



OFFICE OF INSURANCE REGULATION

FILED

JAN 28 2005

OFFICE OF
INSURANCE REGULATION
Docketed by: DJS

KEVIN M. MCCARTY
COMMISSIONER

IN THE MATTER OF:

CASE NO.: 78181-04-CO

INSURANCE COMPANY OF THE AMERICAS
2004 Market Conduct Examination

CONSENT ORDER

THIS CAUSE came on for consideration as the result of an agreement between **INSURANCE COMPANY OF THE AMERICAS**, (hereinafter referred to as "ICA") and the **OFFICE OF INSURANCE REGULATION** (hereinafter referred to as "the OFFICE"). Following a complete review of the entire record, and upon consideration thereof, and being otherwise fully advised in the premises, the Commissioner of the OFFICE of Insurance Regulation, as head of the OFFICE finds as follows:

1. The OFFICE, has jurisdiction over the subject matter of, and the parties to, this proceeding.
2. ICA is a domestic property and casualty insurer authorized to transact insurance business in Florida and is subject to the jurisdiction and regulation of the OFFICE pursuant to the Florida Insurance Code.
3. The OFFICE conducted a market conduct examination of ICA, pursuant to Section 624.3161, Florida Statutes and as a result, it has been determined that ICA has violated the following provisions of the Florida Insurance Code and/or Florida Administrative Code, to wit:

Workers' Compensation

Section 624.418, F.S. – Failure to Comply with Terms of the Consent Order: Market and Operations Changes without Filing for Approval Before Implementation.

Section 624.418, F.S. – Failure to Follow the Market and Operations Plan: Writing Unlicensed PEOs.

Section 624.418, F.S. – Failure to Follow the Market and Operations Plan: Failure to Obtain Financial Guarantees.

Section 628.271, F.S. – Failure to Follow the Market and Operations Plan: Use of Unacceptable Financial Guarantees.

Section 628.291, F.S. – Writing Insurance in a State without a Certificate of Authority.

Rule 690-189.003, F.A.C. – Failure to Use Proper Application: No Signed/Notarized Application.

Section 626.9541(1)(h)(1)(a), F.S. – Failure to Comply with Unfair Trade Practice Requirements: Use of Unfiled Side Agreements.

Section 627.410, F.S. – Use of Unfiled Deductible Endorsement.

Section 627.091, F.S. – Use of Unfiled Rates: Reinsurance Excess Premium.

4. The **OFFICE** and **ICA** expressly waive a hearing in this matter, and the making of Findings of Fact and Conclusions of Law by the **OFFICE** and all further and other proceedings herein to which the parties may be entitled by law. **ICA** hereby knowingly and voluntarily waive all rights to challenge or to contest this Order, in any forum now available, including the right to any administrative proceeding, circuit or federal court action, or any appeal.

5. **ICA** agrees that upon the execution of this Consent Order it shall be subject to the following terms and conditions:

(a) **ICA** shall pay a penalty of \$26,750 and administrative costs of \$2,000.00 on or before the 30th day after this Consent Order is executed.

(b) **ICA** shall henceforth comply with all of the provisions of the Florida Insurance Code and the Florida Administrative Code.

- (c) ICA is hereby placed on notice of the requirements of the above referenced sections of law and agrees that any future violations of these sections by ICA may be deemed willful, subjecting ICA to appropriate penalties.
- (d) ICA shall establish procedures to avoid accepting business in states where it is not licensed. The Company must provide to the OFFICE certification by an officer of the Company that these procedures have been implemented within 30 days of the execution of the Consent Order.
- (e) ICA shall establish procedures to obtain signed/notarized applications from all PEOs. The Company must provide to the OFFICE certification by an officer of the Company that these procedures have been implemented within 30 days of the execution of the Consent Order.
- (f) ICA shall establish procedures to obtain evidence that a PEO is licensed when writing new business. The Company must provide to the Office certification by an officer of the Company that such procedure has been implemented within 30 days of the execution of the Consent Order.
- (g) ICA shall establish procedures to secure a minimum of \$250,000 financial guarantee on all policies issued to PEOs. The Company must provide to the Office certification by an officer of the Company that these procedures have been implemented within 30 days of the execution of the Consent Order.
- (h) ICA shall establish a new method of constructing financial guarantees and file it with the Office for approval. The Company must provide to the Office certification by an officer of the Company that the filing has been made within 30 days of execution of the Consent Order.
- (i) ICA shall file side agreements for approval as endorsements to the contract or as components of another endorsement to the contract. The Company must

provide to the Office documentation of the filings within 30 days of execution of the Consent Order.

(j) ICA shall discontinue using the unfiled deductible endorsement until such time as it has been filed and approved. The Company must provide to the Office certification by an officer of the Company that it has ceased using the unfiled form and documentation that it has filed the form for approval within 30 days of execution of the Consent Order.

(k) ICA shall amend its rate filing to include reimbursement for its costs of reinsurance excess premium. The Company must provide to the Office certification by an officer of the Company that the filing has been made within 30 days of execution of the Consent Order.

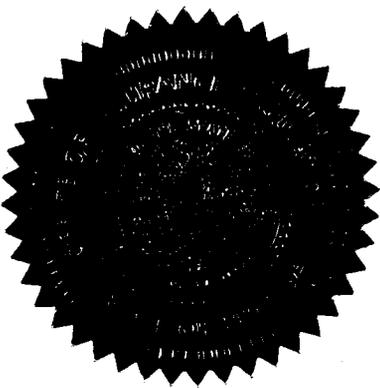
6. ICA agrees that the failure to adhere to one or more of the above terms and conditions of this Order shall constitute a violation of a lawful order of the OFFICE, and shall be subject to such administrative action as the Commissioner of the Office of Insurance Regulation may deem appropriate.

7. Except as noted above, each party to this action shall bear its own costs and attorney's fees.

8. THEREFORE, the agreement between ICA and the OFFICE, the terms and conditions of which are set forth above, is approved.

FURTHER, all terms and conditions above are hereby ORDERED.

DONE AND ORDERED this 28th day of January 2005.



Kevin M. McCarty
Commissioner
Office of Insurance Regulation

By execution hereof, **INSURANCE COMPANY OF THE AMERICAS** consents to entry of this Order, agrees without reservation to all of the above terms and conditions, and shall be bound by all provisions herein. The undersigned represents that he or she has the authority to bind **INSURANCE COMPANY OF THE AMERICAS** to the terms and conditions of this Consent Order and has personal knowledge of the Application and the information provided therein.

**INSURANCE COMPANY
OF THE AMERICAS**

Corporate Seal

By: James M. Karnan
Title: PRESIDENT
Date: 1/28/05

On Jan 28, 2005 before me, James M. Karnan, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person or the entity upon whose behalf the person acted, executed the instrument.

Subscribed and sworn to before me this 28 day of January, 2005.

Signature Angela M. Lockwood
(Signature of Notary Public)

[NOTARIAL SEAL]

My Commission Expires:



Angela M. Lockwood
MY COMMISSION # DD039859 EXPIRES
July 5, 2005
BONDED THRU TROY FAIN INSURANCE, INC.

COPIES FURNISHED TO:

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