

REPORT ON EXAMINATION  
OF THE  
LBA WORKERS COMPENSATION FUND  
MIAMI, FLORIDA  
AS OF  
SEPTEMBER 30, 2003

BY THE

FLORIDA DEPARTMENT OF FINANCIAL SERVICES  
OFFICE OF INSURANCE REGULATION

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Tallahassee, Florida  
June 25, 2004

Kevin M. McCarty, Commissioner  
Office of Insurance Regulation  
State of Florida  
Tallahassee, Florida 32399-0300

Dear Sir:

Pursuant to your instructions, in compliance with Section 624.316, Florida Statutes (FS), and in accordance with the practices and procedures promulgated by the National Association of Insurance Commissioners (NAIC), an examination has been made as of September 30, 2003, of the financial condition and corporate affairs of the:

**LBA WORKERS COMPENSATION FUND  
1001 BRICKELL BAY DRIVE, SUITE 1100  
MIAMI, FLORIDA 33131**

hereinafter referred to as the "Fund". Such report of examination is herewith respectfully submitted.

## **SCOPE OF EXAMINATION**

This examination covered the intervening period from October 1, 1999, to the close of business on September 30, 2003. The prior statutory financial examination of the Fund was as of September 30, 1999 and was conducted by the Office of Insurance Regulation (Office). This examination commenced with planning at the Office, during the week of May 10, 2004 and May 17, 2004. The fieldwork commenced on May 24, 2004, and was concluded as of June 25, 2004. The examination included any material transactions and/or events occurring subsequent to the examination date and noted during the course of the examination.

This financial examination represented a statutory financial examination conducted in accordance with the Financial Examiners Handbook, Accounting Practices and Procedures Manual and Annual Statement Instructions, promulgated by the NAIC as adopted by Rules 690-137.001(4) and 690-138.001, Florida Administrative Code (FAC), with due regard to the statutory requirements of the insurance laws, rules and regulations of the State of Florida.

In this examination, emphasis was directed to the quality, value and integrity of the statement assets and the determination or estimation of liabilities, as affects the financial solvency of the Fund.

The examination included a review of the corporate records and other selected records deemed pertinent to the Fund's operations and practices.

The Fund's assets were valued and/or verified and the liabilities were determined or estimated as of September 30, 2003. Transactions subsequent to year-end 2003 were reviewed where relevant and deemed significant to the Fund's financial condition.

This report of examination is confined to financial statements and comments on matters that involve departures from laws, regulations or rules, or which are deemed to require special explanation or description.

#### **Status of Adverse Findings from Prior Examination**

The following summary of significant regulatory information disclosed the adverse findings from the previous examination as of September 30, 1999, by the Office, with the action taken by the Fund in connection therewith:

The Fund was not in compliance with Rule 690-190.064(6)(g), FAC, which required that the Fund maintain an audit committee.

**Resolution:** On November 3, 2004, the Fund provided minutes of the written consent of the trustees establishing an audit committee.

The Fund, as of year end 1999, had not adopted a policy statement that required annual disclosure on conflicts of interest, in accordance with Rule 690-190.064(6), FAC.

**Resolution:** On November 3, 2004, the Fund provided conflict of interest statements for each trustee.

The recorded minutes by the Fund's Board of Trustees did not adequately approve Fund transactions, in accordance with Rule 690-190.064(21), FAC. Additionally, documentation did not exist in the minutes reviewed, that the Board of Trustees reviewed prior examination reports.

**Resolution:** A review of the recorded minutes indicated that the Board of Trustees reviewed Fund transactions and the prior examination report.

The Fund as, of year end 1999, did not maintain fidelity bond coverage in the suggested minimum amount of coverage for the Fund as recommended by the NAIC and Rules 690-190.064(5) and 690-190.064(7), FAC.

**Resolution:** The Fund is in run-off.

The Fund did not establish procedures for handling written complaints in accordance with Section 626.9541(1)(j), FS. Also, the Fund did not maintain a claims procedure manual that included detailed procedures for each type of claim.

**Resolution:** As of this examination date, the Fund was in run-off. New policies have not been issued. There were 5 claims remaining. The Fund entered into a service agreement with Crawford and Company (Crawford) to handle the remaining claims.

The Fund's reinsurers, Commercial Risk Reinsurance Company and Commercial Risk Reinsurance Company, LTD., were not authorized as reinsurers in the State of Florida.

**Resolution:** The Fund established the appropriate provision for reinsurance liability.

The Fund did not have a contract in effect with Crawford, their claims servicing company.

**Resolution:** The Fund entered into a service agreement with Crawford.

The Fund did not have a custodial agreement with Salem Trust for the safekeeping of its securities at year end 1999.

**Resolution:** No securities were held at year end 2003.

The Fund had not complied with Rule 690-190.0591, FAC, which required an annual audit by a Certified Public Accountant (CPA).

**Resolution:** The Fund complied with Rule 690-190.0591, FAC., and audits were performed annually by a CPA.

## **HISTORY**

### **General**

The Fund was approved in 1991, under the laws of the State of Florida, to operate as a workers' compensation group self-insurance fund. The Fund commenced business on September 1, 1991, with the name of LBA Workers Compensation Fund.

In accordance with Section 624.4621, FS, the Fund was authorized to transact workers' compensation insurance coverage in the State of Florida. The Fund was formed for the primary purpose of providing workers' compensation coverage for qualified members of the Latin Builders Association. The Latin Builders Association was a private

nonprofit corporation of contractors, organized to provide its members with representation at all levels of the construction industry.

The Fund was in run-off and has not written any business since June 1, 1996. The Fund was no longer authorized to transact insurance in the State of Florida.

The Fund was a trust with a Board of Trustees; but had no employees. Kathleen Miller was appointed as Administrator of the Fund in accordance with Section 627.357, FS and Rule 690-190.064(4), FAC.

**Management**

A Board of Trustees oversaw the activities of the Fund. Trustees serving as of September 30, 2003, were as follows:

**Trustees**

<b>Name and location</b>	<b>Principal Occupation</b>
Sergio Pino	Century Partners Group, Ltd.
Ramon E. Rasco	Rasco, Reininger Perez & Esquenazi, P.L.
Reinaldo Sanchez	Century Partners Group, Ltd.

**Senior Officers**

<b>Name</b>	<b>Title</b>
Sergio Pino	President
Ramon E. Rasco	Secretary
Reinaldo Sanchez	Treasurer

The Fund did not maintain an audit committee, as required by Rule 690-190.064(6)(g), FAC.

#### **Conflict of Interest Procedure**

On November 3, 2004, the Fund provided conflict of interest statements for each trustee, in accordance with Rule 690-190.064, FAC.

#### **Corporate Records**

The recorded minutes of the meetings by the Board of Trustees were reviewed for the period under examination. The minutes were documented and adequately approved Fund transactions, in accordance with Rule 690-190.064(21), FAC.

#### **Acquisitions, Mergers, Disposals, Dissolutions, and Purchase or Sales through Reinsurance**

The Fund had no acquisitions, mergers, disposals, dissolutions and purchases or sales through reinsurance during the period covered by this examination.

#### **Surplus Debentures**

The Fund had no surplus debentures as of September 30, 2003.

## AFFILIATED COMPANIES

The Fund was not a member of an insurance holding company system as defined by Rule 690-143.045(3), FAC.

## FIDELITY BOND AND OTHER INSURANCE

As of September 30, 2003, the Fund did not maintain fidelity bond coverage as recommended by the NAIC. In addition, the Fund did not comply with the fidelity bond requirements as required by Rule 690-190.064(5)(7)(b)(8), FAC; however, the Fund was in run-off.

## PENSION, STOCK OWNERSHIP, AND INSURANCE PLANS

There were no employees.

## STATUTORY DEPOSITS

On September 30, 2003, the following amounts were pledged to the State of Florida as required by Section 624.411, FS:

<u>State</u>	<u>Description</u>	<u>Par Value</u>	<u>Market Value</u>
FL	Treasury Cash Deposit	<u>\$ 734,001</u>	<u>\$ 734,001</u>
	Total Florida Pledged Securities	<u>\$ 734,001</u>	<u>\$ 734,001</u>

## **INSURANCE PRODUCTS AND RELATED PRACTICES**

### **Territory**

At September 30, 2003, the Fund was not authorized to transact insurance in the State of Florida, in accordance with Section 624.401(2), FS.

### **Treatment of Policyholders**

The Fund entered into a servicing agreement with Crawford; who provided claims adjusting services for the run-off of claims pursuant to Rule 690-190.064(4)(6)(c)(d) FAC. Crawford maintained procedures for handling written complaints in accordance with Section 626.9541 (1)(j), FS.

## **REINSURANCE**

The Fund entered into a loss portfolio transfer (LPT) reinsurance agreement with Commercial Risk Reinsurance Company (20%) and Commercial Risk Reinsurance Company, LTD. (80%) in the amount of \$15,700,000. This LPT was for the losses incurred prior to June 1, 1996, the date the Fund ceased writing business. The agreement covered each occurrence up to \$225,000, less amounts paid on each occurrence prior to the effective date of the agreement. The reinsurer was also responsible for the proportionate share of allocated loss adjustment expenses associated with each occurrence. The Fund paid a premium to the reinsurers in the

amount of \$5,984,000 as consideration for this agreement. On June 1, 2003, or thereafter, the Fund may elect a commutation clause, which was contained in the agreement. If elected, the Fund would assume all of the reinsurers' liabilities under the agreement and the reinsurers would pay the Fund 95% of the original consideration less the total amounts paid by the reinsurers pursuant to the LPT agreement.

Commercial Risk Reinsurance Company and Commercial Risk Reinsurance Company LTD., were not authorized as reinsurers in the State of Florida. Pursuant to the reinsurers' unauthorized status, the Office requested that the Fund obtain letters of credit from the reinsurers. A letter of credit in the amount of \$4,240,000 from Commercial Risk Reinsurance Company and Commercial Risk Reinsurance Company, LTD., expired on May 31, 1999. In accordance with Section 624.610(6), FS, no credit is allowed for reinsurance with an unauthorized or unapproved assuming insurer. As of September 30, 2003, the Fund established the appropriate provision for reinsurance liability.

**Assumed**

The Fund did not assume risk.

## **Ceded**

The Fund ceded risk on an excess of loss basis to Genesis Reinsurance Corporation (GenRe). The coverage provided was for amounts in excess of \$225,000 per occurrence with an aggregate limitation of \$5,000,000. GenRe was an authorized reinsurer in the State of Florida.

## **ACCOUNTS AND RECORDS**

The Fund was audited annually by Morrison, Brown, Argiz & Farra, LLP, an independent CPA firm for the fiscal years 2000, 2001, 2002 and 2003, in accordance with Section 624.424 (8)(c), FS. Audited statutory financial statements and supporting work papers were prepared by the CPA as required by Rule 690-190.059(4), FAC.

The Fund's accounting records were maintained according to Section 607.1601(2), FS, and the Fund's balance sheet accounts were verified with the audited financial statements submitted to the Office.

The Fund maintained its principal operational offices in Miami, Florida, where this examination was conducted.

On September 30, 2003, the following agreements were in effect between the Company and non-affiliates:

### **Plan Administrator**

The Fund's previous plan administrator was Alexander & Alexander Services, Inc. (A&A). In 1997, A&A was purchased by AON Risk Services, Inc. (ARS), a subsidiary of AON Corporation. An ARS subsidiary, AON Risk Services, Inc. of Florida (ARSF) succeeded A&A as the Fund's plan administrator. Subsequent to this acquisition, ARSF entered into an agreement with the Fund. This agreement indemnified the Fund up to a maximum amount of \$1,800,000 for unpaid obligations not reinsured that it had incurred as a self insurer on claims made pursuant to its workers' compensation policies issued to its members. As of September 30, 2003, the Fund has made claims payments totaling \$14,449,266 since inception.

### **Claims Handling Service Agreement**

Crawford handled the servicing of the claims for the Fund. They have performed this service for the Fund since October 1, 1995. Effective March 1, 2003, the Fund entered into a service agreement with Crawford to provide claims handling services needed to process workers' compensation claims (run-off policies). Prior to this date, a contract did not exist. Crawford also handled all transactions involved with the LPT reinsurance agreement, which included fronting the payments to the Fund's claimants. Subsequently, Crawford was reimbursed for these payments from the Fund's reinsurers.

**Custodial Agreement**

As of September 30, 2003, the Fund was in run-off and was not investing nor reporting securities.

**CPA Agreement**

The Fund contracted with an independent CPA to audit its statutory financial statements for years 2000, 2001, 2002 and 2003, as required by Rule 690-190.0591, FAC.

**FINANCIAL STATEMENTS PER EXAMINATION**

The following pages contain financial statements showing the Fund's financial position as of September 30, 2003, as determined by this examination. Adjustments made as a result of the examination are noted in the section of this report captioned, "Comparative Analysis of Changes in Surplus."

**LBA WORKERS COMPENSATION FUND**  
**Analysis of Assets**

**SEPTEMBER 30, 2003**

Classification	Assets	Examination Adjustments	Per Examination
Cash	1,032,904	0	1,032,904
Amounts Recoverable from Reinsurer	70,730	0	70,730
Aggregate Write-ins other than Invested Assets	80,000	0	80,000
<hr/>			
Totals	<u>\$1,183,634</u>	<u>\$0</u>	<u>\$1,183,634</u>

**LBA WORKERS COMPENSATION FUND**  
**Liabilities, Surplus and Other Funds**

**SEPTEMBER 30, 2003**

<b>Liabilities</b>	<b>Per Company</b>	<b>Examination Adjustments</b>	<b>Per Examination</b>
Losses	\$544,094		\$544,094
Other expenses	136,522		136,522
Provision for reinsurance	163,879		163,879
Aggregate Write-ins for liabilities	(544,094)		(544,094)
 Total Liabilities	 \$300,401		 \$300,401
 Aggregate Write-ins for special surplus funds	 \$178,063		 \$178,063
Unassigned funds (Surplus)	705,170		705,170
 Surplus as regards policyholders	 \$883,233		 \$883,233
 Total Liabilities and Surplus	 \$1,183,634		 \$1,183,634

**LBA WORKERS COMPENSATION FUND**

**Statement of Income**

**SEPTEMBER 30, 2003**

**Underwriting Income**

Premiums earned	\$0
<b>DEDUCTIONS:</b>	
Losses incurred	\$88,832
Losses expenses incurred	0
Other underwriting expenses incurred	(18,522)
Aggregate W/I's for Underwriting Deductions	0
Total underwriting deductions	<u>\$70,310</u>
Net underwriting gain or (loss)	\$70,310

**Investment Income**

Net investment income earned	\$39,608
Net realized capital gains or (losses)	0
Net investment gain or (loss)	<u>\$39,608</u>

**Other Income**

Total other income	0
Net income before dividends to policyholders and before federal & foreign income taxes	<u>(\$30,702)</u>
Dividends to policyholders	<u>0</u>
Net Income, after dividends to policyholders, but before federal & foreign income taxes	(\$30,702)
Federal & foreign income taxes	0
Net Income	<u>(\$30,702)</u>

**Capital and Surplus Account**

Surplus as Regards to Policyholders, Sept. 30, prior year	\$767,499
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**Gains and (Losses) in Surplus**

Net Income	(\$30,702)
Net unrealized capital gains or (losses)	0
Change in net deferred income tax	0
Change in non-admitted assets	63,691
Change in provision for reinsurance	82,261
Change in Surplus Notes	0
Surplus (contributed to)	0
Cumulative Effect of Changes in Acct. Principles	0
Capital Changes	0
Surplus adjustments	0
Net remittances	0
Dividends to Stock Holders	0
Changes in treasury Stock	0
Aggregate write-ins for gains and losses in surplus	483
Change in surplus as regards policyholders for the year	<u>\$115,733</u>
Surplus as regards policyholders, September 30, current year	<u><u>\$883,232</u></u>

**COMMENTS ON FINANCIAL STATEMENTS**

**Liabilities**

**Losses and Loss Adjustment Expenses** **\$544,094**

At September 30, 2003, the Fund had nine claims open from losses incurred. As of the completion of field examination work, the Fund has five open claims remaining. All five open claim files were reviewed during this examination. The documentation found in the individual claimant files showed that the Fund was not actively pursuing a settlement of the remaining claims. The paid history worksheet reviewed in all five files showed different amounts paid than the amounts in the Funds loss run. Crawford, the Fund's servicing company, stated that differences existed because the Fund utilized two service companies during its existence. After the termination of the first servicing company agreement, the board of trustees elected not to pay money to have the claim information from the first servicing company carried over to the subsequent servicing company claims system. All claims information from both servicing companies were requested, received and confirmed by the Office.

**LBA WORKERS COMPENSATION FUND**  
**Comparative Analysis of Changes in Surplus**

**September 30, 2003**

The following is a reconciliation of Total Surplus between that reported by the Fund and as determined by the examination.

Surplus per September 30, 2003 audited Financial Statement	\$1,183,634
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	<u>PER</u> <u>Fund</u>	<u>PER</u> <u>EXAM</u>	<u>INCREASE</u> <u>(DECREASE)</u> <u>IN SURPLUS</u>
<b>ASSETS:</b>			
No adjustment needed.			\$0
<b>LIABILITIES:</b>			
No adjustment needed.			\$0
 Net Change in Surplus:			 <u>\$0</u>
 Surplus September 30, 2003 Per Examination			 <u><u>\$1,183,634</u></u>

## **FINDINGS, COMMENTS AND CORRECTIVE ACTION**

The following is a brief summary of items of interest and corrective action to be taken by the Fund regarding findings in the examination as of September 30, 2003.

### **Reinsurance**

The Fund entered into an LPT agreement which contains a commutation clause. **The Fund is directed to obtain Office approval prior to electing to commute this LPT.**

## CONCLUSION

The customary insurance examination practices and procedures as promulgated by the NAIC have been followed in ascertaining the financial condition of the LBA Workers Compensation Fund as of September 30, 2003, consistent with the insurance laws of the State of Florida.

Per examination findings, the Fund's Surplus as Regards to Policyholders was \$883,233.

In addition to the undersigned, Mary James, CFE, CPM, Examiner/Analyst Supervisor, participated in the examination.

Respectfully submitted,

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Owen A. Anderson  
Financial Examiner/Analyst II  
Office of Insurance Regulation