



Superintendent of Insurance

Regarding a cease and desist hearing before the Superintendent of Insurance concerning Armada Assurance Limited, Tri-Continental Exchange Ltd., Tri Continental Exchange, Tri-Continental Capital, Ltd., John O. Madsen and Robert L. Brown

And the *Insurance Act*, R.S.O. 1990, c.1.8, as amended, sections 39,40, 41, 438, 439 and 441

REASONS FOR DECISION AND ORDER

INTRODUCTION

On May 17, 1996 I made an interim cease and desist order against Armada Assurance Limited, Tri-Continental Exchange Ltd., Tri-Continental Capital, Ltd., John O. Madsen and Robert L. Brown (collectively, "the parties") as a result of information I had received concerning the parties carrying on unlicensed insurance business in Ontario, and my concern that the public may be prejudiced or adversely affected by any delay in the issuance of a permanent order. The interim order directed the parties immediately to cease selling, advertising, promoting or engaging in the business of insurance of any kind, either directly or indirectly in Ontario.

As a result of a request from counsel representing John O. Madsen and Robert L. Brown for an extension of time to respond to the interim order, I extended the interim cease and desist order on May 24, 1996 and set a hearing date of June 26, 1996.

Notice was provided to all parties of the interim cease and desist order, and extension of the interim order, by facsimile at the parties' last known addresses. The Notice advised the parties that they were entitled to a hearing on June 26, 1996 and that the interim order could be made permanent in their absence if a hearing was not requested.

THE HEARING

I convened a hearing under Section 441 of the Insurance Act on June 26, 1996 at the offices of the Ontario Insurance Commission. None of the parties attended the hearing. Fred Hollis, an investigator employed by the Ontario Insurance Commission attended and gave evidence.

In summary, the evidence presented at the hearing disclosed that:

1. None of the parties is licensed as an insurance agent, insurance broker, or insurance company

in Ontario.

2. Tri Continental Exchange is a sole proprietorship of Robert L. Brown registered in the province of British Columbia.
3. Advertisements to solicit the sale of insurance were placed in a paper published in Ontario. These advertisements named Robert Brown, John Madsen, and Tri Continental Exchange and invited prospective insureds to contact those individuals regarding the application for insurance and to obtain forms.
4. Robert L. Brown spoke to Ontario residents about obtaining insurance both from inside and outside of Ontario.
5. A number of Ontario residents made payments for insurance or obtained quotations for insurance through Robert L. Brown and Tri-Continental Exchange in respect of property located within Ontario. Insurance policies and liability certificates evidencing automobile insurance policies showing Armada Assurance Limited as the insurer were issued to residents of Ontario and the associated documentation referred to Tri Continental Exchange.
6. Tri Continental Exchange has distributed documents associating itself with Tri-Continental Exchange Ltd., Tri-Continental Capital, Ltd., and a purported insurer - Armada Assurance Limited. This material purports that Tri-Continental Exchange Ltd is a subsidiary of Tri-Continental Capital, Ltd.
7. Tri-Continental Capital, Ltd. is not registered in the, British Virgin Islands, as purported in documents distributed by Tri Continental Exchange. Tri-Continental Exchange, Ltd, previously known as Dava International Holdings, Ltd until September 28, 1995, is registered in the British Virgin Islands. The authorized capital of Tri-Continental Exchange, Ltd is US\$ 50,000.
8. Armada Assurance Limited is registered with the St. Vincent Trust Authority Limited. The St. Vincent Trust Authority Limited maintains a registry, but does not conduct any regulation. The person named in that registry as the local representative of Armada Assurance Limited claims to have no knowledge of the company. Calls to Armada Assurance Limited by the Ontario Insurance Commission were unanswered and efforts to locate such an entity have been unsuccessful.

REASONS FOR DECISION

Based on the evidence, there is a web of related companies, individuals, and a sole proprietorship. The sole proprietorship of Robert L. Brown, Tri Continental Exchange, is in substance a name used by Robert L. Brown. Therefore, to facilitate the reading of this document, the term "the parties" as defined in the first paragraph of this document shall hereinafter include Tri Continental Exchange.

I have serious concerns for those Ontario residents who have made payments to any of the parties in the belief that they have the security of an insurance policy. They could face substantial losses arising from damage to their property or if they are involved in an automobile accident. Based on the evidence, the concerns are broader than whether the parties named in this order are licenced. Armada Assurance Limited has not responded to inquiries or to the interim order, and persons in St. Vincent claim to have no knowledge of the company. Since Armada Assurance Limited has chosen not to communicate with the Ontario Insurance Commission, and since inquiries could not substantiate the existence of an insurance operation despite substantial efforts to do so, I cannot reasonably conclude that Armada Assurance Limited is a real insurance company.

Section 40 of the Insurance Act states that every insurer undertaking insurance in Ontario or carrying on business in Ontario shall obtain from the Commissioner and hold a licence under the Insurance Act.

Section 39 of the Insurance Act defines certain activities as undertaking insurance or carrying on business in Ontario. Section 123 of the Insurance Act deems certain contracts to be made in Ontario. Section 40 of the Insurance Act also states that no person in Ontario shall do or cause to be done any act or thing mentioned in Section 39(3) on behalf of or as an agent of an insurer not licensed under the Insurance Act.

I accept the evidence that none of the parties are licensed as insurance companies, insurance agents or insurance brokers in Ontario. I conclude that the evidence in points 3, 4, and 5 represent activities listed in Section 39(3) of the Insurance Act as carrying on business in Ontario and that Armada Assurance Limited is carrying on business in Ontario without a licence. I conclude that the evidence in points 2, 3, 4, 5, and 6 represent activities on behalf of Armada Assurance Limited and that Tri-Continental Exchange Ltd., Tri Continental Exchange, Tri-Continental Capital, Ltd.,

John O. Madsen, and Robert L. Brown engaged in activities prohibited by Section 40 of the Insurance Act. As a result I have concluded that the parties are in violation of the Insurance Act.

Section 441 of the Insurance Act empowers the Superintendent to make an order requiring that action be taken to remedy the situation where the Superintendent concludes that a person has committed or has pursued or is pursuing any course of conduct that is an unfair or deceptive act or practice. Unfair or deceptive acts or practice includes commission of any act prohibited under the Insurance Act. Evidence shows that Tri Continental Exchange provided information to Ontario residents about the parties which is incorrect or misleading. Ontario residents may have detrimentally relied on such information.

It is my view that Ontario residents who dealt with the parties should have the opportunity to receive the information contained in this Reasons for Decision and Order, and should be entitled to claim a full refund of any monies paid to the parties. Since the evidence shows that Robert L. Brown and Tri Continental Exchange were involved in providing such information and acting as the conduit to Armada Assurance Limited, Robert L. Brown and Tri Continental Exchange should be responsible to provide the information contained in this Reasons for Decision and Order and to receive requests for refunds from Ontario residents.

ORDER

I made an oral order at the hearing that:

- 1. THE INTERIM CEASE AND DESIST ORDER DATED MAY 17, 1996, EXTENDED BY ORDER DATED MAY 24, 1996, BE MADE PERMANENT. THE TERMS OF THE INTERIM ORDER ARE SET OUT BELOW:**
 - A. ARMADA ASSURANCE LIMITED IMMEDIATELY CEASE SELLING, ADVERTISING, PROMOTING OR ENGAGING IN THE BUSINESS OF INSURANCE OF ANY KIND, EITHER DIRECTLY, INDIRECTLY OR THROUGH ANY AGENT, IN THE PROVINCE OF ONTARIO;**
 - B. TRI-CONTINENTAL EXCHANGE LTD. IMMEDIATELY CEASE SELLING, ADVERTISING, PROMOTING OR ENGAGING IN THE BUSINESS OF INSURANCE OF ANY KIND, EITHER DIRECTLY OR INDIRECTLY, INCLUDING BUT NOT LIMITED TO ACTING AS AGENT FOR ARMADA ASSURANCE LIMITED, IN THE PROVINCE OF ONTARIO;**
 - C. TRI-CONTINENTAL CAPITAL, LTD. IMMEDIATELY CEASE SELLING, ADVERTISING, PROMOTING OR ENGAGING IN THE BUSINESS OF INSURANCE OF ANY KIND, EITHER DIRECTLY OR INDIRECTLY, INCLUDING BUT NOT LIMITED TO ACTING AS AGENT FOR ARMADA ASSURANCE LIMITED,**

IN THE PROVINCE OF ONTARIO;

- D. JOHN O. MADSEN IMMEDIATELY CEASE SELLING, ADVERTISING, PROMOTING OR ENGAGING IN THE BUSINESS OF INSURANCE OF ANY KIND, EITHER DIRECTLY OR INDIRECTLY, INCLUDING BUT NOT LIMITED TO ACTING AS AGENT FOR ARMADA ASSURANCE LIMITED, TRI-CONTINENTAL EXCHANGE LTD. OR TRI-CONTINENTAL CAPITAL, LTD., IN THE PROVINCE OF ONTARIO;**
- E. ROBERT L. BROWN IMMEDIATELY CEASE SELLING, ADVERTISING, PROMOTING OR ENGAGING IN THE BUSINESS OF INSURANCE OF ANY KIND, EITHER DIRECTLY OR INDIRECTLY, INCLUDING BUT NOT LIMITED TO ACTING AS AGENT FOR ARMADA ASSURANCE LIMITED, TRI-CONTINENTAL EXCHANGE LTD. OR TRI-CONTINENTAL CAPITAL, LTD., IN THE PROVINCE OF ONTARIO**
- 2. TRI CONTINENTAL EXCHANGE (A PROPRIETORSHIP OF ROBERT L. BROWN) IMMEDIATELY CEASE SELLING, ADVERTISING, PROMOTING OR ENGAGING IN THE BUSINESS OF INSURANCE OF ANY KIND, EITHER DIRECTLY OR INDIRECTLY, INCLUDING BUT NOT LIMITED TO ACTING AS AGENT FOR ARMADA ASSURANCE LIMITED, IN THE PROVINCE OF ONTARIO;**
- 3. BY JULY 15,1996, ROBERT L. BROWN PROVIDE A COPY OF THIS REASONS FOR DECISION AND ORDER TO EACH RESIDENT OF ONTARIO WHO HAS PAID ANY MONIES TO THE PARTIES NAMED IN THIS ORDER (ARMADA ASSURANCE LIMITED, TRI-CONTINENTAL EXCHANGE LTD. TRI CONTINENTAL EXCHANGE, TRI-CONTINENTAL CAPITAL LTD., JOHN O. MADSEN AND ROBERT L. BROWN) ON ACCOUNT OF ACTIVITIES FOR WHICH THESE PARTIES HAVE BEEN ORDERED TO CEASE AND DESIST.**
- 4. UPON REQUEST BY ANY RESIDENT OF ONTARIO MADE TO ROBERT L. BROWN OR TRI CONTINENTAL EXCHANGE, THE PARTIES NAMED IN THIS ORDER REFUND TO SUCH RESIDENT THE ENTIRE AMOUNT OF ANY MONIES PAID TO THE PARTIES NAMED IN THIS ORDER ON ACCOUNT OF THE ACTIVITIES FOR WHICH THESE PARTIES HAVE BEEN ORDERED TO CEASE AND DESIST. THIS OBLIGATION TO PAY SHALL APPLY JOINTLY AND SEVERALLY ON ALL THE PARTIES NAMED IN THIS ORDER. PAYMENT SHALL BE MADE WITHIN 30 DAYS FROM THE DATE OF THE ASSOCIATED REQUEST, AND MAY BE REDUCED BY ANY**

PREVIOUS PAYMENTS MADE BY THE PARTIES NAMED IN THIS ORDER TO SUCH ONTARIO RESIDENT.

DATED at the City of North York, June 28, 1996.

"Grant Swanson"
Grant Swanson
Superintendent of Insurance of Ontario (Acting)

TO: ARMADA ASSURANCE LIMITED

Halifax Street
Kingstown, St. Vincent
c/o ROBERT L. BROWN, agent for ARMADA ASSURANCE LIMITED FAX 1-800-881-2133

AND TO: TRI-CONTINENTAL EXCHANGE LTD.
#1 03- 13630 72nd Avenue Suite 126
Surrey, British Columbia V3W 2P3
FAX 1-800-881-2133

AND TO: TRI-CONTINENTAL CAPITAL, LTD.
c/o TRI-CONTINENTAL EXCHANGE LTD. at
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FAX 1-800-881-2133

AND TO: TRI CONTINENTAL EXCHANGE
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Surrey, British Columbia V3W 6G4

AND TO: ARMADA ASSURANCE LIMITED
Halifax Street
Kingstown, St. Vincent
c/o Dave Yoder
FAX 1-809-494-4722

AND TO: ARMADA ASSURANCE LIMITED
Halifax Street
Kingstown, St. Vincent
c/o Sylvester & Williams
Barrister and Solicitors
FAX 1-809-456-2622

AND TO: JAMES W. MANDICK
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1900 Sun Life Place
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