Mr. Thomson opined that “[t]he Company is unable to meet – to fulfill its obligations in the normal course of business.”⁴⁴

DISCUSSION

Based on the evidence during the hearing, I find that the Deputy Receiver has provided notice to claimants, creditors, and policyholders through direct mail and publication as directed in the Commission’s Scheduling Order dated October 18, 2013. In addition, based on the evidence presented, I find that Southern Title is insolvent as liabilities far exceed assets, and the Company is unable to pay its obligations as they become due in the ordinary course of business. Based on the Company’s insolvency, and its failed efforts to locate either a purchaser or reinsurance, I agree with the Deputy Receiver and find that further efforts to rehabilitate Southern Title would be futile.

In her Application, the Deputy Receiver requested a “Liquidation Order” in which the Commission:

- a) Finds Southern Title to be insolvent;
- b) Declares that further efforts to rehabilitate Southern Title would be futile, and that Southern Title should be liquidated;
- c) Authorizes assets equal to the value of the UPR on December 20, 2011 (\$9,974,279), be used by the Deputy Receiver to enter into contracts of reinsurance to pay all policy holder claims, or if no such contracts of reinsurance are effected, to be distributed according to the order of preference in § 38.2-4613 C of the Code, and to report its Statutory Premium Reserve liability as \$9,974,279, less any distribution or payment made in accordance with § 38.2-4613 of the Code;
- d) Establishes the Claims Filing Deadline six (6) months following the date of the Liquidation Order, applicable to all claims against Southern Title other than Pending Claims and Administrative Claims, all as more fully described in the Application;
- e) Authorizes the Deputy Receiver to:

⁴⁰ *Id.* at 36; Exhibit No. 8, at 2.

⁴¹ *Id.* at 36-37; Exhibit No. 9, at 2.

⁴² Thomson, Tr. at 39-40.

⁴³ *Id.* at 40; Exhibit No. 11, at 5.

⁴⁴ Thomson, Tr. at 41.

- i) Promulgate reasonable requirements for the method of presentment and for perfecting claims including, but not limited to, the following: that all claims be rendered certain, liquidated, and non-contingent within a reasonable time following initial presentment but no more than one year following expiration of the Claims Filing Deadline;
- ii) Continue managing the affairs of Southern Title until such time as it is liquidated and dissolved;
- iii) Maintain a reasonable reserve of both UPR and non-UPR assets for the costs and expenses of administration;
- iv) Allocate the costs and expenses of administration between UPR and non-UPR assets in the proportion those assets bear to the value of all estate assets;
- v) Allocate the costs and expenses of paying claims pursuant to §§ 38.2-1509 B 1 (ii) and 38.2-4613 C (ii) of the Code between UPR and non-UPR assets in the proportion those assets bear to the value of all estate assets;
- vi) After reserving for the costs and expenses of administration pursuant to §§ 38.2-1509 B 1 and 38.2-1510 of the Code, including the costs of curative actions taken to resolve title defects that, left uncured, might give rise to claims under insurance policies issued by Southern Title, adjudicate and pay out non-UPR designated funds according to the following priorities:
 - 1) The claims of all secured creditors with a perfected security interest not voidable under § 38.2-1513 of the Code to the extent of the value of their security;
 - 2) The claims of the associations for “covered claims” and “contractual obligations,” as defined in § 38.2-1603 of the Code and in other applicable comparable statutes in other jurisdictions, and the claims of other policy holders arising out of insurance contracts apportioned without preference, such payments to be made from Southern Title assets in accordance with a Commission order or directive of the Deputy Receiver setting the payment percentage;
 - 3) Taxes owed to the United States and other debts owed to any persons, including the United States, which by the laws of the United States are entitled to priority;
 - 4) Claims for wages entitled to priority as provided in § 38.2-1514 of the Code;
 - 5) On a *pro rata* basis, claims of all other creditors; and
 - 6) That portion of all Late Filed Claims scheduled to be paid from non-UPR fund sources;
- vii) Adjudicate and pay out UPR designated funds in the following order of preference:

- 1) All expenses incurred under § 38.2-4613 of the Code in connection with the receivership and rehabilitation proceedings, including the costs of curative actions taken to resolve title defects that, left uncured, might give rise to claims under insurance policies issued by Southern Title;
 - 2) Policyholder claims for losses filed before the Claims Filing Deadline apportioned without preference, such payments to be made from Southern Title assets in accordance with a Commission order or directive of the Deputy Receiver setting the payment percentage; and
 - 3) Policyholder claims for losses that were filed after the Claims Filing Deadline, as they are allowed until such time as no funds remain or until December 20, 2031, whichever is earlier;
- viii) Transfer UPR assets that remain unpaid or undistributed after December 20, 2031, if any, to the non-UPR accounts of Southern Title to be administered as non-UPR designated funds;
- ix) In the event that she cannot find any person owed funds by the Company, deliver such unclaimed funds to the custody of the state of that person's last known address, as shown by the Company's books and records, pursuant to the procedures established by that state's unclaimed property laws;
- x) Create a trust to hold any unclaimed funds if the applicable state unclaimed property laws did not permit her to deliver any such unclaimed funds to the relevant states prior to the date that Southern Title would cease to exist and the receivership would terminate;
- xi) Cause a third party or contractor of the Company to assume remaining obligations and contingencies of Southern Title in exchange for reasonable consideration, and be authorized to obtain an independent opinion from an actuarial or accounting firm regarding the reasonableness of consideration paid for the assumption of Southern Title obligations or contingencies; and
- xii) Take all steps necessary and appropriate to liquidate and dissolve Southern Title as soon as reasonably practicable;
- f) Declares that the rights, interests, and contingent claims of all policyholders and creditors of the Company are fixed as of the date of the entry of the Order of Liquidation;
- g) Authorizes the Deputy Receiver, in her reasonable discretion, to issue a directive extending the Claims Filing Deadline for a period of no greater than one (1) year;
- h) Approves the termination and closure of these receivership proceedings upon application of the Deputy Receiver at the completion of the liquidation for the Commission's order terminating these proceedings; and

- i) Grants such other and further relief as the Commission may deem proper under the circumstances.⁴⁵

Based on the evidence developed in this proceeding, I find that the Commission should grant the Deputy Receiver's Application and enter a Liquidation Order as requested by the Deputy Receiver.

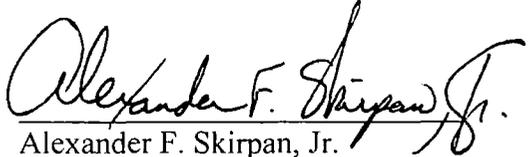
Accordingly, **I RECOMMEND** the Commission enter an order:

1. *Adopting* the findings of this Report; and
2. *Dismissing* this case from the Commission's docket of active cases.

COMMENTS

The parties are advised that pursuant to Commission Rule 5 VAC 5-20-120 C of the Commission's Rules of Practice and Procedure, any comments to this Report must be filed with the Clerk of the Commission in writing, in an original and five copies, within twenty-one days from the date hereof. The mailing address to which any such filing must be sent is Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Any party filing such comments shall attach a certificate to the foot of such document certifying that copies have been mailed or delivered to all counsel of record and any such party not represented by counsel.

Respectfully submitted,


 Alexander F. Skirpan, Jr.
 Senior Hearing Examiner

A copy hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, VA 23219.

⁴⁵ Application at 20-25.