

FINANCIAL SERVICES COMMISSION

**OFFICE OF INSURANCE REGULATION
MARKET INVESTIGATIONS**

TARGET MARKET CONDUCT EXAMINATION REPORT

OF

INSURANCE COMPANY OF THE AMERICAS

AS OF

August 17, 2007

NAIC COMPANY CODE: 33030

Buttner Hammock & Company, P.A.

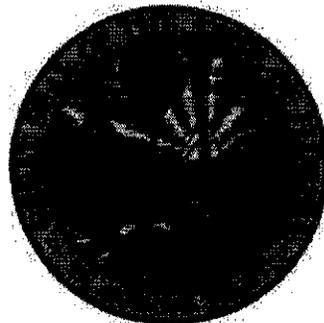


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Purpose and Scope of Examination

Under authorization of the Financial Services Commission, Office of Insurance Regulation, Market Investigations (Office), pursuant to Section 624.3161, Florida Statutes, a target market conduct examination of Insurance Company of the Americas (ICA or Company) was performed by Buttner Hammock & Company, P.A. (BHC). The scope of this examination was January 28, 2005 through February 19, 2007. The examination began on February 19, 2007 and ended on August 17, 2007.

The purpose of this examination was to review the Company's practices related to large deductible collateral and related trust accounts. In addition, it was alleged that ICA failed to hold approximately \$1.5 million in trust for one of its policyholders, in violation of Florida Statutes and a Consent Order for Corrective Action issued by the Office. The examination was conducted at ICA's office in Oriskany, New York.

In reviewing materials for this report, the examiner relied primarily on records maintained by the Company. Procedures and conduct of the examination were in accordance with the Market Regulation Handbook produced by the National Association of Insurance Commissioners (NAIC) and with standards established by the American Institute of Certified Public Accountants (AICPA).

Background

ICA is a domestic property and casualty insurer licensed to conduct business in the State of Florida. From 1994 to 2002, ICA was under administrative supervision of the Office and its Certificate of Authority was suspended. In 2002, IPA Acquisitions, Inc., (IPA) a California Corporation owned 100% by Mr. James M. Kernan, acquired 100% ownership of ICA. At that time, the Office discontinued administrative supervision and restored ICA's Certificate of Authority for workers' compensation and surety lines of business. Since 2002, ICA has provided workers' compensation insurance primarily for Professional Employer Leasing Organizations (PEOs).

As of the date of this report, ICA has two PEO policies in force and seven PEO policies that have been non-renewed or cancelled for which claims are in runoff. The policies include the following:

<u>Policy</u>	<u>Policy Status</u>
Employee Leasing Solutions (ELS)	Cancelled on 1/1/07
First Financial Employee Leasing (FFEL)	Cancelled on 1/1/06
Enterprise HR (Enterprise)	Cancelled Insured's Request, 8/1/05
Accord Human Resources (Accord)	Non-Renewal, 4/1/05
Modern Business Associates (MBA)	Cancelled on 1/1/06
Paychecks Plus (Paychecks)	Non-Renewal, 9/14/05
AMS Staff Leasing (AMS)	Non-Renewal, 12/1/03
DSK Group (DSK)	In Force through 10/25/07
Cambridge	In Force through 4/7/08

In addition, ICA has one minimum premium paying (MPP) workers' compensation policy in force as of the date of this report, which is a policy issued to cover non-employees on a worksite, such as General Contractors and other non-employees. ICA cancelled 43 and 29 MPP policies on January 1, 2006 and January 1, 2007, respectively. ICA currently has three direct (traditional) workers' compensation policies in force as of the date of this report. BHC's focus during this examination was on large deductible policies with collateral and their related trust accounts, which are applicable to PEO policies only.

Consent Order

On November 30, 2005, the Office issued a Consent Order for Corrective Action, Case No. 80897-05-CO (Consent Order) to ICA, as a result of the findings of a 2003 Statutory Financial Examination of ICA conducted by the Office. The Consent Order, agreed to and signed by Mr. Kernan, asserts that ICA was not in compliance with certain provisions of the Florida Insurance Code. The Consent Order identified deficiencies in ICA's loss and loss adjustment expense (LAE) reserves, collateral held as security for large deductible policies, and surplus as regards policyholders as of December 31, 2003.

A provision of the Consent Order required any funds received by any affiliated company of ICA in conjunction with policies issued by ICA to be either held by ICA or maintained in a trust account or an acceptable letter of credit held for the benefit of ICA in the event of a default in deductible payments by an insured.

The Consent Order also required ICA to immediately cease writing new insurance business until the completion and finalization of a multi-state Financial Examination of ICA and its affiliated companies for the period January 1, 2004 through September 30, 2005. As of the date of this report, this examination (whose scope period was extended by the Office until June 30, 2006 for certain specific examination areas) has been completed but has not been issued.

Review of ICA Operations and Systems

High Deductible Collateral

Under ICA's high deductible workers' compensation policies, ICA processes the claim and makes all claims loss and loss adjustment expense payments in advance, and invoices the insured for reimbursement. ICA requires the insured to post collateral, such as cash or a letter of credit to fund the insured's high deductible. ICA is responsible for coverage in excess of the deductible amount for each occurrence, and all amounts in excess of the high deductible amount.

ICA informed BHC that there is no standard calculation to determine the adequate amount of collateral, but rather a combination of the performance of an internal and external credit risk analyses.

Internal Credit Risk Analysis

Prior to issuing a policy to a PEO, ICA performs an internal credit risk analysis. ICA's Financial Underwriting and Credit Risk Evaluator heads a small team of ICA personnel who determine the credit and underwriting risk of the PEO and the amount of initial collateral needed, based primarily on the judgment of the team. The PEO's policy does not state the amount of initial collateral needed, as that amount is communicated and agreed upon among ICA and the PEO prior

to initial issuance of the policy. As the business of a new PEO grows, ICA may determine that additional collateral is needed and would then bill the PEO for the additional funds.

External Credit Risk Analysis

Pursuant to the Consent Order, beginning with the year ending December 31, 2005, ICA was required to engage a qualified independent consultant to review the credit risk associated with its large deductible workers' compensation insurance policy collateral semi-annually and prepare a written report to be provided to the Office.

BHC reviewed Credit Risk Analysis Reports as of year end December 31, 2005 and December 31, 2006, noting that both reports were produced by the same consultant, and both reports included a letter from the consulting group to the Office, noting that the report was pursuant to an agreement between ICA and the Office, ICA had provided full access to its books and records, and ICA is responsible for the management of its credit risk.

The Credit Risk Analysis Reports included evaluation of the following:

- The most common factors that may increase the credit risk of insureds include modest built-in-equity, uncontrolled losses, lack of personal indemnities, significant debt unrelated to ICA's policy, limited working capital, unbalanced growth, a history of late payments (particularly deductible reimbursement payments) and new venture status.
- Underwriting risk has a direct relationship to credit risk for the PEOs. The greater a policy's claims exposure, especially where the exposure exceeds the collateral held by ICA, the more likely it becomes that an insured may not have funds available to pay its portion of losses and loss adjustment expenses.

BHC noted that the independent credit risk analysis reports appear to be comprehensive, thorough, and adequate to fulfill the conditions of the requirement specified in the Consent Order. The independent report concluded that the collateral held by ICA appeared adequate and that the analytical methods employed by ICA in evaluating credit risk was sound.

Violation of the Consent Order: The Consent Order for Corrective Action dated November 25, 2005, paragraph 6(d), requires ICA to have a qualified independent consultant review the credit risk associated with its large deductible insurance policy collateral semi-annually and prepare a written report containing his or her findings, which shall be provided to the Office with the Annual Statement and the June 10th Quarterly Statement. ICA did not engage or have an independent review of the credit risk at June 30, 2006.

Trust Agreements

BHC obtained and reviewed the signed trust agreements between ICA and the nine PEOs (two in-force, six non-renewed or cancelled, and Oriska Insurance Company for trust account funds held for a PEO's business that was 100% ceded to Oriska Insurance Company under a reinsurance agreement), as well as signed trust agreements with IPA (trust account funds held f/b/o ICA).

BHC reviewed these agreements, noting that they appear to be similar standardized agreements, with a few modifications particular to each individual PEO. Each agreement included provisions under which ICA could withdraw amounts from trust accounts. All trust agreements reviewed

contained similar language for the following two scenarios under which funds could be withdrawn:

The carrier and beneficiary, ICA, can use and apply any amounts drawn on the trust accounts to:

- Pay or reimburse on behalf of the Insured (the PEO) in the event the Insured is financially unable to meet its obligations under the Agreement (i.e. to pay claims losses and loss adjustment expenses); and
- To reimburse the Carrier (ICA) for claims, costs, charges, and expenses relating to the policy for any losses and allocated loss adjustment expenses paid by the beneficiary (ICA) but not recovered from the Insured.

ICA pays the PEO's claims directly and then bills the PEO for reimbursement of high deductible amounts and fees.

BHC reviewed ICA's Billing and Cash Receipts Systems and determined they were functioning as designed.

Review of Trust Account Bank Statements

BHC reviewed ICA's trust account bank statements beginning with December 31, 2005 (initial month end following the November 25, 2005 Consent Order) through June 30, 2007. BHC's analysis of the trust account collateral balances identified a total of 68 transfers during the period reviewed.

Testing of Invoices for Claims and Administrative Fees

Claims Invoice Testing

BHC selected a sample of claims and administrative fee invoices and tested for accuracy and completeness. For each invoice and PEO selected, BHC obtained from ICA the loss runs spreadsheets for the current selected month's loss run (inception-to-date) and the prior month's loss run (inception-to-date). BHC totaled the columns on the selected month's loss run spreadsheet for (1) claims paid during the month, (2) claims paid to date, (3) reserves, and (4) total incurred claims by claims subcategories of compensation, medical, legal, and other. BHC noted that the column totals for claims category agreed to ICA's Member Experience Report (a summary report generated from the claims system) without exception.

BHC performed a comparison of inception-to-date paid losses by claim between the two monthly reports. BHC subtracted the previous month's inception-to-date claims paid from the current selected month's inception-to-date claims paid. BHC deleted from its recalculation those claims that showed a difference of \$0 (there was no claims activity in the current period). For the remaining differences, BHC sorted these claims by PEO customer and compared the results to the selected period claims invoice.

BHC's recalculation matched the claims amount invoiced to the PEO without exception.

Claims Administrative Fee Testing

While performing the comparison between the selected current month's loss run spreadsheet to the prior month's loss run spreadsheet, there appeared one claim on the current month's spreadsheet that did not exist on the prior month's spreadsheet. This indicated a new processed claim during the current month. BHC noted that this claim had a code indicating a "medical only" claim on the current month's loss run spreadsheet. A medical only claim has a \$200 administrative fee, and BHC agreed this claim to a separate invoice listing the PEO customer in the amount of \$200, noting that the invoice was for "administration fee". BHC noted no exceptions in the invoicing of administrative fees.

Testing of Wire Transfers to and from Trust Accounts

Reviewing the transactions included in the monthly trust account bank statements, BHC tested each of the 68 wire transfer transactions by obtaining and reviewing the supporting documentation for each transfer. BHC concluded that in 67 of the 68 wire transfers, funds were moved for an appropriate reason that did not violate the Consent Order or Florida Statutes. For the remaining wire transfer, a deposit to collateral of approximately \$60,000, supporting documentation could not be located, and therefore, BHC could not determine the source of the funds or the appropriateness of the transfer.

Violation of the Consent Order: BHC noted that one policy did not have a trust account for collateral. Collateral for this policy was determined to consist of an investment in IPA that occurred prior to the Consent Order. The parent of the policyholder loaned IPA \$933,019 on April 7, 2004, interest not to exceed 10%, due upon demand but only out of dividends of IPA from free and divisible surplus of the insurer subsidiaries, subject to approval of the New York Insurance Department and the Office. This investment has not been converted to a trust account which is a violation of the November 30, 2005 Consent Order.

Violation of the Consent Order: BHC noted that IPA issued a surplus note to one policyholder dated December 31, 2004, in the amount of \$884,066. This surplus note was apparently intended to be held as collateral for the benefit of the policyholder. This surplus note has not been converted to a trust account which is a violation of the November 30, 2005 Consent Order.

In addition, the one policy is 100% ceded to Oriska Insurance Company (Oriska), an affiliate. Oriska holds the collateral in a trust account for the benefit of the policyholder, however, BHC believes that ICA is still at risk for the policy despite the 100% cession. BHC examined the collateral support and trust agreement dated December 31, 2003 from Oriska, as guarantor and ICA as beneficiary. BHC also examined a reinsurance contract dated December 31, 2002 between ICA and Dallas Fire Insurance Company (Dallas), subscribing reinsurer; and a novation agreement that is signed and undated between ICA, Dallas and Oriska, as retrocessionaire. BHC does not consider the cession and collateral issues to be a violation of the Consent Order.

Violation of the Consent Order: At December 31, 2005, IPA held investments for the benefit of ICA totaling approximately \$5 million. The original source of these funds was a loan from ELS, a high deductible policyholder, to IPA after ELS borrowed the funds from Gold Bank. IPA placed the borrowed funds in a trust account for the benefit of ICA, but not for the benefit of ELS specifically. In November and December 2006, IPA transferred these funds to a new collateral account expressly for the benefit of ELS, and not ICA generally. BHC considers the delay in transfer of the funds to a collateral account specifically for the benefit of ELS to be a violation of the Consent Order.

Review of Bank Account Listings

To assist BHC in testing of wire transfers and collateral balances, BHC requested and obtained from ICA a listing of all bank accounts, including trust accounts, for ICA and its related entities. BHC obtained copies of 17 ICA trust accounts, one OIC trust account, and 2 IPA trust accounts for review and analysis.

Analysis of Reserves and IBNR

BHC requested from ICA information on ICA's reserves by policyholder to determine if the collateral held by ICA f/b/o ICA's policyholders is in excess of ICA's reserves (known case reserves and IBNR reserves). ICA provided BHC with the case reserves by policyholder, and informed BHC that the IBNR amount is calculated by ICA's actuary, Milliman.

ICA provided BHC with a copy of Milliman's "Analysis of Insurance Company of the Americas Loss and Loss Adjustment Expense Reserve as of December 31, 2006" (Actuarial Report). BHC reviewed this report and noted that the Actuarial Report did not contain the necessary policyholder layer information to allow BHC to perform the analysis of the sufficiency of the collateral held in the individual trust accounts. Milliman calculated the estimated ultimate loss and LAE by deductible layer rather than by individual PEO. For example, the estimated ultimate loss and LAE for the \$250,000 deductible layer was calculated for the combined PEO group belonging to that deductible layer. The \$500,000 deductible layer included two policyholders.

Based on the unavailability of estimated loss and LAE reserves by individual PEO, BHC was unable to determine whether the collateral held by ICA f/b/o ICA's individual policyholders is in excess of ICA's reserves at December 31, 2006.

Enterprise Trust Account

BHC reviewed the February 19, 2007 Draft of the Proposed Settlement Agreement (Settlement Agreement) between ICA and Enterprise. BHC participated in a conference call on March 19, 2007 with Mr. James Kernan, Mr. Bipin Desai, and Mr. Jon Perry from ICA to discuss the Settlement Agreement. BHC also held discussions by telephone on April 4, 2007 with Mr. Ed Rawls, President of Enterprise, and on May 2, 2007 with Mr. Brian Fisher, attorney for Enterprise.

\$1,462,274.86 paid by Enterprise to ICA

Prior to the conference call, BHC had determined that the \$1,462,274.86 was paid by Enterprise to ICA, pursuant to an agreement in a transcript of a court proceeding, in the form of two wire transfers to ICA's Operating Account on 9/29/06: \$1,453,659.80 and \$8,615.06. Enterprise had apparently stopped paying its claims and administrative fee reimbursement obligation to ICA prior to canceling its policy with ICA in August 2005. BHC determined that the total amount of \$1,462,274.86 was for payments of 16 months of outstanding claims invoices (for amounts below the deductible paid by ICA f/b/o Enterprise) and 10 months of outstanding administrative fee invoices (also paid by ICA f/b/o Enterprise).

BHC reviewed supporting documentation for specific invoices and wire transfers noting the amount of invoices appeared appropriate.

Both ICA and Enterprise agree that the \$1,462,275 was paid by Enterprise to ICA for the reimbursement of claims paid and administrative fees for April 2005 through July 2006, and was paid pursuant to an agreement in a transcript of a court proceeding.

Amounts reimbursed to IPA

The Settlement Agreement stated that funds that were "reimbursed to IPA Acquisitions (IPA)" were "to be placed in trust". BHC had noted that the \$1,462,274.86 was paid to ICA, not IPA. Mr. Kernan agreed that this amount was paid to ICA, but noted that of the \$1,462,274.86, an amount of \$657,443.19 was transferred from ICA to IPA, because IPA had originally advanced this amount to ICA to pay claims during the time period that Enterprise stopped paying its reimbursements to ICA.

BHC has reviewed supporting documentation for the advance of funds from IPA to ICA and for the repayment of those funds by ICA to IPA. The remainder of the wire transfer of \$1,462,275 on September 29, 2006 was \$804,832 (\$1,462,275 – \$657,443) and was retained in the ICA claims account (loss fund account) because these claims and expenses were originally funded by the loss fund account. This amount replenished the loss fund account for those funds that were used by ICA to pay Enterprise's claims and administrative fees.

BHC did not believe the amount of \$1,462,275 was required to be placed in trust since this amount was not new collateral, but rather simply reimbursement to ICA for past due claims and administrative fees paid by ICA f/b/o Enterprise. Mr. Kernan agreed, but decided to adhere to the provision in the Settlement Agreement to go ahead and fund the trust account in the amount of \$1,294,550

Surplus Notes and Releases

The Settlement Agreement stated the following:

"in connection with providing security to cover the ultimate exposure of Enterprise for the future reimbursement of claims paid by ICA within Enterprise's deductible retention with respect to the insurance, Enterprise shall release IPA from any and all obligations to repay surplus notes issued by IPA to Enterprise, and IPA shall forgive repayment of a certain advance of funds made on behalf of Enterprise to reimburse such claims made by ICA."

BHC was uncertain of which surplus notes the Settlement Agreement referred. BHC previously had identified the following two notes:

- \$884,066 loan to IPA, evidenced by a 12/31/04 Surplus Note.
- \$1,480,408 loan to IPA, evidenced by a 8/22/06 Note (not a surplus note).

\$884,066 Loan to IPA

Mr. Rawls informed BHC that Enterprise had loaned IPA \$884,066, and a Note Agreement was executed between Enterprise and IPA on December 31, 2004. The amount of \$884,066 consisted of the following four payments from Enterprise to IPA:

\$ 250,000	Check # 1865 to IPA Operating Account, dated 3/31/03 from Enterprise. BHC agreed this amount to IPA's Operating Account bank statement and copy of check and check stub (noting "surplus" on the check stub).
167,033	Wire to IPA Operating Account on 5/10/04 from Enterprise. BHC agreed this amount to IPA's Operating Account bank statement.
167,033	Wire to IPA Operating Account on 6/9/04 from Enterprise (via Stone, Biber, O'Toole & Delano P.L Trust Account). BHC agreed this amount to IPA's Operating Account bank statement and wire transfer documentation.
300,000	Wire to IPA Operating Account on 3/10/04 from Enterprise. BHC agreed this amount to IPA's Operating Account bank statement and wire transfer documentation.
<u>\$ 884,066</u>	Total amount of Surplus

Mr. Kernan informed BHC that the \$884,066 was a surplus note and was still outstanding.

\$1,480,408 Loan to IPA

Enterprise stated that the \$884,066 loan to IPA was replaced by the August 22, 2006 Note Agreement in the amount of \$1,480,408, and provided the following calculation of the amount:

Loss Fund Prepayment	\$ 50,000
Premium Deposit (policy period 1)	20,000
Surplus Notes (policy period 1)	250,000
Premium Deposit (policy period 2)	13,342
Surplus Notes (policy period 2)	634,066
Surplus Notes (policy period 3)	325,000
Premium Overpayment	188,000
	<u>\$1,480,408</u>

BHC reviewed the details of the \$1,480,408, noting the amount of \$884,066 was comprised of the amounts of \$634,066 (combined total of three individual transfers of \$167,033, \$167,033, and \$300,000 identified previously in this report) and \$250,000 identified in the above table. BHC reviewed a copy of the Note Agreement for \$1,480,408 signed by Mr. Kernan. The Agreement identified Enterprise as the "Lender" and IPA as the "Borrower" and stated that the borrowed funds shall be used by IPA to:

- Conduct insurance business;
- Enable it to comply with any surplus requirement or make good any impairment or deficiency or other requirement for capital or surplus;
- Defray the reasonable expenses of its organization;
- Provide and fund to be voluntarily contributed to surplus; or
- Organize, acquire or invest in any subsidiaries or affiliated insurance companies in order to procure reinsurance or provide markets for lender.

Mr. Kernan and Mr. Rawls disagree on the classification and components of the \$1,480,408, as follows:

Mr. Rawls informed BHC that the August 22, 2006 Note Agreement for \$1,480,408 was for Enterprise's Investment in IPA. Mr. Rawls stated that the Note Agreement was signed by Enterprise and was effective, however, this was a secured note, and the security consisted of

general assets of IPA. Mr. Rawls stated that Mr. Kernan never provided Enterprise with a security agreement. BHC noted that the Note Agreement for \$1,480,408 did not include verbiage describing an "investment in IPA", but rather used the specific terms of "loan", "lender", and "borrower".

Mr. Kernan informed BHC that the \$1,480,408 note was never executed and no money was ever transferred. Mr. Kernan stated that Enterprise did not retain an "investment in IPA", but rather "loaned" IPA a total of \$1,397,066. The individual amounts comprising the \$1,397,066 are components which are also included in the 1,480,408, illustrated as follows:

	Enterprise's "Investment in IPA" (per Enterprise)	Enterprise's "Loan to IPA" (per Mr. Kernan)
Loss Fund Prepayment	\$ 50,000	
Premium Deposit (policy period 1)	20,000	
Surplus Notes (policy period 1)	250,000	\$ 250,000
Premium Deposit (policy period 2)	13,342	
Surplus Notes (policy period 2)	634,066	634,066
Surplus Notes (policy period 3)	325,000	325,000
Premium Overpayment	188,000	188,000
	\$ 1,480,408	\$ 1,397,066

BHC reviewed Enterprise's calculation of the \$1,480,408, and through examination of supporting documentation provided by ICA, including IPA bank statements and the PEO Statement of Activity spreadsheets prepared by ICA for Enterprise, has confirmed that the entire amount of \$1,480,408 had been transferred by Enterprise to ICA/IPA during the period from March 2003 to June 2005, despite Mr. Kernan's statement that no funds included in the \$1,480,408 were ever transferred.

Also included in the \$1,480,408 is a premium overpayment in the amount of \$188,000 by Enterprise to ICA due to experience refunds. Enterprise calculated a premium adjustment of \$226,480 and acknowledged that ICA had calculated an adjustment of \$188,000, leaving a disputed balance of \$38,480. ICA's records show \$188,000 as an adjustment in favor of Enterprise and it does not appear that it has been refunded to Enterprise. Therefore, it is, and should be included in both the calculation of the \$1,480,408 in funds paid by Enterprise to ICA/IPA and the calculation of funds due to Enterprise from IPA/ICA.

Mr. Kernan informed BHC that the surplus notes referred to in the Settlement Agreement referred to the \$1,397,066 "Loan to IPA" (from the above table) and Mr. Kernan and ICA provided BHC with supporting documentation, as follows:

\$ 884,066	[1]	Surplus note dated 12/31/04 (see preceding discussion).
188,000	[2]	Premium (Experience) refunds due to Enterprise (2003/2004 and 2004/2005 policy years).
325,000	[3]	Wire transfer from Enterprise to IPA operating account on 3/31/05 (additional collateral required for the policy renewal).
\$ 1,397,066		

[1] \$ 250,000 Check # 1865 to IPA Operating Account, dated 3/31/03 from Enterprise. BHC agreed this amount to IPA's Operating Account bank statement and copy of check and check stub (noting "surplus" on the check stub).

	167,033	Wire to IPA Operating Account on 5/10/04 from Enterprise. BHC agreed this amount to IPA's Operating Account bank statement.
	167,033	Wire to IPA Operating Account on 6/9/04 from Enterprise (via Stone, Biber, O'Toole & Delano P.L. Trust Account). BHC agreed this amount to IPA's Operating Account bank statement and wire transfer documentation.
	300,000	Wire to IPA Operating Account on 3/10/04 from Enterprise. BHC agreed this amount to IPA's Operating Account bank statement and wire transfer documentation.
	\$ 884,066	Total amount of Surplus
[2]	\$ 52,754.91	Policy year 2003 - 2004. BHC agreed this amount to ICA Spreadsheet of premium differences by pay period.
	135,245.27	Policy year 2004 - 2005. BHC agreed this amount to ICA Spreadsheet of premium differences by pay period.
	\$ 188,000.18	

- [3] Agreed to 3/30/05 letter from Jon Perry to Tra Rawls (Enterprise HR), referencing the enclosed Renewal Proposal for the WC policy and that as agreed, a total of \$325,000 will be needed to effectively bind coverage. BHC also agreed the amount to an online printout of account activity in the IPA Operating Account, showing an incoming wire from Enterprise on 3/31/05 for the amount of \$325,000. Mr. Kernan stated that the March 2005 transfer of \$325,000 into IPA's Operating Account was not subsequently transferred to Enterprise's trust account, as he informed BHC that "there was not a requirement to place the \$325,000 received by IPA in trust. The instructions from Enterprise accompanying the payment to IPA delineate what could be done." BHC reviewed the instructions from EnterpriseHR noting that the instructions were signed by Mr. Rawls, the transfer was identified as an "Investment in IPA", and the proceeds could be used for a number of specific reasons, including conducting insurance business and complying with any surplus requirements. BHC noted that this transfer occurred in March 2005, prior to the November 2005 Consent Order, which required collateral to be held in trust accounts.

Mr. Kernan stated that the Settlement Agreement's discussion of a "forgiveness of repayment" by IPA of "a certain advance of funds made on behalf of Enterprise to reimburse such claims made by ICA" refers to the \$657,443 advance by IPA to ICA discussed above.

Enterprise's payment of \$1,420,851.48

According to the Settlement Agreement, both parties agree that "Enterprise has paid the sum of \$1,420,851.48."

BHC was unable to determine the composition of this amount, as the Settlement Agreement stated that Enterprise had paid \$1,462,274.86. Mr. Kernan stated that he does not know how the \$1,420,851 was calculated and believes this amount is erroneous. Mr. Kernan informed BHC that Enterprise's attorneys had originally drafted the Settlement Agreement, to which Mr. Rawls disagrees, noting that ICA's attorney originally drafted the Settlement Agreement.

Despite Mr. Kernan's statement that he does not know how the \$1,420,851 was calculated, he apparently is in agreement with the amount, since he has represented to BHC that he is not aware of any current negotiations between ICA and Enterprise regarding the Proposed Settlement Agreement.

Remaining principal balance of \$1,294,550

The remaining principal balance of \$1,294,550, referred to in the Settlement Agreement is calculated as follows:

\$ 1,420,851	Funds paid by Enterprise to ICA for reimbursement of claims and expenses (see above).
(126,302)	Reimbursements of claims payments and expenses from September 2006 through January 2007 accrued and owed to ICA.
\$ 1,294,550	Amount of the principal balance remaining in trust after the execution of the Settlement Agreement.

BHC has agreed the amount of \$126,302 to specific invoices from September 2006 through January 2007. As discussed previously in this report, Enterprise's trust account balance was increased in February and March 2007 to reflect this amount of \$1,294,550.

ICA's calculation of \$837,996

The Settlement Agreement identifies an amount of \$837,996 as the "ultimate policyholder exposure" for Enterprise future claims and expenses. BHC asked ICA how this number was calculated and ICA informed BHC that this was an internally-calculated amount based on a number of factors, including loss development factors used by the National Council on Compensation Insurance (NCCI), and ICA's calculation of ultimate loss exposure, less amounts paid for claims and administrative fees since policy inception. ICA provided BHC with supporting documentation for this calculation, and a summary is presented in the following table:

Selected Ultimate Loss & ALAE (Policyholder Layer)	\$ 3,053,155
Less: Claims reimbursed to ICA (Policy Inception through 12/31/06)	(2,215,159)
Collateral required for policy years	<u>\$ 837,996</u>

BHC reviewed the supporting documentation and ICA's calculations and concludes that the amount of collateral required appears reasonable.

Mr. Kernan stated that a transfer was made by IPA to Enterprise's trust account on February 28, 2007 in the amount of \$675,069.05, to increase the trust account balance to an amount equal the ultimate exposure of \$837,996.

The transfer of \$456,553 from ICA to Enterprise's trust account is discussed in the next section of this report. BHC noted that the trust account balance at March 5, 2007 of \$1,294,549 is equal to the remaining principal amount expected to be in the trust account after the execution of the Settlement Agreement, as discussed earlier in this report.

ICA's calculation of \$456,553

The Settlement Agreement identifies an amount of \$456,553 as an amount owed to Enterprise by ICA. BHC asked ICA how this number was calculated and Mr. Kernan informed BHC that this represents a premium adjustment for all Enterprise's policy years due to certain experience modification credits. This amount was transferred by ICA to Enterprise's trust account on March 5, 2007. ICA provided BHC with supporting documentation for the calculation of this amount consisting of the amount of actual premiums received, a recalculation of revised premiums totaled by job code classifications, and the resulting difference of \$456,553 owed to Enterprise. Mr. Kernan stated that if OIR agrees with ICA's calculated ultimate exposure of \$837,996, and approves the Settlement Agreement with a trust account balance not to exceed \$837,996, ICA would return the \$456,553 to Enterprise upon execution of the Settlement Agreement.

Enterprise's remaining obligation

Mr. Kernan stated that despite all the provisions in the Proposed Settlement Agreement for "releases" and "forgiveness", and despite whether the Settlement Agreement is approved, Enterprise is obligated and expected to continue to reimburse ICA for claims and administrative fees paid by ICA f/b/o Enterprise.

Summary of Total Payments by Enterprise to ICA/IPA

Following BHC's conversation with Mr. Rawls, Enterprise provided BHC with a schedule summarizing the total payments made by Enterprise to ICA/IPA in the categories of premiums, claims & claims expenses, collateral, and miscellaneous deposits. BHC reviewed supporting documents received from ICA for amounts paid by Enterprise to ICA/IPA and compared these results to the schedule provided by Enterprise. BHC's results and additional comments are shown in the following table:

PAYMENTS FROM ENTERPRISE TO ICA

	<u>Per Enterprise</u>		<u>Per ICA</u>	<u>Variance</u>	<u>Variance %</u>
Premiums					
Policy Period 4/8/03 - 4/8/04	\$ 635,227				
Policy Period 4/8/04 - 4/8/05	1,942,183				
Policy Period 4/8/05 - 8/1/05 (cancellation date)	493,578				
Total Premiums	<u>3,070,988</u>		<u>\$ 3,070,888</u>	<u>\$ 100</u>	<u>0.00%</u>
Claims & Claims Fees					
Period 1/1/03 - 12/31/03	37,196				
Period 1/1/04 - 12/31/04	394,309				
Period 1/1/05 - 12/31/05	175,257				
Period 1/1/06 - 12/31/06	1,537,129				
Period 1/1/07 - 3/31/07	126,102	[1]			
Total Claims & Claims Fees	<u>2,269,993</u>		<u>2,341,261</u>	<u>[1] (71,267)</u>	<u>-3.14%</u>
Collateral					
Policy Period 4/8/03 - 4/8/04	250,000	[2]	250,000	-	0.00%
Policy Period 4/8/04 - 4/8/05	634,066	[2]	634,066	-	0.00%
Policy Period 4/8/05 - 8/1/05 (cancellation date)	325,000	[3]	325,000	-	0.00%
Total Collateral	<u>1,209,066</u>		<u>1,209,066</u>	<u>-</u>	<u>0.00%</u>
Miscellaneous Deposits					
Loss Fund Deposit (Policy period 3)	50,000	[4]	50,000	-	0.00%
Premium Deposit (Policy period 3)	20,000	[4]	20,000	-	0.00%
Premium Deposit (Policy period 4)	13,342	[4]	13,342	-	0.00%
Total Miscellaneous Deposits	<u>83,342</u>		<u>83,342</u>	<u>-</u>	<u>0.00%</u>
TOTAL PAYMENTS TO ICA/IPA	<u>\$ 6,633,389</u>		<u>\$ 6,704,556</u>	<u>\$ (71,167)</u>	<u>-1.07%</u>

- [1] This amount was settled according to the provisions of the Proposed Settlement Agreement. Per the agreement, ICA will deposit into Enterprise's trust account the amount of \$1,420,851, which represents amounts paid by Enterprise. After the execution of the Settlement Agreement, ICA shall be entitled to withdraw from the amount deposited into the trust account the sum of \$126,302 (\$126,102 for claims reimbursement and \$200 for claims administrative fees). The Settlement Agreement notes that the remaining balance in the trust account would be \$1,294,549. This amount agrees to the actual balance in Enterprise's trust account on March 5, 2007 (see table in next section of this memorandum). Therefore, it is clear that ICA has funded the trust account with the net amount as specified in the Settlement Agreement, and therefore, giving consideration of the amount "paid" by Enterprise of \$126,102. The total claims and claims fees paid by Enterprise per ICA in this table are \$2,341,261 (\$2,215,159 per ICA's records plus the \$126,102 settlement of claims according to the Settlement Agreement).
- [2] The sum of these two amounts is \$884,066, the amount of Enterprise's 12/31/04 loan to IPA. BHC reviewed a copy of the Note Agreement for that loan, signed by Mr. Kernan on behalf of IPA. These amounts are also included in the 8/22/06 Note Agreement for Enterprise's \$1,480,408 investment in IPA, discussed above.
- [3] This amount was for additional collateral due by Enterprise to ICA upon the renewal of Enterprise's policy in April 2005. BHC reviewed bank statement documentation for the transfer and a copy of the letter requesting the additional funds by ICA to Enterprise.
- [4] Amount agreed to the PEO Statement of Activity spreadsheet for Enterprise, prepared by ICA.

BHC concludes that the difference of 1.07% is immaterial, and Enterprise and ICA essentially agree on the amount and classification of amounts that Enterprise has paid to ICA/IPA.

Enterprise Funds Held as Collateral by ICA

As demonstrated in the above table, Enterprise and ICA agree that Enterprise has paid total collateral to ICA in the amount of \$1,209,066. Enterprise alleged that ICA failed to hold approximately \$1,500,000 in trust accounts or letters or credit, thus violating Florida Statutes.

The Enterprise trust account held \$162,263 as of January 31, 2007. On February 28, 2007, IPA transferred \$675,069 to the Enterprise trust account and on March 5, 2007, ICA transferred \$456,553 to the Enterprise trust account. The balance in the Enterprise trust account on March 5, 2007 was \$1,294,549 (the amount specified in the Settlement Agreement).

As of March 31, 2007, ICA is holding \$86,360 in trust more than Enterprise's calculation of \$1,209,066 in total collateral paid to ICA. If Enterprise's total collateral paid amount of \$1,209,066 is added to Enterprise's total miscellaneous deposits paid to ICA in the amount of \$83,342 (see table on previous page), the resulting total amount paid to ICA for collateral and miscellaneous deposits is \$1,292,408, or \$3,018 less than the amount of Enterprise's trust account of \$1,295,426 as of March 31, 2007.

BHC concludes that ICA has now funded the Enterprise trust account with an amount that exceeds Enterprise's total collateral payments to ICA.

Violation of the Consent Order: Transfers to the Enterprise trust account to comply with the November 30, 2005 Consent Order occurred in February and March 2007. BHC considers the delay in transferring the funds to Enterprise's collateral trust account to be a violation of the Consent Order.

SUBSEQUENT EVENTS

On October 31, 2008, IPA Acquisitions, Inc. ("IPA"), the parent company of ICA, entered a stock purchase agreement ("SPA") with First Florida Equity Holdings, Inc. ("First Florida"). The SPA memorialized, among other things, IPA's agreement to sell the stock of ICA to First Florida under certain terms and conditions. In accordance with §628.461, Florida Statutes, First Florida submitted an application to acquire the stock of ICA ("Application") to the Florida Office of Insurance Regulation ("Office"). The Office approved the Application based on certain factors pertaining to the future operations of ICA in Florida, which included First Florida's plans to have ICA: (i) operate under new directors and officers, (ii) emphasize the writing of surety products, (iii) write a reduced amount of worker's compensation insurance premiums compared to ICA's writings in recent years, and (iv) not make worker's compensation insurance products available in the PEO market in Florida. The Office considers these modifications to ICA's proposed operations, coupled with steps ICA has taken in respect to this and other reports, to be material and beneficial to the future operations of ICA in Florida. First Florida and IPA subsequently closed the SPA, effective May 20, 2009. As the new owner of ICA, First Florida replaced the previous directors of ICA with new board members. ICA's new board of directors has appointed new officers to replace the previous officers of ICA.

EXAMINATION REPORT SUBMISSION

The courtesy and cooperation of the officers and employees of the Company during the examination are acknowledged.