

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

02CVH11-10928

J. LEE COVINGTON, II,
Superintendent of Insurance
Ohio Department of Insurance
In His Capacity as Liquidator of the
Estates of Credit General Insurance
Company and Credit General Indemnity
Company
2100 Stella Court
Columbus, OH 43215

Plaintiff,

v.

AMTRUST FINANCIAL GROUP, INC.,
59 Maiden Lane
New York, NY 10038

and

AMTRUST FINANCIAL SERVICES,
INC.,
25800 Science Park Drive, Suite 105
Beachwood, OH 44122

and

TECHNOLOGY INSURANCE
COMPANY, INC.,
59 Maiden Lane
New York, NY 10038

Defendants.

Case No. _____

Judge _____

Related Case:
Case No. 00CVH11-9867
Judge Beverly Pfeiffer

**COMPLAINT FOR
DECLARATORY RELIEF AND
MONETARY DAMAGES**

FILED
COMMON PLEAS COURT
FRANKLIN CO., OHIO
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CLERK OF COURTS

Plaintiff J. Lee Covington II, Superintendent of Insurance, Ohio Department of Insurance, in his capacity as Liquidator of the Estates of Credit General Insurance Company and Credit General Indemnity Company ("plaintiff"), for his Complaint against AmTrust Financial Group, Inc. ("AFG"), AmTrust Financial Services, Inc. ("AFS") and, Technology Insurance

Company, Inc. (“Technology”) (sometimes collectively referred to herein as either “AmTrust” or “defendants”), alleges and states as follows:

PARTIES

1. Plaintiff is the duly appointed and acting Liquidator of Credit General Insurance Company (“CGIC”) pursuant to an Order entered by this Court on January 5, 2001 in Case No. 00CVH11-9867 (Judge Pfeiffer). Plaintiff has the power and authority to bring this action pursuant to the Liquidation Order and R.C. 3903.21(A)(12), (13), and (19).

2. Defendant AFG is a Delaware corporation engaged in the business, *inter alia*, of managing and operating property and casualty insurance businesses. AFG conducts business in the State of Ohio, and has asserted various claims against CGIC.

3. Defendant AFS, an Ohio corporation, is an affiliate and subsidiary of AFG, and is a party to an Interim Cut-Through Reinsurance Agreement (“September Cut-Through Agreement”) entered into on the 20th day of September, 2000 with CGIC. (A copy of the September Cut-Through Agreement is attached hereto as Exhibit A.)

4. Acknowledging the need to clarify some provisions of the September Cut-Through Agreement, the parties amended the September Cut-Through Agreement and executed a new Cut-Through Agreement on November 3, 2000 (the “November Cut-Through Agreement”). (A copy of the November Cut-Through Agreement is attached hereto as Exhibit B.) The September Cut-Through Agreement and the November Cut-Through Agreement are sometimes collectively referred to herein as the “Cut-Through Agreements.”

5. Defendant Technology is a subsidiary of AFG, and a party to the Cut-Through Agreements.

6. On the 18th day of October, 2000, CGIC and AFG entered into a "Management Agreement" under which AFG agreed to manage certain aspects of the business of CGIC. (A copy of the Management Agreement is attached hereto as Exhibit C.)

JURISDICTION AND VENUE

7. This action is instituted, *inter alia*; to obtain a declaration of the rights, status and other legal relations between plaintiff, as Liquidator of CGIC, and AmTrust, its affiliates and subsidiaries, under the Cut-Through and Management Agreements.

8. A case or controversy exists between the Liquidator, on the one hand, and the defendants, on the other, with respect to whether or not certain actions taken by the other are in violation of the terms of the Cut-Through and/or Management Agreements, and the amount of monies that may be owed between the parties to these Agreements.

9. The Court of Common Pleas for Franklin County, Ohio has exclusive jurisdiction over this action, and venue is proper in this Court pursuant to R.C. 3903.04(E).

FACTS COMMON TO ALL CLAIMS FOR RELIEF

10. In the second and third quarters of 2000, AmTrust investigated the opportunity to assume the business operations of CGIC. At the time, CGIC was subject to the terms and conditions of an Order of Supervision issued by the Ohio Department of Insurance.

11. AmTrust desired to maintain the business operations of CGIC, pending its due diligence on a possible acquisition, and did so by entering into the Management and Cut-Through Agreements.

12. Pursuant to the Management Agreement, AFG was engaged to conduct, on behalf of CGIC, the property and casualty insurance business of CGIC.

13. The Management Agreement provided, *inter alia*, that CGIC would reimburse AFG for direct costs and expenses incurred by AFG in the performance of its duties under the Management Agreement, but that AFG would not be paid any management fee or derive any profit in connection with its services provided.

14. Pursuant to the Cut-Through Agreements, AmTrust agreed that its right to be paid fees and expenses specifically excluded any fees or expenses incurred by it in managing or overseeing underwriting or claims handling.

15. Pursuant to the Cut-Through Agreements, AmTrust agreed to indemnify CGIC with respect to all loss and loss adjustment expenses as to “Eligible Policies” which were issued, renewed, or originated by CGIC during the term of the Agreements.

16. Pursuant to the Cut-Through Agreements, AmTrust agreed that it would, “upon the entry of an order of liquidation for [CGIC], or if [CGIC] is unable to fully pay any claim, or any portion of any claim, arising under an Eligible Policy assume directly all obligations under all policies reinsured by” the Cut-Through Agreements.

17. The premium to be paid by CGIC to AmTrust for the Eligible Policies – i.e., reinsurance, was agreed to be 70% of the “Net Earned Premiums.” The term “Net Earned Premiums” was defined in the Cut-Through Agreements to mean “premiums earned and collected on the policies net of all premiums paid to other reinsurers. . . . if any, on the Eligible Policies.”

18. On and after September 1, 2000, and through the first week of February, 2001, AmTrust’s managers were on the premises of CGIC, and were aware of and managing all aspects of the underwriting and claims handling for the policies issued or renewed by CGIC after September 20, 2000.

COUNT ONE

(Declaratory Judgment as to the Cut-Through Agreements)

19. Plaintiff repeats and realleges, as if fully rewritten herein, the allegations contained in paragraphs 1 through 18 of this Complaint.

20. Shortly after September 20, 2000, AmTrust directed CGIC to issue approximately 120 workers' compensation policies (the "WC Policies"). In February 2001, AmTrust first claimed and so advised the Liquidator that the WC Policies were "ineligible" under the Cut-Through Agreements.

21. AmTrust specifically and knowingly wrote or approved of the issuance of the WC Policies.

22. AmTrust has taken the position and advised the Liquidator that the WC Policies are not the responsibility of AmTrust, its affiliates or subsidiaries, as reinsurer.

23. With respect to the WC Policies, it is the Liquidator's position that AmTrust remains fully obligated to administer and to pay all claims and loss adjustment expenses on such policies pursuant to the Cut-Through Agreements.

24. Shortly after September 20, 2000, AmTrust directed CGIC to issue certain property and casualty policies, most of which were written under a program known as the Artisan's Program (the "Artisan's Policies"). In February 2001, AmTrust first claimed and so advised the Liquidator that the Artisan's Policies were "ineligible" under the Cut-Through Agreements.

25. AmTrust specifically and knowingly wrote or approved of the issuance of the Artisan's Policies.

26. AmTrust has advised the Liquidator that the Artisan's Policies are not the responsibility of AmTrust, its affiliates or subsidiaries, as reinsurer.

27. With respect to the Artisan's Policies, it is the Liquidator's position that AmTrust remains fully obligated to administer and to pay all claims and loss adjustment expenses on such policies pursuant to the Cut-Through Agreements.

28. AmTrust has advised the Liquidator that AmTrust believes that less than 70% of "Net Earned Premiums" have been paid to AmTrust by CGIC since September 20, 2001, and that the Liquidator owes AmTrust in excess of \$200,000.00 in premiums.

29. The Liquidator has advised AmTrust that the calculation of "Net Earned Premiums" made to date has been correct and appropriate under the Cut-Through Agreements.

COUNT TWO

(Declaratory Judgment as to the Management Agreement)

30. Plaintiff repeats and realleges, as if fully rewritten herein, the allegations contained in paragraphs 1 through 29 of this Complaint.

31. AmTrust has demanded that the Liquidator reimburse AmTrust \$303,090.79 for claimed salaries and expenses purportedly incurred by AmTrust, on behalf of CGIC, in the performance of duties AmTrust claims arise under the Management Agreement.

32. The Liquidator has advised AmTrust that all of these claimed salaries and expenses were incurred as part of AmTrust's oversight of the underwriting and claims handling, and that none of these alleged salaries or expenses are payable to AmTrust under the terms of the Management Agreement.

COUNT THREE

(Claim for Monetary Damages)

33. Plaintiff repeats and realleges, as if fully rewritten herein, the allegations contained in paragraphs 1 through 32 of this Complaint.

34. In February, 2001, AmTrust and the Liquidator mutually agreed that there no longer existed a possibility that AmTrust would acquire substantially all the assets of CGIC.

35. Thereafter, the Liquidator determined that it was necessary to lay off employees of CGIC, but at the specific request of AmTrust the Liquidator retained three specified individuals for a two-week period, upon the explicit promise that AmTrust would reimburse CGIC for all salaries and salary-related expenses for these individuals. Plaintiff incurred \$13,288.70 for these salaries and salary-related expenses, and AmTrust has failed to reimburse the Liquidator for these salaries or expenses.

36. AmTrust and several of its former consultants removed from the offices of CGIC, and have failed to return despite requests of the Liquidator, a Startac phone and accessories; lap top computer; Audiovox phone with accessories; and, related equipment, all property belonging to the Liquidator of CGIC.

37. Pursuant to and following the Liquidation Order entered on January 5, 2001, AmTrust was to assume full responsibility not only as to liabilities under "Eligible Policies," but also for the administrative costs of processing premiums and claims related to those policies.

38. As a result of AmTrust's failure to perform its responsibilities with respect to "Eligible Policies," the Liquidator continues to incur expenses relating to the administration of such policies, and AmTrust is liable to the Liquidator for the reimbursement of such costs and expenses.

WHEREFORE, plaintiff J. Lee Covington, II, Superintendent of Insurance, Ohio Department of Insurance, in his capacity as Liquidator, demands judgment against defendants, jointly and severally, as follows:

- (a) Declare that under the Cut-Through Agreements AmTrust is fully obligated to administer and pay all losses and loss adjustment expenses incurred under the WC Policies and the Artisan's Policies;
- (b) Declare that under the Cut-Through Agreements the Liquidator's calculation and payment of "Net Earned Premiums" to the defendants have been properly made in accordance with those Agreements;
- (c) Declare that under the Management Agreement the defendants are not entitled to be paid the salaries and expenses sought by them and the Liquidator does not owe any monies to the defendants, as either a management fee, or for costs and expenses;
- (d) Award to the Liquidator an amount, to be determined at trial, but in excess of \$25,000.00, on the claims contained in Count Three;
- (e) Award to the Liquidator the costs incurred in the prosecution of this action, and such interest as may be allowed by law; and,
- (f) That this Court grant such other and further relief as may be just and equitable in the premises.

Respectfully submitted,

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