

INSURANCE COMPANY OF THE AMERICAS in LIQUIDATION
INSOLVENCY REPORT
(Date)

Prepared by:

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Name of Receivership: Insurance Company of the Americas (“ICA”)
Receivership Number: 551
Date of Liquidation: January 19, 2018
Circuit Court Case Number: 2018 CA 00125

Scope of this Report:

Pursuant to Florida Statutes Section 631.398(3), the Department of Financial Services (“the Department”) is required to prepare a summary report containing such information as is in its possession relating to the history and causes of insolvency, including a statement of the business practices of such insurer which led to such insolvency.

This Report will be greatly limited by two main factors: a) ICA was in runoff when it was referred to the Department for receivership proceedings, and b) there were no records of any import, there were no employees, and the two remaining officers provided only limited and possibly unreliable information to the Department.

Background of the Business:

ICA was incorporated in 1976 in Florida. IPA Acquisitions, Inc., which was 100% owned by James Kernan, acquired ICA in 2002. ICA’s primary line of business was workers’ compensation coverage. It operated in Oriskany, New York for many years. James Kernan was indicted in January, 2008, for fraudulently marketing unlawful and invalid worker’s compensation policies and inducing PEO’s to pay premiums to a related business that was not licensed to write insurance. ICA’s license was then suspended in Florida.

In February, 2008, ICA was referred to the Department by the Florida Office of Insurance Regulation for receivership proceedings. A Consent Order was entered into between ICA and OIR in which ICA agreed to cease writing new and renewal policies and agreed to continue administering the claims on its existing policies. In 2009, First Florida Equity Holding, Inc., a company owned by Gary Hirst, acquired ICA from IPA. No cash was paid for the book of business, so there was no increase in assets at the time ICA was acquired.

In April 2011, OIR advised ICA that the ICA Certificate of Authority had expired since no steps had been taken to reinstate it following the 2008 suspension and ICA failed to redomesticate in another state. OIR permitted ICA to remain in runoff and administer the claims until ICA was referred to the Department for receivership proceedings in January, 2018. In the meantime, in 2015, federal fraud charges were filed against Gary Hirst, and he was convicted of wire and securities fraud on September 28, 2016. Ricardo Rios, who had been with ICA since its operations commenced in New York, was promoted to CEO. Rios moved to Arizona and ran the financial end of the company from that state. Hirst was discharged by the Board of Directors following his conviction. In August 2017, Hirst was sentenced to 6 ½ years in prison. Julia Kean handled the claims aspect of ICA from Lake Mary, Florida throughout this time. During the remaining years of ICA’s existence, the statutory deposits in various states were

collected and used to fund questionable payments to other Hirst companies, as well as to fund payments for credit card charges, travel, and claims payments.

Geographic Areas:

At the time of liquidation, ICA appeared to be licensed in the following states, in addition to Florida: California, Delaware, Georgia, Indiana, Iowa, Kansas, Nebraska, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Texas, and Wisconsin. The Department made efforts to surrender the licenses in these states.

Ownership and Affiliates:

Just prior to liquidation, Ricardo Rios was the President, Treasurer, Chairman and a Director. He was placed in charge of all of the financial and technical aspects of the company as of September 28, 2016. Julia Kean was the Secretary and a Director. The two remaining directors were John Greenwood and Matthew Nordgren.

First Florida Equity Holdings, Inc. is owned by Allied Provident Insurance, Inc., which is owned by Amalphis Group, Inc. and Zasis, LLC. Zasis, a now-dissolved Nevada entity, and FFEH, are or were controlled by Gary Hirst.

Events of Impact:

On November 8, 2017, ICA asked OIR to be put in Administrative Supervision. As a basis for the request, ICA indicated that it lacked sufficient cash to pay claims without accessing funds held as collateral by the Department of Financial Services' Bureau of Collateral Management. Further, ICA's October 2017 monthly statement was filed approximately two weeks late. It noted a reinsurance receivable of \$2,507,873 which has been contested in prolonged litigation. OIR did not consider that to be an asset available for the payment of losses and claims, and it was therefore a non-admitted asset. Another asset on the October statement, the Modern Business Associates receivable, was not collectible. Applying these two adjustments caused ICA's surplus to be calculated as negative \$601,336, rendering ICA insolvent.

ICA consented to the entry of a receivership order, and OIR referred ICA to the Department for receivership proceedings on January 9, 2018. Upon entry of the Liquidation Order on January 18, 2018, it was determined that ICA no longer had an office, hard copy records, or employees. The electronic accounting and other corporate records were shipped to Tallahassee on a hard drive.

Reinsurance:

Arbitration proceedings were held in October, 2015 against Lloyds of London seeking coverage for construction site injuries sustained by two separate claimants. The arbitrators found in favor of ICA. Lloyds filed an action in the U.S. District Court seeking to vacate the arbitration award, which the Court granted. ICA appealed to the Second Circuit Court of Appeals. That Court vacated the ruling of the District Court and remanded the case back for further proceedings. Due to resources and a lack of witnesses, the Department determined that it could not proceed further with the litigation.

Financial:

As of the March 31, 2018 Quarterly Financial Statement, total liabilities exceeded total assets by \$12,181,428.29.¹ Once all timely Proofs of Claims were received, the June 30, 2018 Financial Statement showed that figure escalated to \$23,985,023.05. Total assets were \$975,064.94. Excessive payments were seen to counsel on retainer and for unnecessary litigation, especially for a company in runoff, as well as lack of oversight by the Board of Directors for payments to employees and directors and officers. ICA did not have a Directors & Officers liability policy under which the Department could bring an action against said individuals, and there were insufficient funds available to finance such litigation without there being a policy under which to collect.

Conclusions:

Based on a review of ICA's history and business practices, the causes of ICA's insolvency appear to stem from mismanagement, lack of incoming funds due to the long runoff period, and self-dealing on the part of management.

¹ The Department's post-liquidation figures are used here due to the lack of accurate pre-receivership financial statements by ICA.