

Florida -- Fla. Moves to Seize Carrier After Owner's Indictment: *Top* [07/28/08]

Florida regulators have moved to seize control of Insurance Company of the Americas (ICA), alleging that indicted owner James M. Kernan engaged in an illegal transfer of the workers' compensation carriers' stock and voted himself an illegal dividend of nearly \$1.7 million during the fourth quarter of 2007.

The Florida Department of Financial Services made the allegations in a petition for rehabilitation of the Bradenton, Fla.-based carrier filed in Leon County Circuit Court in Tallahassee on July 10.

For the first time, the petition ties Florida's ongoing review of the Bradenton-based workers' compensation carrier to events following the federal indictments of Kernan and associate Robert J. "Skip" Anderson in New York on Jan. 30. That indictment involves Oriska Insurance Co., a sister carrier based in Oriskany, N.Y.

As a result of the indictment on charges related to workers' compensation policies Oriska sold to professional employer organizations (PEOs) between 2001 and 2005, Kernan stepped down in early February from his management roles at ICA and Oriska.

Patrick Lynch, president of First Indemnity of America Insurance Co., was named president of both companies until Kernan resolved the criminal charges, according to the Department of Financial Services petition.

The indictment surfaced during an ongoing review of ICA by Florida regulators dating back to their decision to ban the carrier from writing new business in Florida in 2005.

The indictment triggered a series of conversations among Lynch, Kernan and the Florida Office of Insurance Regulation (OIR) intended to resolve ICA's financial problems in the wake of Kernan's indictment.

On July 10, regulators detailed a series of developments surrounding the time of Kernan's indictment they said convinced them Kernan's company should be placed in receivership:

- A multistate examination report issued in December 2007 showed that some of the claims owed by ICA were maintained in an "off-general ledger and balance sheet account" that distorted the financial picture Kernan had presented to OIR by hiding some of ICA's liabilities.
- A 2007 annual report on the company received by OIR in 2008 showed that Kernan had declared a dividend of \$1,658,890 in violation of a state law requiring approval by OIR of such dividends. Kernan was the sole shareholder.
- On April 15, 2008, Kernan transferred his shares – all of the shares in the carrier – to a voting trust in violation of Florida law mandating OIR review and approval of such transfers.

On the same day Florida regulators filed the petition, Circuit Judge P. Kevin Davey ordered ICA to appear at a hearing on Sept. 3 and show cause why it should not be placed into rehabilitation.

Davey said the carrier had met at least one of four conditions allowing a state takeover under Florida law:

- It is in such a financial condition or is using or has been subject to using methods or practices that would make further insurance operations a hazard to policyholders, creditors, stockholders or the public.
- It willfully failed to submit documents for inspection by OIR.
- It transferred or attempted to transfer "substantially its entire property or business" to another insurer or other entity or has entered into a transaction that would merge its property or business with another entity without state permission.
- It willfully violated Florida law.

Davey also ordered ICA not to destroy or remove records from the company and warned that it must cooperate fully with the Florida investigation.

The petition also details the involvement of Anderson, a convicted felon, with Kernan's operations dating back to the 2002 acquisition of ICA by Kernan's holding company, IPA Acquisitions.

The petition identifies Anderson as a potential investor in the ICA deal, but said Kernan assured OIR that Anderson, a convicted felon, would have no involvement with the carrier.

Last Thursday, Anderson pleaded guilty to charges of conspiracy to commit mail and wire fraud and involvement in the insurance industry by a convicted felon as part of an ongoing federal investigation of Oriska and agreed to help the Justice Department with the case.

The grand jury in New York alleged Kernan and Anderson conspired to collect millions of dollars in premiums from PEOs based on false assurances that Oriska was licensed to write workers' compensation insurance in California and other states where it was not authorized to do business.

Kernan was further charged with lying to New York regulators about Oriska's financial condition and its premium volume. He has pleaded not guilty to the federal charges and is set to begin trial in Syracuse on Aug. 18.

Anderson was charged with being involved with an insurance operation as a convicted felon, stemming from his 1996 federal conviction for bank fraud and bankruptcy fraud stemming from false statements he made to obtain a loan for PEOs he ran in California.

Attorneys for both Anderson and Kernan did not return telephone calls last week.

Tom Zutell, deputy communications director for OIR, said Friday the criminal

case and ongoing questions by Florida regulators about the financial condition of ICA all may figure into the state's argument that it should assume control of the carrier.

"I think it's a synthesis of many things – financial as well as other business dealings – that are woven throughout those items and have created the need for an investigation and an ultimate order to show cause," Zutell said Friday.

Florida regulators signed a consent order with Kernan on behalf of ICA on Nov. 25, 2005, that called for the carrier to stop writing new business until it had resolved a series of financial troubles dating back to 2003.

As of Dec. 31, 2003, Florida examiners found ICA's loss and loss-adjustment expense reserves deficient by a little more than \$7 million. Regulators also alleged ICA's collateral for the credit risk associated with its large-deductible policies was deficient by \$12 million for the period.

A year later, examiners in McCarty's office reported ICA's reserves were still deficient by \$4 million and the deficiency for its collateral backing large-deductible policies had jumped to \$16 million.

McCarty warned in the 2005 consent decree that ICA was in "hazardous financial condition" and ordered the carrier to immediately cease writing new business in Florida.

Financial records filed as part of a 2006 market examination show its financial troubles hadn't ended by June 30, 2006, when it posted underwriting losses of \$869,288 for the first six months of the year.

The 2006 report put total liabilities for ICA at \$47.1 million.

A spokeswoman for ICA in New York said she would refer questions about the Florida actions to the carriers' chief operating officer. The company had not responded by late Friday.

A copy of the show-cause order is at <http://www.workcompcentral.com/pdf/2008/misc/ICAShowCause.pdf>.