



FILED

JUN 3 2012

OFFICE OF INSURANCE REGULATION

Docketed by SP.

KEVIN M. MCCARTY
COMMISSIONER

In the matter of:

INTERNATIONAL FIDELITY & SURETY, LTD.,

**ICM GROUP a/k/a ICM Group, Inc. a/k/a
ICM Grup, LLC,**

**Case No. 79842-05-CO
UE No. 3716**

ARIE KOTLER,

and

**ROBERT THOMAS THEUS
DFS License No. A263249**

ORDER TO CEASE AND DESIST AND FOR PENALTIES AND RESTITUTION

TO:

**INTERNATIONAL FIDELITY & SURETY, LTD.
Security House
Port Vila, Vanuatu, South Pacific
P.O. Box 1214**

and

**c/o ICM Group, LLC
100 Pearl Street, 14th Floor
Hartford, Connecticut 06103;**

**ICM GROUP a/k/a ICM Group, Inc. a/k/a ICM Grup, LLC
a/k/a International Consultants & Management, Ltd.
100 Pearl Street, 14th Floor
Hartford, Connecticut 06103**

and

**One Woodward Avenue, Suite 2400
Detroit, Michigan 48226;**

ARIE KOTLER
c/o ICM Group
100 Pearl Street, 14th Floor
Hartford, Connecticut 06103;

and

ROBERT THOMAS THEUS
DFS License No. A263249
Cecil W. Powell & Company
219 North Newnan Street
Jacksonville, Florida 32202-3231

YOU ARE HEREBY NOTIFIED that pursuant to the Florida Insurance Code, including Sections 624.307, 624.317, and 626.9561, Florida Statutes, the State of Florida Office of Insurance Regulation (the "Office") has caused an investigation to be made of the insurance-related activities of Arie Kotler ("Kotler"), International Fidelity & Surety, Ltd. ("IFS"), Robert Thomas Theus ("Theus"), and ICM Group a/k/a ICM Group, Inc. a/k/a ICM Grup, LLC a/k/a International Consultants & Management, Ltd. (collectively, "ICM") that pursuant to Sections 626.909, 626.910, 626.9571 and 626.9581, Florida Statutes, the Office intends to enter a Final Order requiring Kotler, IFS, Theus, and ICM to cease and desist from engaging in the business of insurance in the State of Florida and requiring Kotler, IFS, Theus, and ICM to pay fines, as set forth in Sections 626.910 and 624.4211, Florida Statutes, and requiring IFS and ICM to pay restitution of premiums as set forth in Section 624.4211, Florida Statutes. As grounds therefore, the Office alleges that:

GENERAL ALLEGATIONS:

1. The Office has jurisdiction over the parties and the subject pursuant to Sections 120.569, 624.307, 624.310, 624.317, 626.901, 626.902, 626.906, 626.907,

626.909, 626.9561, 626.9571 and 626.9581, Florida Statutes.

2. Kotler is an individual whose last known address is ICM Group, 100 Pearl Street, 14th Floor, Hartford, Connecticut 06103, who has acted in the State of Florida as the agent or representative of ICM and IFS during July of 2002, in the sale of a performance bond, a labor and material bond, and a guaranty policy to a Florida resident.

3. Kotler was never authorized or appointed to engage in the business of insurance in the State of Florida.

4. IFS is a foreign corporation never authorized to engage in the business of insurance in the State of Florida.

5. ICM is a foreign corporation never authorized to engage in the business of insurance in the State of Florida.

6. On June 28, 2001, the former Department of Insurance, statutory predecessor to OIR through Florida Statutes §20.121, issued an Immediate Final Order to Cease and Desist against IFS and ICM ordering them to immediately cease and desist from providing insurance as unlicensed entities, the "Bonded Life Settlement Programs," in support of sales by Future First Financial Group, Inc., of Life Settlement Agreements.

7. Theus is licensed by the Florida Department of Financial Services as an insurance agent, license number A263249.

8. On July 15, 2002, as Attorney-in-Fact on behalf of IFS and ICM, Kotler personally executed a Performance Bond as to Cameo Development Corporation of Gainesville, Florida, as principal, for a construction project in Tallahassee, Florida (the

"Appleyard Project"), see exhibit 1 attached.

9. On July 15, 2002, as Attorney-in-Fact on behalf of IFS and ICM, Kotler personally executed a Labor and Material Payment Bond as to Cameo Development Corporation of Gainesville, Florida, as principal, for the Appleyard Project in Tallahassee, Florida, see exhibit 2 attached.

10. During July of 2002, as Managing Director of ICM, Kotler personally executed a Guaranty policy, in favor of Wachovia Bank, N.A., whose office is in Miami, Florida, and Boardwalk at Appleyard, LLC, whose principal office is in Gainesville, Florida, for the Appleyard Project in Tallahassee, Florida, see exhibit 3 attached.

11. While licensed as an insurance agent by the Florida Department of Financial Services, Theus facilitated the purchase of the performance bond referred to in paragraph 8, above, facilitated the purchase of the labor and material payment bond referred to in paragraph 9, above, and facilitated the purchase of the guaranty referred to in paragraph 10, above, by acting directly or indirectly as agent for, or by otherwise representing IFS or ICM, or both, to facilitate the transaction of insurance business of IFS or ICM, or both, in the State of Florida. However, Theus was not appointed as an agent of either IFS or ICM in accord with the requirements of the Florida Insurance Code.

12. To procure the performance bond referred to in paragraph 8, above, to procure the labor and material payment bond referred to in paragraph 9, above, and to procure the guaranty referred to in paragraph 10, above, Cameo Development Corporation paid IFS and ICM eighty-seven thousand five hundred dollars (\$87,500) in premiums, see exhibit 4 attached.

**COUNT 1, IFS AND ICM ENGAGED IN THE UNAUTHORIZED TRANSACTION OF
INSURANCE IN FLORIDA DIRECTLY OR THROUGH AN UNAUTHORIZED AGENT
OR REPRESENTATIVE, Fla. Stat. § 626.901.**

13. Paragraphs one through twelve are realleged and incorporated by this reference.

14. Section 626.901, Florida Statutes, provides:

(1) No person shall, from offices or by personnel or facilities located in this state, or in any other state or country, directly or indirectly act as agent for, or otherwise represent or aid on behalf of another, any insurer not then authorized to transact such insurance in this state in:

- (a) The solicitation, negotiation, procurement, or effectuation of insurance or annuity contracts, or renewals thereof;
- (b) The dissemination of information as to coverage or rates;
- (c) The forwarding of applications;
- (d) The delivery of policies or contracts;
- (e) The inspection of risks;
- (f) The fixing of rates;
- (g) The investigation or adjustment of claims or losses; or
- (h) The collection or forwarding of premiums;

or in any other manner represent or assist such an insurer in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed in this state.

15. Section 626.910, Florida Statutes, provides:

Any unauthorized insurer or person representing or aiding such insurer transacting insurance in this state and subject to service of process as referred to in s. 626.909 shall forfeit and pay to the state a civil penalty of not more than \$1,000 for each nonwillful violation, or not more than \$10,000 for each willful violation, of any lawful order of the office or department or any provision of this code.

16. Section 626.9581, Florida Statutes, provides:

If it is determined that the person charged has engaged in an unfair or deceptive act or practice or the unlawful transaction of insurance, the department or office shall also issue an

order requiring the violator to cease and desist from engaging in such method of competition, act, or practice or the unlawful transaction of insurance.

WHEREFORE, because Kotler, Theus, IFS and ICM solicited, negotiated, procured, or effectuated insurance for the Appleyard Project, and because IFS and ICM collected premiums from Cameo Development Corporation, directly or through their agent Theus, IFS and ICM violated Section 626.901, Florida Statutes, thus entitling the Office to issue a cease and desist order against each of Kotler, Theus, IFS and ICM pursuant to Section 626.9581, Florida Statutes; and

WHEREFORE, because Kotler, Theus, IFS and ICM violated Section 626.901, Florida Statutes, Theus, IFS and ICM are each liable for a fine of up to \$1,000 for each such violation.

COUNT 2, IFS AND IMC FAILED TO FILE, OR SEEK APPROVAL OF FORMS OR RATES, Fla. Stat. §§627.062 and 627.410.

17. Paragraphs one through twelve are realleged and incorporated by this reference.

18. Section 627.410, Florida Statutes, requires:

(1) No basic insurance policy or annuity contract form, or application form where written application is required and is to be made a part of the policy or contract, or group certificates issued under a master contract delivered in this state, or printed rider or endorsement form or form of renewal certificate, shall be delivered or issued for delivery in this state, unless the form has been filed with the office by or in behalf of the insurer which proposes to use such form and has been approved by the office.

19. Section 627.062, Florida Statutes, requires:

(2) As to all such classes of insurance:

(a) Insurers or rating organizations shall establish and use rates, rating schedules, or rating manuals to allow the insurer a reasonable rate of return on such classes of insurance written in this state. A copy of rates, rating schedules, rating manuals, premium credits or discount schedules, and surcharge schedules, and changes thereto, shall be filed with the office under one of the following procedures:

1. If the filing is made at least 90 days before the proposed effective date and the filing is not implemented during the office's review of the filing and any proceeding and judicial review, then such filing shall be considered a "file and use" filing. In such case, the office shall finalize its review by issuance of a notice of intent to approve or a notice of intent to disapprove within 90 days after receipt of the filing. The notice of intent to approve and the notice of intent to disapprove constitute agency action for purposes of the Administrative Procedure Act. Requests for supporting information, requests for mathematical or mechanical corrections, or notification to the insurer by the office of its preliminary findings shall not toll the 90-day period during any such proceedings and subsequent judicial review. The rate shall be deemed approved if the office does not issue a notice of intent to approve or a notice of intent to disapprove within 90 days after receipt of the filing.

2. If the filing is not made in accordance with the provisions of subparagraph 1., such filing shall be made as soon as practicable, but no later than 30 days after the effective date, and shall be considered a "use and file" filing. An insurer making a "use and file" filing is potentially subject to an order by the office to return to policyholders portions of rates found to be excessive, as provided in paragraph (h).

20. Section 624.4211, Florida Statutes, specifies:

(1) If the office finds that one or more grounds exist for the discretionary revocation or suspension of a certificate of authority issued under this chapter, the office may, in lieu of such revocation or suspension, impose a fine upon the insurer.

(2) With respect to any nonwillful violation, such fine shall not exceed \$2,500 per violation. In no event shall such fine exceed an aggregate amount of \$10,000 for all nonwillful violations arising out of the same action. When an insurer

discovers a nonwillful violation, the insurer shall correct the violation and, if restitution is due, make restitution to all affected persons. Such restitution shall include interest at 12 percent per year from either the date of the violation or the date of inception of the affected person's policy, at the insurer's option. The restitution may be a credit against future premiums due provided that the interest shall accumulate until the premiums are due. If the amount of restitution due to any person is \$50 or more and the insurer wishes to credit it against future premiums, it shall notify such person that she or he may receive a check instead of a credit. If the credit is on a policy which is not renewed, the insurer shall pay the restitution to the person to whom it is due.

21. Despite having been engaged in the business of insurance in Florida, neither IFS nor ICM has filed either forms or rates with the Office.

22. Section 624.418, Florida Statutes, provides:

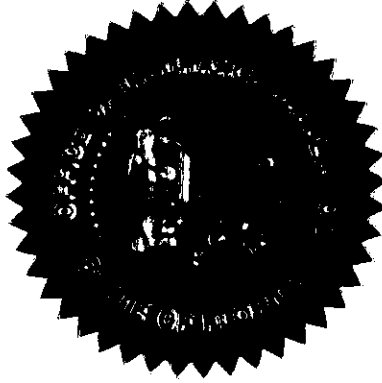
- (2) The office may, in its discretion, suspend or revoke the certificate of authority of an insurer if it finds that the insurer:
 - (a) Has violated any lawful order or rule of the office or commission or any provision of this code.

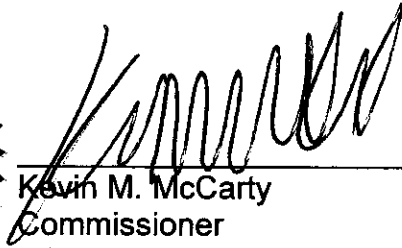
23. When IFS and ICM issued the performance bond referred to in paragraph 8, above, issued the labor and material payment bond referred to in paragraph 9, above, and issued the guaranty referred to in paragraph 10, above, both IFS and ICM conducted the business of an insurer in Florida, using unapproved forms and rates. Thus both IFS and ICM have violated Sections 627.410 and 627.062, Florida Statutes, entitling the Office to fine IFS and ICM pursuant to Sections 624.418 and 624.4211, Florida Statutes, and to order restitution of premiums paid.

WHEREFORE, because IFS and ICM each issued a performance bond, a labor and materials bond and a guaranty in the State of Florida to Florida residents for which both forms and rates were not approved as provided by Florida law, the Office is entitled

to fine each of IFS and ICM pursuant to Section 624.4211, Florida Statutes, and to order restitution of premiums paid.

DONE and ORDERED this 3RD day of JUNE 2005.





Kevin M. McCarty
Commissioner
Office of Insurance Regulation

NOTICE OF RIGHTS

Pursuant to Sections 120.569 and 120.57, Florida Statutes and Rule Chapters 28-106 and 28-107, Florida Administrative Code (F.A.C.), you have a right to request a proceeding to contest this action by the Office of Insurance Regulation (hereinafter the "Office"). You may request a proceeding by filing a Petition. Your Petition for a proceeding must be in writing and must be filed with the General Counsel acting as the Agency Clerk, Office of Insurance Regulation. If served by U.S. Mail the Petition should be addressed to the Florida Office of Insurance Regulation at 612 Larson Building, Tallahassee, Florida 32399-4206. If Express Mail or hand-delivery is utilized, the Petition should be delivered to 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0300. The written Petition must be received by, and filed in the Office no later than 5:00 p.m. on the twenty-first (21) day after your receipt of this notice. Unless your Petition challenging this action is received by the Office within twenty-one (21) days from the date of the receipt of this notice, the right to a proceeding shall be deemed waived. Mailing the response on the twenty-first day will not preserve your right to a hearing.

If a proceeding is requested and there is no dispute of material fact the provisions of Section 120.57(2), Florida Statutes would apply. In this regard you may submit oral or written evidence in opposition to the action taken by this agency or a written statement challenging the grounds upon which the agency has relied. While a hearing is normally not required in the absence of a dispute of fact, if you feel that a hearing is necessary one will be conducted in Tallahassee, Florida or by telephonic conference call upon your request.

If you dispute material facts which are the basis for this agency's action you may request a formal adversarial proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes. If you request this type of proceeding, the request must comply with all of the requirements of Rule Chapter 28-106.201, F.A.C., must demonstrate that your substantial interests have been affected by this agency's action, and contain:

- a) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- b) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- c) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action; and
- d) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

These proceedings are held before a State hearing officer of the Division of Administrative Hearings. Unless the majority of witnesses are located elsewhere the Office will request that the hearing be conducted in Tallahassee.

In some instances you may have additional statutory rights than the ones described herein.

Failure to follow the procedure outlined with regard to your response to this notice may result in the request being denied. Any request for administrative proceeding received prior to the date of this notice shall be deemed abandoned unless timely renewed in compliance with the guidelines as set out above.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order to Cease and Desist and for Penalties and Restitution has been served by certified mail, return receipt requested on:

INTERNATIONAL FIDELITY & SURETY, LTD.

Security House
Port Vila, Vanuatu, South Pacific
P.O. Box 1214

and
c/o ICM Group, LLC
100 Pearl Street, 14th Floor
Hartford, Connecticut 06103;


ICM GROUP a/k/a ICM Group, Inc. a/k/a ICM Grup, LLC
a/k/a International Consultants & Management, Ltd.
100 Pearl Street, 14th Floor
Hartford, Connecticut 06103

One Woodward Avenue, Suite 2400
Detroit, Michigan 48226;

ARIE KOTLER
c/o ICM Group
100 Pearl Street, 14th Floor
Hartford, Connecticut 06103;

and
ROBERT THOMAS THEUS
DFS License No. A263249
Cecil W. Powell & Company
219 North Newnan Street
Jacksonville, Florida 32202-3231

on the Chief Financial Officer of the State of Florida on the day and date indicated on the return of service, pursuant to Section 626.9571(3), Florida Statutes.


James H. Harris
Fla. Bar #817775
Office of Insurance Regulation
Division of Legal Services
200 East Gaines Street
Suite 612
Tallahassee, Florida 32399
850-413-4188
Facsimile: 850-922-2543