



May 25, 1993

BULLETIN #589

RE: COMMERCIAL INDEMNITY ASSURANCE COMPANY (Dominican Republic)

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 Brokers that effective May 25, 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.

James S. Pugh
Assistant Manager

JSP/imb

Enclosure(s)

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 FREMONT STREET, 24 TH FLOOR
SAN FRANCISCO, CA 94105

May 25, 1993

The Surplus Line Association of California
388 Market Street, Suite 1150
San Francisco, CA 94111

Subject: **COMMERCIAL INDEMNITY AND ASSURANCE COMPANY
(Dominican Republic)**
Order Pursuant to California Insurance Code Section 1765.1

Dear Gentle People:

Please issue a bulletin to your members notifying them that Commercial Indemnity and Assurance company (Dominican Republic) is unacceptable pursuant to CIC S 1765.1 for placement of new or renewal business.

Attached please find a copy of the Department Is letter to this company and its representatives.

Very truly yours,
Carol A. Harmon
Staff Counsel
(415) 904-5966

cc.:Janice E. Kerr, CDI General Counsel
Victoria S. Sidbury, CDI Assistant Chief Counsel
Commercial Indemnity Assurance Company

DEPARTMENT OF INSURANCE
45 FREMONT STREET, 24th FLOOR
SAN FRANCISCO, CA 94105

May 25, 1993

Commercial Indemnity Assurance Company
Av. Romulo Betacourt
1420 Bella Vista
Santo Domingo, Dominican Republic
Apartado Postal 21243

John F. McHugh
Brittain Company Insurance
1338 E. Center Court Drive
P.O. 4069
Covina, CA 91723

R. C. Elster, Jr.
Apollo General Insurance Agency, Inc.
P.O. Box 1508
Sonoma, CA 95476

Howard Folmar
Surety Bonds Insurance Services
P.O. Box 3626

Tustin, CA 92681

Allen E. Spangenberg
A & L Insurance Services, Inc.
108 Petaluma Blvd., North
Petaluma, CA 94952

Dunfield Excess & Surplus Insurance Brokers
3007 Washington Blvd., Ste. 100
Marina Del Rey, CA 90292

J R W Surplus Lines Insurance Brokers
P.O. Box 220
321 Fifth Street
Hollister, CA 95024

Mr. Robert S. Shotwell
Riding Insurance Services, Inc.
7280 Blue Hill Drive, Suite #8
San Jose, CA 95129

Werlhof Aviation Insurance Agency, Inc.
6289 Freeport Boulevard
Sacramento, CA 95822

**SUBJECT: Commercial Indemnity and Assurance Company
(Dominican Republic)
ORDER PURSUANT TO CIC Sec.. 1765.1**

PLEASE TAKE NOTICE OF THE FOLLOWING:

Pursuant to California Insurance Code (CIC) S 1765.1, the California Department of Insurance has reviewed -the submitted financial and other documentary information concerning **commercial indemnity** and Assurance Company ("CIAC") [Dominican Republic.] The Department's review is guided by legal and accounting standards as set forth in the California Insurance Code and other California laws, such as the California Corporations Code.

The Department has a number of concerns requiring the issuance of an order and bulletin pursuant to CIC S 1765.1 ordering that no further business be placed with CIAC.

These concerns and the Department's intent to issue this Order pursuant to CIC S 1765.1 were previously forwarded to CIAC and its brokers on or about April 26, 1993 at the addresses noted thereon.

SEE, Department of Insurance's ce of Proposed Order Pursuant to CIC 9 1765.1, hed hereto as Exhibit "A"

No counter argument nor counter evidence was submitted by CIAC or any of its brokers in response to the Department's Proposed Order on or before the due date for such response of May 18, 1993. Accordingly, the Department hereby orders that Commercial Indemnity and Assurance Company is unacceptable for the placement of further new or renewal business pursuant to CIC Section 1765.1. The bases for the CIC S 1765.1 Order are as follows:

(I.) K OF LICENSE IN DOMICILE

Information -from the insurance authorities in the Dominican Republic, the stated domicile for this company, indicates that CIAC is not licensed as an insurance company there. While **CIAC** may be a company duly organized under the laws of the Dominican Republic, it has never been authorized to carry on the business of insurance or reinsurance in that country.

Such lack of Authorization by its country of domicile reflects poorly on the reputation and integrity of CIAC and gives concern to the Department as to the stability of this company.

(II.) REPUTATION AND INTEGRITY OF MANAGEMENT

The Department has received information which points to the conclusion that CIAC is a name change from, or bears substantial identity to, Meadowlark Insurance Company, a company formerly the subject of a Department CIC S 1765.1 Order (August 8, 1989).

Mr. Cliff Heffner, C.P.A., of Albuquerque, New Mexico who presented the financial statement on behalf of CIAC, has so averred in correspondence to the Department of March 22, 1993. Mr. Heffner states that the name "Commercial Indemnity Assurance Company" was assumed on or about 1/1/92 by the company formerly known as Meadowlark Insurance Company.

Further, Mr. Heffner attached bank confirmation letters under the name of Meadowlark Insurance Company to his correspondence to the Department in his attempt to support the cash accounts of CIAC.

This apparent effort to circumvent the Department's former legitimate Orders Pursuant to CIC S 1765.1 gives additional concern to the Department regarding the reputation and integrity, as well as the financial stability, of this company.

(III.) FINANCIAL INSTABILITY

The Department has reviewed the financial documents submitted on behalf of CIAC by its broker Apollo General Insurance Agency, Inc. and other brokers placing business with this company.

Specifically, the Department has analyzed the "Independent Auditor's Report" as of January 1, 1992 and had the following questions, concerns, and requests for documentation and verification concerning the assets listed therein:

(a.) Cash and Cash Equivalents -- \$101,773

CIAC's Balance Sheet as of January 1, 1992 lists "Cash and Cash Equivalents" of \$101,773. No disclosure on behalf of CIAC reveals where such alleged cash amounts are deposited, whether in a member of the Federal Reserve system or otherwise. Without such disclosure, it is impossible to verify existence and ownership of the stated funds, and accordingly they must be non-admitted for purposes of evaluating the financial stability of this company.

(b.) Premiums in Course of Collection -- \$3,148,375

CIAC's Balance Sheet further lists "Premiums in the Course of Collection" of \$3,148,375. Note 5 to the financial statement indicates that such balance "...includes receivables of \$3,003,699 guaranteed for payment by two entities related to the Company's grandparent through common ownership and control."

However, nothing in the financial statements indicates the identity of such allegedly related entities. Nor was there any explanation as to why premiums in the course of collection necessitated such guarantee, an unusual practice in the business of insurance. Since CIAC has not availed itself of the opportunity to offer adequate disclosure and explanation, the Department is left with the presumption that such premium amounts are incapable of being collected. Since there is insufficient verification of the existence and dependability of these accounts, they must be deemed non-admitted for purposes of assessing the financial stability of this company.

(c.) Receivable -- \$958,103

The Balance Sheet for this company also lists "Accounts Receivable" of \$958,103. Note 5 to the financial statement indicates that \$908,104 of this amount is "from an entity related to the Company's grandparent through common ownership and control and secured by certain real estate mortgages."

However, without proper verification and disclosure, the authenticity of these accounts cannot be ascertained. As above, the identity of the entity related to the company's grandparent is neither identified nor documented. The transaction resulting in the receivable is not divulged. There is nothing to substantiate the "certain real estate mortgages" said to secure the asset.

Consequently, these assets, too, will be non-admitted for purposes of assessing the financial stability of CIAC.

(d.) Other Receivables--- \$1,835,555

CIAC's Balance Sheet also lists as an asset "Other Receivables" of \$1,535,555. In Note 7 of the financial statement it is asserted that "Legal action is pending regarding collection efforts on a receivable of \$901,367 included in other Receivables. While management believes that the receivable may or may not be collectible, estimation of possible loss is considered indeterminable."

Since there is no disclosure as to the verification or authentication of these receivables, all must be non-admitted. In particular, the \$901,367 amount in litigation, making up 60% of the total entry, is especially subject to objection and nonadmissibility.

(e.) Investment in Real Estate -- \$2,351,500

The financial statement presented on behalf of CIAC also lists as an asset "Investment in Real Estate" of \$2,351,500. Such amount cannot be deemed an admitted asset absent proof of ownership and proof of valuation.

CIC S 1100 requires that an insurer's assets be held in its own name. CIC S 1195 mandates that an insurer's assets be income producing. And CIC S 706.5 dictates that an insurer's investments must be liquid. It is highly unlikely that the assets in question would meet these criteria; absent any sort of documentation from this company to so indicate, these assets must likewise be non-admitted for purposes of assessing-the financial stability of CIAC.

(f.) Real Estate Mortgages Loans -- \$5,308,248

This company's balance sheet also lists as an asset "Real Estate Mortgage Loans" of \$5,308,248. These loans suffer from the same problems regarding proof of authenticity as the real estate investments listed above. In addition, Note 4 to the-financial statement admits that the asset is non-income producing: "The loans currently have no stated rate of interest..."

There is no showing that these loans are liquid, income-producing, a, sound investment pursuant to CIC S 1196, or that these assets are held in the name of the insurer. Accordingly, they, too, must be non-admitted.

(g.) Other Investments -- \$93,490

The financial statement for CIAC also lists as an asset "other Investments" of \$93,490. However, there is no disclosure as to verification of ownership, authentication as to liquidity of the investments, or confirmation as to the soundness of the investment. Absent such documentation, these amounts must likewise be deemed non-admitted for purposes of assessing the financial stability of the company.

Reinsurance Deposit \$914,798

The financial statement proffered for the carrier lists the asset "Reinsurance Deposit" of \$914,798. Note 5 to the statement declares that "The January 1, 1992 Reinsurance Deposit balance of \$914,798

consisted of deposits held for reinsurers by an entity related to the Company's grandparent through common ownership and control and guaranteed for collection by another entity similarly situated."

As such, it would appear that this amount is not a true asset of the company, but rather a liability. In any event, it is certainly not an admissible asset for purposes of assessing the financial stability of this company.

Furniture and Equipment -- \$158,025; Organizational Costs -- \$2,835; and Deferred Policy Acquisition Costs -- \$52,050

The financial statement of CIAC further lists as assets "Furniture and Equipment" of \$158,025; "Organizational Costs" of \$2,835; and "Deferred Policy Acquisition Costs" of \$52,050.

But under Statutory Accounting Principles, none of these assets may be admitted, due to their lack of liquidity.

When the above non-admitted assets are deducted from CIAC's Balance Sheet, a negative capital and surplus results. Consequently, since the company has failed to offer convincing proof as to why such assets should be considered verifiable and admissible, this company's financial status is far too precarious to allow the continued placement of policies with California insureds.

(IV.) UNRELIABILITY OF FINANCIAL STATEMENT

As set forth above, the assets listed on CIAC's Financial Statement are non-admissible for the reasons stated, including their lack of authentication as to ownership, their lack of verification as to valuation, their lack of liquidity, and their non-income producing nature.

In addition, the Financial Statement, presented on behalf of CIAC by their surplus line broker Britain Company, and likewise presented on behalf of CIAC by the surplus line broker Apollo General Insurance Agency, Inc., is lacking in credibility and cannot be relied on by the Department for assessing the financial stability of this company.

Such report states that Mr. Heffner audited only the "accompanying balance sheet", a practice not in keeping with generally accepted auditing standards. Moreover, Heffner issued, an unqualified -opinion for such balance sheet, a highly, unusual procedure.

Such report is lacking an income statement, as well as a cash flow statement, both essential parts of the independent auditor's Report. Without such statements.. there is no way to cross- reference the various accounts, making it impossible to determine potential overstatements of income or understatements of expenses, either of which could have a negative effect on the company's surplus.

For this reason as well, then, the financial stability of CIAC is suspect, and the submission of such a

report on behalf of the company certainly reflects poorly on the reputation and integrity of this carrier.

THEREFORE, PLEASE TAKE NOTE AS FOLLOWS:

COMMERCIAL INDEMNITY ASSURANCE COMPANY is unacceptable for placement of further new or renewal business pursuant to CIC 1765.1 for all the foregoing reasons, including the questionable financial stability, reputation, and integrity of CIAC due to its lack of license in its domiciliary, the reputation and integrity of its management, its financial instability, its unsubstantiated and unacceptable assets, and its unreliable financial statements, as set forth above.

PLEASE TAKE FURTHER NOTE THAT you may make a written request for a hearing within thirty (30) days after service of this order. If such request is made by counsel, the request should include a letter from the client verifying counsel's authority to represent the carrier. Should you so request, the Department will set a hearing within twenty (20) to thirty (30) days of its receipt of your written request and will notify you of such hearing date.

Sincerely,

Carol A. Harmon
Staff Counsel
(415) 904-5966

cc: Janice E. Kerr, General Counsel
Victoria Sidbury, Chief, Corporate Affairs Bureau

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 FREMONT STREET, 24th FLOOR
SAN FRANCISCO, CA 94105

May 25, 1993

The Surplus Line Association of California
388 Market Street, suite 1~150
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