



April 22, 1993

BULLETIN #576

RE: FIRST ASSURANCE AND CASUALTY CO., LTD (TURKS & CAICOS)

We have been requested by the California Insurance Department, acting in accordance with and pursuant to Section 1765.1 of the Insurance Code, to advise all Surplus Line brokers and Special Lines Surplus Line brokers that effective April 22, 1993, unless and until notified by the Department to the contrary, the above insurer should not be employed for placements of California business. No further new or renewal business may be placed with the company.

Please see attached documentation for further information.

Assistant Manager

JSP/imb

Enclosures

State of California
THE CALIFORNIA DEPARTMENT OF INSURANCE
45 Fremont Street, 24th Floor
San Francisco, CA 94105

April 22, 1993

The Surplus Line Association of California
388 Market Street
San Francisco, CA 94111

Subject: First Assurance and casualty Co., Ltd (Turks & Caicos)
Order Pursuant to California Insurance Code section 1765.1

Dear Gentle People:

Please issue a bulletin to your members notifying them that First Assurance and Casualty Co., Ltd (Turks & Caicos) is unacceptable pursuant to cic 1765.1 for placement of new or renewal business.

Attached please find a copy of the Department's order to First Assurance and its representatives.

Yours very truly,
Carol A. Ayoob,
Sr. Staff Counsel,
(415) 904-5666

cc: Janice E. Kerr ,
Victoria S. Sidbury

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE

April 22, 1993

First Assurance and Casualty Co., Ltd.
Arawak Bldg. Front Street
Grand Turk
Turks & Caicos BWI

Mr. John Smalley, President
Tradewinds Insurance Brokerage, Inc.
2300 Contra Costa Blvd., Ste 230
Pleasant Hill, CA 94523

Mr. Robert George Burnham
11012 Ventura Blvd.
Studio City, CA 91604

American Contractors Insurance Services
1611 So. Pacific Coast Hwy
Redondo Beach, CA 90277

Sun Coast General Insurance Agency Inc.
23042 Mill Creek Rd.
Laguna Hills, CA 92654

Great Republic Insurance Agency, Inc.
1335 Hotel Circle South
San Diego, CA 92108

Dumaine Insurance Services
3609 East Thousand Oaks Blvd.
Westlake Village, CA 91302

Two Rivers General Insurance Agency, Inc.
1812 Tribute Rd.
Sacramento, CA 95815

LRO Insurance Services
11365 Ventura Blvd.
Studio City, CA 91604

Re: First Assurance and Casualty Co., Ltd.(Turks & Caicos)
Order Pursuant to CIC 1765.1

Dear Gentle People,

Pursuant to California Insurance Code (CIC) Section 1765.1, the Department has reviewed the submitted information concern in.

First Assurance and Casualty Co. , Ltd. (First Assurance) The Department's review is guided by legal and accounting standards as set forth in our California Insurance Code and other California laws. The Department has a number of concerns which require the issuance of an order and bulletin pursuant to CIC 1765.1 ordering that no further business be placed with First Assurance. These concerns were previously forwarded to First Assurance and its sponsoring broker, Tradewinds Insurance Brokerage, on March 9, 1993. First Assurance answered on March 29, 1993, with further submissions the last of which was late on April 1, 1993. Having reviewed First Assurance's answer, the Department still has the following concerns.

UNACCEPTABLE ASSETS

St. Paul Baptist Church Bond \$3 million Previously, First Assurance had showed an investment in a \$3 million bond issued by New St. Paul Baptist Church, "a non-profit corporation organized under the laws of the State of Texas," to First Assurance. The Department determined that no such non-profit corporation was listed with the Secretary of State for Texas. Also a similarly named church involving the same individual had its charter forfeited. Moreover, the bond was not listed nor registered with the SEC and had no formal market. The Department determined the bond to be unacceptable because of its doubtful legitimacy and marketability. Although First Assurance has now allegedly "exchanged" the Bond for Logos International Inc., the initial purchase and holding of the Bond with a reported value of \$3 million reflects poorly on the reputation, integrity, and financial stability of First Assurance.

Logos International Inc. First Assurance claimed that it "divested the bond (St. Paul Bond, see above)

in January, 1993 in exchange for 300,000 shares of Logos International Inc. at a cost of \$10 per share." However, although the Department has repeatedly advised First Assurance that ownership of stocks must be proved, no copy of the Logos stock certificates) has been produced. Indeed, in checking with the broker holding the stock on 4/7/93, the Department was informed that the stock was still in the process of being transferred from Impact III (an affiliate of First Assurance) into the name of First Assurance.

Moreover, the Department also questions the value and marketability of the Logos stock. The independent auditors as of 12/31/91 stated "the Company's recurring losses from operations, net capital deficiency and the uncertainty of obtaining the necessary capital which will limit its ability to market its products raised *substantial doubt about the Company's ability to continue-as a going concern.*" (*emphasis added*)

It is also clear that Logos is unable to pay dividends to its shareholders which means that it is not an "income producing" investment to the alleged shareholder, First Assurance.

Without copies of the stock certificates, the Department cannot determine whether the Logos shares are restricted. However, the Department does note that the Form 10Q as of 9/30/92 for Logos reveals that it has issued numerous shares of restricted stock pursuant to Regulation S. The transactions varied from issuances "at a considerable discount" to issuances for debentures from the purchaser, with an option to trade the debentures back to the "purchaser" for a return of the Logos shares. It appears that a great deal of the issuances have been restricted shares and have been only paper transactions that allow Logos to regain the shares. The nature of these transactions indicates that the "purchaser" can not sell the shares on the open market. The Department questions whether the alleged First Assurance shares are similarly restricted.

The Department further questions the value of Logos shares in general given the above described numerous non-cash transactions and discounted issuances. Furthermore, since the St. Paul Bond traded for the Logos stock had questionable value, and since it appears that the alleged trade took place between affiliates with no cash changing hands, the Department does not accept the \$10 per share value reported by First Assurance for the Logos stock.

Finally, Logos which was incorporated under the laws of Nevada has a delinquent corporate citizen status there. This raises further questions about the legitimacy and marketability of Logos stock.

The Logos stock is not acceptable in that it fails to meet the Department's standards on liquidity (CIC 706.5), quality and legality of investment (CIC 717b), income production (CIC 1195), and sound investment (CIC 1196a).

International Basic Resources An additional investment appears to be claimed by First Assurance's late answer of 4/1/93. Again no stock certificate was offered as proof of ownership. Again on 4/7/93, the broker holding the stock confirmed that it was still in the process of being transferred into First

Assurance's name.

In addition, the most recent SEC Filing 10Q in Note # 11 of the Audited report as of 6/30/92 reveals that, "The Company has sustained substantial operating losses in recent years and used substantial amounts of working capital in its operations. Current liabilities exceed current assets by approximately \$532,338 at June 30, 1992." Also retained earnings have been negative by more than \$.6 million in 1991 and 1992 which indicates that no dividends can be paid to the stockholders.

The purported investment in International Basic Resources is not acceptable in that it fails to meet the Department's standards on

First Assurance liquidity (CIC 706.5), quality, and legality of investment (CIC 717b), income production (CIC 1195), and sound investment (CIC 1196a).

Treasury Bonds \$619,702 This investment is described in Note #4 of the accountant's review as of 6/3/92. "The government securities are treasury bonds and have been pledged against a note payable obtained from the stock brokerage firm that holds the securities." .

Since the Treasury Bonds are pledged against a liability, they are not liquid nor readily marketable. Therefore, the treasury bonds are not acceptable in that they fail to meet the Department's standards on liquidity (CIC 706.5) and ownership and control (CIC 1100).

Bora Capital, Inc. \$4.2 million Again despite repeated requests from the Department, First Assurance has failed to prove its ownership of this stock. On 12/7/92, First Assurance claimed that the Bora stock "is in the name of First Assurance." On 3/29/93, First Assurance claimed "all the assets shown on the financial statements of First Assurance are owned by First Assurance. If such were not the case, the independent auditor would not be able to review or audit First Assurance and issue its opinion to such effect." Although copies of the stock certificates registered to First Assurance were promised to the Department, none have been received. Quite to the contrary, the Department obtained confirmation that First Assurance is not a registered stockholder of Bora stock from Bora's transfer agent. (Exhibit A-- 3/9/93 letter of Progressive Transfer Agent) Similarly, the broker holding the shares confirmed on 4/7/93 that the Bora stock was still in the process of being transferred to First Assurance's name. It appears to this Department that First Assurance has misrepresented itself as the registered owner of Bora Capital stock.

Moreover, the Department questions the value and marketability of the Bora stock. Bora reported in its SEC Registration Statement (FORM S-18) on 10/17/88 that its business plan was to acquire or merge with private companies by trading stock since it had insufficient capital. On 1/20/92 it traded stock for the stock of Pesch Health Stems (PSH). Through this trade, Bora acquired various assets of PSH such as an airplane hangar in Sun Valley, Idaho, a condominium, some personal property, a bankrupt hospital in Seattle Washington, and Genus Technology Corp. whose chief asset is intangible, being a license to develop and market a program for writing on and reading finished laser cards. (Also, as of 12/31/91

Genus showed a deficit of \$503,000 in its stock holders' equity.) Bora Capital in its Form 10-Q to the SEC as of 3/31/92 reported total assets of only \$243,483 and stockholder's equity of only \$43,629. While reporting income of \$8,375 in the first quarter of 1992, it also had a negative retained earnings of \$69,221.

From the above, it appears that Bora Capital is still in the development stages and undercapitalized. It has an uncertain future. This investment is speculative and non-income producing. Furthermore, it does not appear that \$4.2 million is an accurate market value for this investment. First Assurance has failed to answer the Department's questions about how First Assurance acquired the Bora stock, whether by cash or stock trade or other transaction, and how the \$4.2 million valuation was arrived at. The Department continues to question the reported value of the Bora stock.

Furthermore, Bora's state of incorporation is California. The California Secretary of State advises that the corporate status of Bora was suspended by the Franchise Tax Board on 4/1/93. This raises further questions about the legitimacy and marketability of Bora stock.

Finally, the broker holding the Bora shares that are allegedly being transferred to First Assurance confirmed that they are restricted as "insiders" shares pursuant to SEC Regulation 144. It thus appears that the alleged Bora shares are not freely traded which further compromises their liquidity and value.

The investment in Bora Capital is unacceptable in that it does not meet the Department's standards on liquidity (CIC 706.5), quality and legality of investment (CIC 717b), investments held in company's own name (CIC 1100), income production (CIC 1195), and sound investment (CIC 1196a).

Mortgage Loans--West Virginia Oil & Gas \$2.5 million This item from the NAIC form report as of 6/30/92 appears as part of "notes receivable" on the accountant's review as of the same date. The review report in note # 3 explains:

These notes receivable are not registered with the Securities and Exchange Commission nor is there a formal market for these securities. In event of liquidation this may or may not be the amount of cash received, if a market can be found.

Not only do the notes have questionable liquidity and value, but the Department does not generally accept investments in oil and gas properties because of their speculative and illiquid nature.(see CIC 1194.8a)

Once again, First Assurance has not complied with the Department's request for copies of the notes from West Virginia Oil and Gas. Accordingly, the Department continues to question whether First Assurance's owns the notes in its own name.

The mortgage loans based on West Virginia Oil and Gas are unacceptable in that they fail to meet the Department's standards on liquidity (CIC 706.5), quality and legality of investment (CIC 717b),

investments held in company's own name (CIC 1100) , income production (CIC 1195), and sound investment (CIC 1196a).

Cash \$877,235 First Assurance in its answer submitted various standard forms to confirm bank account balances. Its "Draft" 12/31/92 financial statements showed more than \$800,000 in cash. However, many of the submitted bank forms are for accounts not in First Assurance's name but for example "Surety Operations" for \$27,777 or "Neal Van Vlymen Trust" for \$21.09 or "Impact Investment" for \$1000 or even the owner, Jesse Maynard's personal account. Less than \$400,000 appears to be in the name of First Assurance. The Department remains dubious about the cash position of First Assurance to pay claims especially since more than half of the reported cash is not held in the name of First Assurance.

Notes Receivable New items under Notes Receivable appear in the "Draft" 12/31/92 Financial Statements by Ray & Assocs. As before such notes receivable of over \$5 million are "not registered with the Securities and Exchange commission, nor is there a formal market for these notes." Again no proof of ownership nor copies of the notes were submitted.' Furthermore, the notes are not acceptable because they are illiquid. Similarly, the Notes Receivable from an affiliate for \$835,809 is unacceptable because it is unsecured and no evidence has been presented that it is interest bearing.

INSOLVENCY--\$ 5 Million Negative Surplus

When the above unacceptable amounts are deducted, First Assurance has a negative surplus of more than \$ 5 million. First Assurance is insolvent under the Department's standards (see CIC 36a and 985). An order pursuant to CIC 1765.1 is warranted based on this demonstrated financial instability.

REPUTATION AND INTEGRITY CONCERNS

Although the above described insufficiencies alone would warrant disqualifying First Assurance for placement of surplus lines business under CIC 1765.1, the Department has additional concerns about the reputation and integrity of First Assurance.

Unreliable Financial Reports As described above First Assurance has repeatedly claimed to own assets in its own name when in fact it did not. Furthermore, these assets were reported at values which could not be substantiated. First Assurance presented financial reports audited by Ray & Associates of Dallas Texas as verification of its investments and financial stability. It is apparent that Ray & Assoc. did NOT confirm ownership and value of the key assets. This is at least the third surplus line company which this Department has reviewed in which audits by Ray & Associates were presented. All three, Standard Indemnity Co., Ltd. (BVI) , Freedom Insurance Co., Ltd. (BVI) and now First Assurance are the subject of objection orders pursuant to CIC 1765.1. In all three, the Department found that contrary to the audit information presented by Ray & Associates, major investments were not truly owned by the companies and their reported values were grossly overstated. The continued use of Ray & Associates by First Assurance to "audit" its business affairs demonstrates poor reputation and a lack of -integrity.

Misrepresentations of Financial Stability It appears to this Department that First Assurance has repeatedly misrepresented both its ownership and the Value of its assets. First Assurance still has not

presented a single copy of any stock certificate for any of its investments. Instead, the misrepresentations have continued. For example, in its late answer of 4/1/93, First Assurance claimed, "we enclose correspondence from Craig Aalseth of Paine Webber whereby Paine Webber confirms the securities, the number of shares held, and the current bid price for the subject securities." However, at that time the securities were not in the name of First Assurance. Furthermore the stated current bid prices were for "free trading" stocks when in fact at least one, the Bora Capital was restricted. The continued nonresponsive and misleading information from First Assurance evidences poor reputation and a lack of integrity.

Claims Payment Problems Los Angeles Civil Disturbance The Department is concerned with the continuing disputes over unpaid claims from the LA Civil Disturbance. The Department questions why First Assurance still has many outstanding claims including \$1.4 million in undisputed claims.

Other Regulatory Enforcement Actions Against First Assurance-Both Texas and Alabama have issued Cease and Desist Orders against- First Assurance for illegally doing business in those states. Illinois has also forbidden its brokers from placing business with First Assurance. First Assurance's reputation and integrity are further impugned by these regulatory actions.

Therefore, First Assurance and Casualty Co., Ltd. is unacceptable for placement of further new or renewal business pursuant to CIC 1765.1 because of the above described : 1. financial instability due to unacceptable assets and unsubstantiated financial reports and 2. questionable integrity and reputation due to unacceptable investments, misrepresentation of financial stability, unreliable financial reports, claims payment problems, and regulatory actions by other states.

You may make a written request for a hearing within thirty (30) days of your receipt of this order. The Department will set a hearing within twenty (20) to thirty (30) days of its receipt of your written request.

Yours very truly,

cc: "Surplus Lines Association
NAIC/Non-Admitted Insurers, attn. Maximiliane Moody
Janice E. Kerr, General Counsel
Victoria S. Sidbury, Bureau Chief of Corporate Affair
John Sebastinelli esq., attorney for First Assurance

Progressive Transfer Company

MARCH 9, 1993

GLENN R. SARTE
DEPT. OF INSURANCE

FAX (213) 897-8021

DEAR MR. SARTE:

THIS LETTER IS TO CONFIRM THAT WE DO NOT SHOW FIRST ASSURANCE & CASUALTY CO., LTD., AS A STOCKHOLDER OF RECORD OF BORA CAPITAL INC.

WE HOPE THIS WILL ASSIST YOU IN YOUR EFFORTS.

SINCERELY,
PROGRESSIVE TRANSFER COMPANY

DENISE NORDSTROM
TRANSFER SERVICES