

JUDGE GEDARBAUM

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

ASSURANT, INC.,

Defendant.

Civil Action No.

ECF Case

Complaint

Plaintiff Securities and Exchange Commission ("Commission"), for its complaint against defendant Assurant, Inc. ("Assurant"), alleges as follows:

SUMMARY OF ALLEGATIONS

1. This matter involves the failure by Assurant, a publicly traded insurance company, to properly account for millions of dollars that it obtained in the third quarter of 2004 under a so-called "reinsurance policy." The reinsurance policy was subject to an undisclosed "handshake" agreement that effectively negated risk transfer. As a result, under applicable accounting rules, Assurant should have accounted for the policy as a deposit rather than as true reinsurance. By failing to do so, Assurant overstated its reported net income for the quarter ended September 30, 2004, by nearly 10%, and in the process violated corporate reporting, recordkeeping and internal control provisions of the federal securities laws.

2. The reinsurance policy, which originated in 1992 and was renewed annually through 2004, was entered between subsidiaries of Assurant that report through a business segment known as Assurant Solutions, as the reinsured parties, and American Re-Insurance Company (“Am Re”), as the reinsurer. The policy consisted of the written reinsurance treaty documents, the terms of which were negotiated annually, and a continuing oral side-agreement, which the parties referred to as the “handshake” agreement. Although the terms of the written treaty purported to transfer the risk of certain losses from Assurant Solutions to Am Re under certain conditions, the terms of the oral “handshake” agreement effectively negated the transfer of risk. Pursuant to the “handshake” agreement, the parties established an “experience account” to keep track of the amount of premiums paid by Assurant Solutions compared to the amount of claims paid by Am Re over the life of the treaty. Assurant Solutions agreed that if the total amount of claims paid by Am Re exceeded the total amount of premiums paid by Assurant Solutions, Assurant Solutions would reimburse Am Re for the difference. In return, Am Re agreed that if the total amount of premiums paid by Assurant Solutions exceeded the total amount of claims paid by Am Re, Am Re would return the difference to Assurant Solutions. The terms of the “handshake” agreement were omitted from the formal treaty documents and were not disclosed to Assurant’s outside auditors during the relevant period.

3. Assurant improperly accounted for the Am Re treaty by using principles of reinsurance accounting instead of deposit accounting. Under generally accepted accounting principles (“GAAP”), reinsurance accounting can only be used where there is sufficient risk transfer to the reinsurer under a reinsurance treaty, while deposit accounting is required where there is insufficient or no risk transfer. Deposit accounting means that the reinsurance agreement is accounted for as a financing arrangement, *i.e.*, as a loan or deposit. Under reinsurance

accounting, the reinsured is permitted to offset relevant losses in the amount of the probable recovery under a reinsurance agreement, which thus reduces the impact of those losses on the reinsured's income statement. Under deposit accounting, the payment by the reinsurer is treated as the return of a deposit or the repayment of a loan and affects only the balance sheet, not the income statement. Because the "handshake" agreement, and in particular its pay-back provision, had the effect of negating the transfer of risk to Am Re, GAAP required the use of deposit accounting for the premiums paid and any recoveries made under this particular treaty.

4. After the 2004 Florida hurricane season, Assurant booked a \$10 million claim payment made by Am Re pursuant to the policy as a reinsurance recovery rather than the return of a deposit, thereby reducing the adverse impact of the hurricane losses incurred by Assurant Solutions on Assurant's reported financial results. By improperly booking the \$10 million payment using reinsurance accounting instead of deposit accounting, Assurant overstated its net income for the quarter ended September 30, 2004 by \$6.41 million, or 9.4%.

5. Assurant misstated its financial results for the third quarter of 2004 to the public in a Form 8-K filed on November 4, 2004 and in a Form 10-Q filed on November 12, 2004. Assurant filed another Form 8-K on December 22, 2004 disclosing that its third quarter after-tax losses from the hurricanes, net of reinsurance recoveries, had increased from \$49 million to \$59 million because of subsequent claim activity. This disclosure was also inaccurate because the losses were still understated due to Assurant's continued treatment of the \$10 million payment from Am Re as a reinsurance recovery instead of the return of a deposit.

6. By virtue of the foregoing conduct, Assurant violated Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78m(a)

and 78m(b)(2)(A) and (B)] and Rules 12b-20, 13a-11 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-11 and 240.13a-13].

7. Unless Assurant is permanently restrained and enjoined, it will again engage in the acts, practices, transactions and courses of business set forth in this complaint and in acts, practices, transactions and courses of business of similar type and object.

JURISDICTION AND VENUE

8. The Commission brings this action pursuant to authority conferred by Section 21(d)(1) of the Exchange Act [15 U.S.C. § 78u(d)(1)], and seeks to restrain and enjoin Assurant from engaging in the acts, practices, transactions and courses of business alleged herein. The Commission also seeks a final judgment ordering Assurant to pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

9. This Court has jurisdiction over this action pursuant to Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and 78aa]. Certain of the transactions, acts, practices and courses of business alleged herein occurred in the Southern District of New York, where Assurant maintains its corporate headquarters.

THE DEFENDANT

10. **Assurant**, a Delaware corporation with its principal offices in New York, New York, engages in the business of providing specialized insurance products and related services. Assurant is a public company whose common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and trades on the New York Stock Exchange. Assurant became a public company on February 4, 2004, as the result of an initial public offering (“IPO”) of its common stock. Immediately prior to the IPO, Assurant was formed and merged with Fortis, Inc. (“Fortis”), a private Nevada corporation engaged in the insurance business. As a

result of this merger and the IPO, Assurant became the successor to the operations of Fortis, which consisted of four business segments, including Assurant Solutions, the segment at issue here. Assurant reports, on a consolidated basis, the financial results of the four business segments. Assurant subsidiaries that report results through Assurant Solutions (formerly Assurant Group) are the counter-parties to the finite reinsurance treaty with Am Re that is the subject of this action.

OTHER RELEVANT ENTITY

11. **Am Re**, now known as Munich Reinsurance America, Inc., is a private U.S. reinsurance company headquartered in Princeton, New Jersey, and a member of the Munich Re Group, which is headed by Munich Reinsurance Company of Munich, Germany.

FACTUAL ALLEGATIONS

Origin And History Of The Handshake Agreement Through 1999

12. The reinsurance arrangement between Assurant and Am Re dates back to 1992. At that time, a predecessor company to Assurant was a publicly traded company known as American Bankers Insurance Company (“ABIC”). ABIC entered into an Accident Year Aggregate Stop Loss Reinsurance treaty with Am Re covering a period of five accident years (1992-1997).

13. The treaty included provisions: (i) establishing an experience fund account, which the parties used to keep track of the “loss ratio” (*i.e.* premiums paid by ABIC in versus claims paid out by Am Re) under the treaty; (ii) requiring the payment by ABIC of “additional premium” to Am Re if and when the loss ratio was unfavorable to Am Re (*i.e.* total claims paid out by Am Re exceed the total premiums paid in by ABIC); and (iii) providing that in the event of a positive balance in the experience account (*i.e.* total premiums paid in by ABIC exceed the

total claims paid out by Am Re) upon commutation of the treaty, Am Re would return the amount of the remaining funds to ABIC (collectively, the “Experience Fund Provisions”). The experience fund was a notional account that served the purpose of a “score-card” for the parties to track the amount of premiums paid in by ABIC versus the amount of claims paid out by Am Re; the funds were not segregated in a separate bank or escrow account.

14. On January 1, 1993, Financial Accounting Standards Board Statement No. 113 (“FAS 113”) went into effect and amended the accounting guidance on reinsurance contracts for fiscal years beginning after December 15, 1992. Among other things, FAS 113 required a certain degree of risk transfer between the parties in order for the agreement to qualify for reinsurance accounting treatment. Shortly after FAS 113 became effective, ABIC and Am Re restructured their reinsurance agreement. Specifically, they commuted their existing reinsurance treaty and Am Re returned the experience fund balance to ABIC. The parties then entered into a new arrangement and executed treaty documents that omitted the Experience Fund Provisions, because those provisions negated whatever risk of loss was otherwise transferred from ABIC to Am Re under the treaty. However, the Experience Fund Provisions remained a key feature of the parties’ agreement. Instead of memorializing the Experience Fund Provisions in the written treaty, the parties entered into an oral side-agreement to honor the Experience Fund Provisions, which the parties referred in various documents as their “handshake” agreement.

15. From 1994 through 1999, ABIC and Am Re annually renewed their “reinsurance” arrangement on these terms. Although the policy limits and premium payments varied from year to year depending on the coverage levels negotiated in a particular year, the parties reaffirmed their verbal “handshake” agreement each year. ABIC paid annual “premiums” that consisted of a “margin” (*i.e.* a fee) that went directly to Am Re and a “funding” contribution that was credited

to the experience fund balance. Under the terms of the “handshake” agreement, interest accrued on the experience fund balance to ABIC’s benefit. Am Re maintained, and provided to ABIC and ABIC’s successors, spreadsheets that recorded how much of each year’s premium payment was apportioned to “margin” (*i.e.* credited to Am Re) and how much of it was allocated to the experience fund (*i.e.* credited to ABIC and its successors).

16. During this period, ABIC accounted for the Am Re treaty improperly by using principles of reinsurance accounting instead of deposit accounting. As discussed above, GAAP precludes the use of reinsurance accounting, and requires the use of deposit accounting, where, as here, there is insufficient or no risk transfer to the putative reinsurer. Since the “handshake” agreement, and in particular its “pay-back” component, negated the transfer of risk to Am Re, GAAP required the use of deposit accounting for the premiums paid and any recoveries made under this treaty.

**Formation Of Assurant Group And Confirmation
Of The Handshake Agreement From 2000 To 2004**

17. In August 1999, ABIC was acquired by Fortis, renamed “Assurant Group,” and ceased trading as a public company. After the acquisition, representatives from Assurant Group met with representatives from Am Re to re-confirm the parties’ “handshake” agreement. In particular, in or about February 2000, the parties re-confirmed the general terms of the “handshake” agreement, and specifically agreed that Assurant Group would pay Am Re back in full for any losses Am Re experienced under the treaty.

18. Assurant Group and Am Re renewed their arrangement, including the “handshake” agreement, in each subsequent year through the end of 2004. During this period, representatives of Assurant Group and Am Re met and periodically discussed, among other things, the parties’ reinsurance treaty and the “handshake” agreement, confirming both parties’

commitment to the terms of the “handshake” agreement and, in particular, Assurant Group’s obligation to reimburse Am Re for any losses that Am Re might suffer under the treaty.

19. Assurant Group made no claims during this period, and the experience fund account had a positive balance of approximately \$16 million by mid-2004, consisting of premiums paid in 2004 and in prior years, plus the interest earned on those premiums. Pursuant to the terms of the “handshake” agreement, this money was credited to Assurant Group in the experience fund account. The money was effectively a deposit that belonged to Assurant Group and its successor Assurant Solutions. Assurant Group and Fortis nevertheless accounted for the Am Re treaty during this period by using principles of reinsurance accounting rather than deposit accounting.

Assurant’s Materially Misstated Financial Results For The Third Quarter Of 2004

20. On February 4, 2004, Fortis became a publicly traded company known as Assurant Inc., which Fortis formed and merged into in connection with the Assurant IPO. The Fortis business segment known as Assurant Group became known as Assurant Solutions after the IPO. The reinsurance treaty with Am Re and the “handshake” agreement remained in effect following the IPO with respect to the year ended December 31, 2004.

21. Through Assurant Solutions, Assurant sold, among other insurance products, homeowners’ insurance policies for homes throughout the southeastern part of the United States, including Florida. In August and September of 2004, four major hurricanes made landfall in Florida, resulting in total insurance industry losses of approximately \$22 billion. These hurricane losses adversely impacted Assurant’s financial results for the quarter ended September 30, 2004, and Assurant turned to the Am Re treaty to help mitigate the impact of those losses. Assurant submitted, and Am Re paid, a claim for a \$10 million recovery under the treaty. As

discussed below, Assurant improperly recorded the \$10 million payment it received from Am Re as a reinsurance recovery on its books and records and in its financial statements. Assurant failed to comply with GAAP because the \$10 million payment was effectively a return of Assurant's own money and should have been accounted for using deposit accounting. As a result, Assurant's publicly reported financial results for the third quarter of 2004 were materially misstated.

22. Assurant first announced its financial results for the third quarter of 2004 in a Form 8-K filing, with a press release, on November 4, 2004. In the Form 8-K, Assurant stated that although it had incurred \$100.8 million in pretax losses from the recent hurricanes, it had \$25.3 million in reinsurance to off-set the losses. Assurant stated that the reinsurance recoveries reduced its pretax hurricane losses to \$75.5 million and after-tax hurricane losses to \$49 million. However, \$10 million of the \$25.3 million in claimed reinsurance was paid by Am Re under the finite reinsurance treaty that was subject to the parties' "handshake" agreement. Under GAAP Assurant was precluded from using the \$10 million payment from Am Re, which was effectively the return of a deposit, to reduce the amount of hurricane losses reported on Assurant's income statement.

23. By improperly accounting for the \$10 million payment from Am Re using reinsurance accounting instead of deposit accounting, Assurant materially understated its hurricane losses by \$10 million, or 11.7%. As a result, Assurant also materially overstated its net income for that quarter by \$6.41 million, or 9.4%. Assurant reported \$74.84 million in net income when it should have reported \$68.43 million in net income for that quarter.

24. On November 12, 2004, Assurant filed its Form 10-Q for the quarter ended September 30, 2004. The financial statements in Assurant's Form 10-Q were not prepared in

accordance with GAAP because Assurant improperly accounted for the \$10 million payment from Am Re using reinsurance accounting instead of deposit accounting. In addition to the \$6.41 million (9.4%) overstatement of Assurant's net income for the third quarter of 2004, Assurant's Form 10-Q also inaccurately stated that Assurant Solutions, the business segment that sustained the full impact of the hurricane losses, nevertheless generated net income of \$2.97 million that quarter due to Assurant's reinsurance arrangements. In the section titled Management's Discussion and Analysis of Financial Condition and Results of Operations, Assurant stated as follows:

Assurant Solutions, our specialty property and consumer protection product segment, took the full weight of the catastrophe losses. But as a result of our reinsurance arrangements, the losses netted to \$49,075 [thousand] after tax and reinsurance, allowing Assurant Solutions to earn net income of \$2,974 [thousand] for the three months ended September 2004.

Had Assurant accounted for the \$10 million payment from Am Re properly under GAAP as the return of a deposit, Assurant Solutions would have reported a \$4.98 million loss instead of a \$2.97 million profit for that quarter.

25. On December 22, 2004, Assurant filed another Form 8-K, with a press release, in which Assurant reported that its after-tax hurricane losses in the third quarter of 2004, net of reinsurance, had increased from \$49 million (as previously reported) to \$59 million due to subsequent claims and escalating material and labor costs. This disclosure was also materially inaccurate because the \$10 million paid by Am Re was still improperly treated as a reinsurance recovery rather than the return of a deposit.

Assurant's Deficient Internal Controls

26. During the relevant period, Assurant's internal controls were insufficient to prevent the arrangement with Am Re from being accounted for as reinsurance in contravention

of GAAP. As a result, the \$10 million paid by Am Re with respect to the hurricane losses incurred in the third quarter of 2004 was incorrectly recorded in Assurant's books and records, and incorrectly reported in its financial statements, as a reinsurance recovery rather than the return of a deposit. Specifically, Assurant lacked internal controls sufficient to identify and properly account for side agreements to reinsurance treaty documents, such as the "handshake" agreement with Am Re, and to ensure that adequate risk transfer existed under FAS 113 before reinsurance accounting was used. Assurant's accountants were unaware of the terms of the "handshake" agreement, and no one at Assurant performed a formal risk transfer analysis on the Am Re treaty. These deficiencies in Assurant's internal accounting controls continued until the disclosure of the "handshake agreement" in mid-2005 and subsequent improvements in internal controls. In its Form 10-Q for the quarter ended June 30, 2005, Assurant acknowledged that there was a "verbal side agreement" with respect to the Am Re treaty and that, as a result, deposit accounting was the "appropriate" accounting treatment for the treaty. In that Form 10-Q, Assurant also disclosed that following its receipt of subpoenas in connection with the Commission's investigation and a parallel criminal investigation, Assurant "enhanced its internal controls regarding reinsurance."

FIRST CLAIM FOR RELIEF

Violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-11 and 13a-13

27. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 26.

28. Assurant failed to file with the Commission, in accordance with the rules and regulations prescribed by the Commission, such quarterly and current reports as the Commission has prescribed and Assurant failed to include, in addition to the information expressly required to

be stated in such reports, such further material information as was necessary to make the statements made therein, in light of the circumstances in which they are made, not misleading, in violation of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-11 and 240.13a-13]. As alleged above, Assurant's quarterly report filed on Form 10-Q for the quarter ended September 30, 2004, and Assurant's Forms 8-K filed on November 4, 2004, and December 22, 2004, each contained material misstatements and omitted material information necessary to make statements made therein not misleading because, among other things, they included financial statements that materially overstated Assurant's net income for the quarter ended September 30, 2004 and failed to disclose the existence of the "handshake" agreement and other material information relating to the full impact of hurricane losses on Assurant's financial performance that quarter.

29. By reason of the foregoing, Assurant directly, or indirectly, singly or in concert, has violated, and unless enjoined will again violate, Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-11 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-11 and 240.13a-13].

SECOND CLAIM FOR RELIEF

Violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act

30. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 26.

31. Assurant failed to:

- a. make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of its assets; and

b. devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that:

- i. transactions were executed in accordance with management's general or specific authorization;
- ii. transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for assets;
- iii. access to assets was permitted only in accordance with management's general or specific authorization; and
- iv. the recorded accountability for assets was compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any differences,

in violation of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C § 78m(b)(2)]. As alleged above, Assurant made improper accounting entries on its books and records when, contrary to GAAP, Assurant accounted for the Am Re policy using principles of reinsurance rather than deposit accounting, and Assurant's internal accounting controls were insufficient to reasonably assure that that its transactions with reinsurers were recorded as necessary to permit the preparation of financial statements in accordance with GAAP.

32. By reason of the foregoing, Assurant, directly, or indirectly, singly or in concert, has violated, and unless enjoined will again violate, Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C § 78m(b)(2)(A) and (B)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests a Final Judgment:

I.

Permanently enjoining Assurant, its agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating, directly or indirectly, Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and (B)] and Rules 12b-20, 13a-11 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-11 and 240.13a-13].

II.

Ordering Assurant to pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

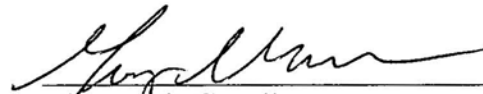
III.

Granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York
January 21, 2010

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By:


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