

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

In the Matter of Bill R. Foster)

Docket No. 2878-SO

CONSENT ORDER

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, and order, to wit:

Findings of Fact

1. Mr. [REDACTED], owner of [REDACTED], 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. [REDACTED]. The binder indicated that coverage was bound with Aviation Underwriting Mgrs. No such insurance agency or company is licensed in Kansas. Policy # [REDACTED] 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. [REDACTED].

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

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

4. [REDACTED], Erie, Kansas purchased aircraft insurance, policy # [REDACTED] 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, was not authorized to transact insurance in Kansas during the period of time in which these contracts were made.

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 Bill R. Foster 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 forth in paragraph #1 through #8 above, it appears that Bill R. Foster 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 Bill R. Foster has transacted the business of insurance without being duly licensed and authorized in the state of Kansas, in violation of K.S.A. 40-214.

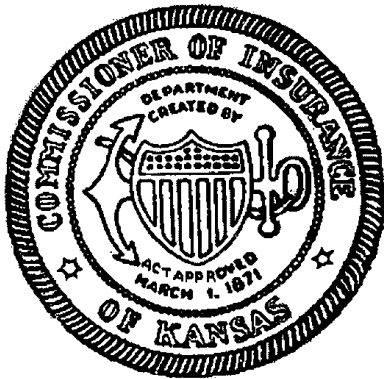
15. A Summary Order was issued on June 23, 2000. Following receipt of the Summary Order, Mr. Foster supplied the Kansas Insurance Department with a copy of a legal opinion that he had used in the operation of his insurance business. He also provided information showing the opinion had been followed by some states in which he had similarly transacted business. Upon review of that opinion and information, it appears that Mr. Foster was acting in good faith upon the information contained in the legal opinion, but that legal opinion was not rendered by an attorney licensed to practice law in Kansas and does not correctly recite the status of Kansas law as it relates to the issues set out above.

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

1. In light of the supplemental information supplied by Bill R. Foster, the parties hereby agree that in full settlement of all issues, Mr. Foster will pay a fine of \$250, within thirty (30) days of the date of the Consent Order.

2. Bill R. Foster further agrees that if he resumes the business of insurance, he will either become licensed in the State of Kansas or use a broker/agent licensed to transact business in this State as to any contracts effecting risks on property located within the State of Kansas.

IT IS SO ORDERED THIS _16th_ DAY OF FEBRUARY, 2001, 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

_____/s/ Billy R. Foster_____
Bill R. Foster