

**FLORIDA DEPARTMENT
OF
FINANCIAL SERVICES**

**OFFICE OF INSURANCE REGULATION
BUREAU OF MARKET INVESTIGATIONS**

TARGET MARKET CONDUCT EXAMINATION REPORT

OF

INSURANCE COMPANY OF THE AMERICAS

AS OF

April 9, 2004

**NAIC COMPANY CODE: 33030
NAIC GROUP CODE: 3384**

EXAMINER:

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Filed Date: 01/28/2005

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PURPOSE AND SCOPE OF EXAMINATION

Under authorization of the Florida Department of Financial Services, Office of Insurance Regulation, Bureau of Market Investigations, pursuant to Section 624.3161, Florida Statutes, a target market conduct examination of Insurance Company of the Americas (Company) was performed by Victor M. Negron, AIE, FLMI, independent contractor. The scope of this examination was January 1, 2003 through March 26, 2004. The examination began March 8, 2004 and ended April 9, 2004.

The purpose of this examination was to determine whether the Company was in full compliance with its Market and Operations Plan as agreed to in Consent Order Number 61900-02-CO and 65067-02-CO issued by the Florida Department of Financial Services, Office of Insurance Regulation (Office) and to verify compliance with Florida Statutes. The Company records were examined at its administrative office located at 1310 Utica Street, Oriskany, New York.

In reviewing materials for this report, the examiner relied primarily on records maintained by the Company. The examination included, but was not limited to, a review of the Company's Market and Operations Plan and workers' compensation policies. The examination report is a report by exception. As a result, files or material reviewed containing no improprieties by the Company have been omitted from the examination report. Procedures and conduct of the examination were in accordance with the Market Conduct Examiner's Handbook produced by the National Association of Insurance Commissioners.

REVIEW OF MARKET AND OPERATIONS PLAN

Insurance Company of the Americas is a domestic property and casualty insurer licensed to conduct business in the State of Florida. The Company provides workers' compensation insurance mainly for Professional Employer Leasing Organizations (PEO's). The Company was acquired by IPA Acquisitions, Inc. in 2002, and as part of its application process with the Office, formerly known as Florida Department of Insurance, the Company submitted a Plan of Operation and supporting documents, which included a Market and Operations Plan. The Consent Orders issued authorized IPA Holdings, Inc. to acquire the Company and reinstated the Company's Certificate of Authority. The Consent Orders also required prior approval from the Office before any deviations from said plan and supporting documents could be made.

This examination included, but was not limited to, review of filed rates, rules and forms, and to the following subjects included in the original Market and Operations Plan: risk acceptance criteria, procedures after acceptance, policyholder review program and renewal review. In addition, agreements between the Company and PEO's were reviewed. Compliance with Certificate of Authority requirements for states other than Florida where the Company has exposure was also reviewed.

Findings

The Company has written eighteen (18) master policies issued to PEO's. These master policies provide coverage to 6,291 certificate holders.

Ten (10) policies were reviewed. These policies provide coverage to 4,736 certificate holders. Forty-one (41) certificates were reviewed.

One hundred sixty (160) errors were found.

The errors are divided into three (3) categories:

- A violation due to the Company changing the Market and Operations Plan without filing for approval before implementing;
- Errors due to the Company not following the Plan; and,
- Other errors.

The following violation was due to Market and Operations Plan changes without filing for approval before implementation.

1. A violation was due to failure to follow the terms of Consent Order 65067-02-CO. The Consent Order states in Section 13; "ICA shall comply with its Plan of Operation and supporting documents as submitted with the application. Prior written approval shall be secured from the DEPARTMENT before any deviation from said plan and supporting documents." This constitutes a violation of Section 624.418, Florida Statutes.

Corrective Action: The Company has been requested to file with the Office the revised Market and Operations Plan. Prior to issuance of the report, the Company filed the revised Plan with the Bureau of Property and Casualty Insurer Solvency.

The following errors were due to the Company not following the Market and Operations Plan:

2. Four (4) errors were due to failure to follow the requirements of a Consent Order. This constitutes a violation of Section 624.418, Florida Statutes. These errors were due to issuing policies to unlicensed PEO's. The Company's Market and Operations Plan eligibility requirements require that the PEO purchasing insurance be licensed.

Corrective Action: The Company was requested to establish procedures to obtain evidence that a PEO is licensed when writing new business.

3. Six (6) errors were due to failure to follow the requirements of a Consent Order. This constitutes a violation of Section 624.418, Florida Statutes. These errors were due to failure to secure a financial guarantee. The Company's Market and Operations Plan eligibility requirements state that the Company shall secure a minimum \$250,000 financial guarantee from the PEO.

Corrective Action: The Company was requested to establish procedures to secure a minimum \$250,000 financial guarantee on all policies issued to PEO's.

4. Four (4) errors were due to use of an unacceptable financial guarantee. This constitutes a violation of Section 628.271(2), Florida Statutes. The funds are held by the parent company and should be held by this Company.

Corrective Action: The Company must establish a new method of securing the financial guarantee and file it with the Office.

The following errors were outside the plan:

5. One hundred five (105) errors were due to writing business without a Certificate of Authority. This constitutes a violation of Section 628.291, Florida Statutes. The Company wrote business in states that they do not hold a Certificate of Authority. Four policies had locations in the following states: North Carolina (3 locations), Pennsylvania (3), Alabama (67), Louisiana (2), Illinois (16), Colorado (1), Idaho (1), Mississippi (7), Maryland (1), California (1), and New York (3).

Corrective Action: The Company has been requested to discontinue this practice and provide a written corrective action plan describing how the Company will avoid accepting locations in states where they are not licensed.

6. Ten (10) errors were due to failure to obtain a signed and notarized application. This constitutes a violation of Rule 69O-189.003, Florida Administrative Code. None of the files reviewed contained a signed and notarized application.

Corrective Action: The Company has been requested to establish procedures to obtain a signed and notarized application from all PEO's.

7. Ten (10) errors were due to failure to comply with unfair trade practices requirements. This constitutes a violation of Section 626.9541 (1)(h)(1)(a), Florida Statutes. These errors were due to the Company making contracts or side agreements as to such contract other than as plainly expressed in the insurance contract.

Corrective Action: The Company has been requested to file side contracts or agreements for approval as endorsements to the contract. The Company advised that it would revise the agreements to remove any references to matters that should be part of the policy language, including endorsements, and will include such language in the revised deductible endorsement.

8. Ten (10) errors were due to the use of an unfiled deductible endorsement. This constitutes a violation of Section 627.410, Florida Statutes. These errors were due to the Company using a modified form that is not identical to the filed and approved form. The Company advised that it would file a revised deductible endorsement form.

Corrective Action: The Company has been requested to discontinue using the unfiled form until such time as it has been filed and approved.

9. Ten (10) errors were due to the use of an unfiled rate. This constitutes a violation of Section 627.091, Florida Statutes. The PEO/Insurer agreement states that the PEO will pay the insurer for its cost of reinsurance excess premium.

Corrective Action: The Company has been requested to amend its filing to include reimbursement for its cost of reinsurance excess premium. The Company advised that it will file an amendment to its filing.

CORRECTIVE ACTION PLAN

When the Company follows its Market and Operations Plan, the Company will be in compliance with Florida Statutes, correcting three (3) of the violations noted.

When the Company follows its filed rules and rates, uses only those forms that have been filed, the Company will be in compliance with Florida Statutes, correcting five (5) violations noted.

In order to do this, the following actions must be accomplished.

1. The Company shall establish procedures to avoid accepting business in states where it is not licensed.
2. The Company shall establish procedures to obtain signed/notarized applications from all PEOs.
3. The Company shall establish procedures to obtain evidence that a PEO is licensed when writing new business.
4. The Company shall establish procedures to secure a minimum \$250,000 financial guarantee on all policies issued to PEOs.
5. The Company shall establish a new method of constructing financial guarantees and file it with the Office for approval.
6. The Company shall file side contracts or agreements for approval as endorsements to the contract.
7. The Company shall discontinue using the unfiled deductible endorsement until such time as it has been filed and approved.
8. The Company shall amend its rate filing to include reimbursement for its cost of reinsurance excess premium.

The Company is requested to submit to the Office, a written Corrective Action Plan, certified by an officer of the Company, within 30 days of receipt of this examination report. The Plan is to confirm implementation of corrective action in the items above.

EXAMINATION REPORT SUBMISSION

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

The undersigned examiner conducted the examination and prepared the draft report.

Respectfully submitted,

Victor M. Negron, AIE, FLMI

Independent Market Conduct Examiner