

**BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS**

In the Matter of International Casualty)
& Surety Co. LTD, Auckland New Zealand) Docket No. 2880-SO

SUMMARY ORDER

(Pursuant to, K.S.A. 40-214, K.S.A. 40-216, and K.S.A. 1998 Supp. 40-2,125)

Pursuant to authority granted to the Commissioner of Insurance (“Commissioner”) by K.S.A. 40-214, 40-216, 40-2,125 and in accordance with the Kansas Administrative Procedure Act (as amended), K.S.A. 77-501, *et seq.*, the Commissioner hereby makes the following findings of fact, conclusions of law, by way of this Summary Order:

Findings of Fact

1. Mr. Don Lyons, owner of Old Fort Flying Service, located in Fort Scott, Kansas, purchased aircraft insurance from Bill R. Foster, owner of Air Comp Insurance, High Point, NC effective March 13, 1997. A binder was issued for 1997, 1998, and 1999 but no policy was ever provided to Mr. Lyons. The binder indicated that coverage was bound with Aviation Underwriting Mgrs. No such insurance agency or company is licensed in Kansas. Policy # 60106947 was issued to Old Fort Flying Service, Inc. by International Casualty & Surety Co., LTD, domiciled in Auckland, New Zealand, but the policy was never delivered to Mr. Lyons.

2. Randy Burke, Ft. Scott, Kansas purchased aircraft insurance, policy #C60406918 issued by International Casualty & Surety Co., LTD, from Bill R. Foster through his agent, Robert Urbine, effective February 2, 1999.

3. George Post, Mapleton, Kansas purchased aircraft insurance # C60406092 issued by International Casualty & Surety Co., LTD, from Bill R. Foster through his agent, Robert Urbine, effective September 20, 1999.

4. Johnny Leroy, Erie, Kansas purchased aircraft insurance, policy #C60106107 issued by International Casualty & Surety Co., LTD, from Bill R. Foster through his agent, Robert Urbine effective October 1, 1999.

5. Records of the Kansas Insurance Department reveal that although Bill R. Foster is licensed as an insurance agent in the state of North Carolina, neither he nor his agency, Air Comp Insurance presently is or was ever was licensed by the state of Kansas to sell or contract insurance on Kansas risks.

6. Records of the Kansas Insurance Department reveal that Robert W. Urbine, the general agent for Mr. Foster, and managing general agent for International Casualty & Surety Co., LTD, the underwriting carrier, is not presently licensed, nor has he been licensed as an insurance agent in Kansas since 1987 and therefore, may not transact insurance in Kansas.

7. Records of the Kansas Insurance Department reveal that International Casualty & Surety Co., LTD has not been admitted to the state of Kansas, is not authorized as an excess and surplus lines insurance company in Kansas, nor has it ever filed and/or obtained approval of the insurance contracts issued in the above cases.

8. Ed Mailen, an investigator with the Kansas Insurance Department contacted both Mr. Foster and Mr. Urbine, who confirmed that neither were currently licensed to sell insurance in the state of Kansas, but asserted that they believed they were exempt from state licensing laws because of the line of insurance they sold. Mr. Urbine subsequently acknowledged that aviation insurance was not exempt from regulation in the state of Kansas.

Conclusions of Law

9. At the time the foregoing policies were issued, K.S.A. 40-214 provided, in relevant part:

It shall be unlawful for any person, company, corporation...to transact the business of insurance...or do any act toward transacting such business, unless such person, company, corporation...shall have been duly authorized under the laws of this state to transact such business and shall have received proper written authority from the commissioner of insurance...and further, it shall be unlawful for any insurance company to effect contracts of insurance in this state...on property located in this state except through persons duly licensed and certified in accordance with the insurance laws of this state....

10. At the time the foregoing policy was issued, K.S.A. 40-216 provided, in relevant part:

...No contract of insurance or indemnity shall be issued or delivered in this state until the form of the same has been filed with the commissioner of insurance...

11. At the time the foregoing policies were issued K.S.A. 40-2,125, (Supp. 1998) provided, in relevant part:

(a) If the commissioner determines...that any person has engaged in or is engaging in any act or practice constituting a violation of any provision of Kansas insurance statutes or any rule and regulation or order thereunder, the commissioner may in the exercise of discretion, order any one or more of the following:

(1) Payment of a monetary penalty of not more than \$1000 for each and every act or violation, unless the person knew or reasonable should have known such person was in violation of the Kansas insurance statutes or any rule and regulation or order thereunder, in which case the penalty shall not be more than \$2,000 each and every act or violation:

(2) ...

(3) that such person cease and desist from the unlawful act or practice and take such affirmative action as in the judgment of the commissioner will carry out the purposes of the violated or potentially violated provision.

12. Based upon the findings of fact set forth in paragraphs #1 through #8 above, it appears that International Casualty & Surety Co., LTD, has engaged in unlawful acts and practices, as prohibited by K.S.A. 1998 Supp. 40-2,125.

13. Based upon the findings of fact set fourth in paragraph #1 through #8 above, it appears that International Casualty & Surety Co., LTD has issued contracts of insurance not filed with the Commissioner of Insurance, in violation of K.S.A. 40-216.

14. Based upon the findings of fact set forth in paragraphs #1 through #8 above, it appears that International Casualty & Surety Co., LTD has transacted the business of insurance without using persons duly licensed and authorized in the state of Kansas, in violation of K.S.A. 40-214.

15. Based upon the findings of fact set forth hereinabove, it appears that the use of summary proceedings in the manner set forth herein does not violate any provision of law, and the protection of the public interest does not require the Department to give notice and an opportunity to participate to parties other than International Casualty & Surety Co., LTD all in accordance with the provisions set forth in K.S.A. 77-537.

IT IS THEREFORE, BY THE COMMISSIONER OF INSURANCE, ORDERED THAT:

International Casualty & Surety Co., LTD shall cease and desist any and all business activity in the State of Kansas, including but not limited to the unauthorized and unlicensed transaction of the business of insurance in the State of Kansas; shall pay a monetary penalty in the amount of \$1,000 for violation of K.S.A. 40-214, and \$1,000 for each of the four policies issued in violation of K.S.A. 40-216, (total fines of \$5,000) pursuant to K.S.A. 40-2,125.

Notice And Opportunity For Hearing

International Casualty & Surety Co., LTD may, within fifteen (15) days of service of this Summary Order, file with the Department a written request for a hearing on this Summary Order, as provided for by K.S.A. 77-542. If International Casualty & Surety Co., LTD requests a hearing, a written request must be made within the time prescribed to:

Kathy Greenlee
General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

If a hearing is not requested, this Summary Order shall become effective as a Final Order, without further notice, upon the expiration of the fifteen (15) day period for requesting a hearing.

**IT IS SO ORDERED THIS 23rd DAY OF JUNE, 2000, IN THE CITY OF TOPEKA,
COUNTY OF SHAWNEE, STATE OF KANSAS.**



/s/ Kathleen Sebelius
Kathleen Sebelius
Commissioner of Insurance
BY:

/s/ Kathy Greenlee
Kathy Greenlee
General Counsel

Certificate of Service

The undersigned hereby certifies that a true and correct copy of the above and foregoing Summary Order was served by placing the same in the United States Mail, first class postage prepaid, on this 23rd day of June, 2000, addressed to the following:

International Casualty & Surety Co., LTD.
NML Center – 11th Floor
41 Shortland Street
Auckland, NEW ZEALAND

/s/ Kathy Greenlee _____
Kathy Greenlee
General Counsel