

Financial Fraud Alert

Who: *Plaintiffs:* Securities and Exchange Commission

Defendant: Provident Capital Indemnity, Ltd., Minor Vargas Calvo, and Jorge L. Castillo

Relief Defendant: Desarrollos Comerciales Ronim S.A.

What: The Securities and Exchange Commission (“SEC”) recently won a judgment in excess of \$108 million against Costa Rica-based Provident Capital Indemnity, Ltd. (“PCI”), which sold reinsurance bonds on life settlements, for its role in what was alleged to be a “massive, ongoing fraud.” In its complaint, which was filed on January 19, 2011, the SEC alleged that “PCI, its president Minor Vargas Calvo (‘Vargas’), and its purported outside auditor, Jorge L. Castillo (‘Castillo’) misrepresented PCI’s ability to satisfy its obligations under those bonds by making material misrepresentations about: (i) whether PCI’s financial statements had been audited; (ii) the assets that backed PCI’s bonds; (iii) PCI’s credit rating; and (iv) the availability of reinsurance to cover claims on PCI’s bonds.” The complaint alleged that since at least 2003, despite representations to the contrary, “Castillo never conducted an audit of PCI and instead issued clean audit reports at Vargas’s bidding, thereby supporting the illusion that PCI had materially larger assets and greater financial wherewithal to support its obligations under the life settlement bonds.” The complaint further alleged that “PCI and Vargas also have represented that PCI was backed by a ‘bouquet’ of reputable reinsurers that would backstop PCI’s obligations under its life settlement bonds when, in fact, PCI had no reinsurance coverage.”

The complaint alleged that “[f]rom at least 2004 through March 2010, PCI issued approximately 197 bonds backstopping numerous bonded offerings of investments in life insurance policies with a face value of more than \$640 million.” The SEC sought “temporary, preliminary and permanent injunctive relief, disgorgement of all illicit profits and benefits Defendants have received plus accrued prejudgment interest and a civil monetary penalty.” The SEC also sought “an asset freeze, an accounting and other incidental relief, as well as the appointment of a receiver to take possession and control of Defendants’ assets for the protection of Defendants’ victims.”

On April 18, 2012, in the criminal case of *United States v. Provident Capital Indemnity, Ltd., Minor Vargas Calvo and Jorge Luis Castillo*, 3:11-CR-14 (E.D. Va.) (the "Criminal Case"), PCI pled guilty to one count of wire and mail fraud conspiracy in violation of 18 U.S.C. § 1349. Thereafter, on May 29, 2012, PCI signed its consent to the entry of a Final Judgment in the SEC action which, *inter alia*, (i) permanently restrains and enjoins PCI from violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Section 17(a) of the Securities Act of 1933; (ii) orders PCI to disgorge \$43,582,699.22, "representing profits gained from the conduct alleged in the complaint," plus prejudgment interest in the amount of \$51,102,055.41, for a total of \$94,684,754.63; and (iii) orders PCI to pay a civil penalty in the amount of \$13,780,000. The Final Judgment was entered on July 10, 2012 by the Honorable John A. Gibney, Jr. of the United States District Court for the Eastern District of Virginia.

Castillo also pled guilty in the Criminal Case to one count of conspiracy to commit mail and wire fraud and faces sentencing in November 2012. Also in the Criminal Case, Vargas was found guilty of one count of conspiracy to commit mail and wire fraud, three counts of mail fraud, three counts of wire fraud, and three counts of money laundering. Vargas's sentencing is scheduled for October 2012.

Where: United States District Court for the Eastern District of Virginia

When: Final Judgment: July 10, 2012

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