

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF SOUTH CAROLINA
ANDERSON DIVISION**

Thrift Development Corporation,)	Case No.
Plaintiff,)	
)	COMPLAINT
)	
v.)	CLASS ACTION COMPLAINT
)	
American International Group, Inc.;)	
Chartis Inc. and)	(DEMAND FOR JURY TRIAL)
American Home Assurance Co.,)	
Defendants.)	

Plaintiff brings this action on behalf of itself and all others similarly situated against American International Group, Inc., and its subsidiary companies, Chartis, Inc. and American Home Assurance Company, alleging breach of contract, breach of the covenant of good faith and fair dealing, and unjust enrichment. Specifically, Defendants failed to timely and properly revise unit statistical reports and to adjust reserves after certain reimbursements and recoveries. These failures resulted in Defendants reaping the benefits of reimbursements and recoveries for losses at the expense of the Plaintiff and all others similarly situated.

PARTIES AND JURISDICTION

1. Plaintiff Thrift Development Corporation (“Thrift”) is a business incorporated under the laws of the State of South Carolina, with its principal place of business in the State of South Carolina. Thrift purchased workers’ compensation insurance from the Defendant American International Group, Inc. (“AIG”) and its subsidiaries, Chartis, Inc. (“Chartis”) and American Home Assurance Company (“AHA”) (parent and subsidiaries referred to collectively as “Defendants” or “AIG Companies”).

2. Plaintiff is a business with employees working in the State of South Carolina, and is required by South Carolina law to have in effect at all times a policy of workers' compensation insurance for the benefit of its employees.

3. Plaintiff brings this action on its own behalf and as representative of a class of individuals defined further in paragraph 47.

4. Defendant American International Group, Inc. ("AIG") is a corporation incorporated under the laws of Delaware whose shares are listed and publicly traded on the New York Stock Exchange, with its corporate headquarters and principal place of business at 180 Maiden Lane, New York, New York. At all times pertinent to this Complaint, AIG has promoted itself and its subsidiaries named herein as leaders in the insurance industry, with superior expertise and profitability.

5. Defendant Chartis, Inc. ("Chartis") is a subsidiary of AIG and is incorporated under the laws of New York with its headquarters and principle place of business at 175 Water Street, New York, New York. Chartis operates as a provider of commercial umbrella/excess liability and primary and excess workers' compensation insurance.

6. Defendant American Home Assurance Co. ("AHA") is a subsidiary of AIG and Chartis and is incorporated under the laws of New York with its headquarters and principal place of business at 175 Water Street, New York, New York. AHA operates as a provider of commercial umbrella/excess liability and primary and excess workers' compensation insurance.

7. This Court has jurisdiction over this action pursuant to 28 U.S.C.A. § 1332, as the parties are completely diverse and the amount in controversy exceeds \$75,000.00.

8. The Court has subject matter jurisdiction under 28 U.S.C.A § 1332, which provides for federal jurisdiction in class actions with minimal diversity when damages exceed

five million dollars, exclusive of interest and costs. The Court has supplemental subject matter jurisdiction over the pendent state law claims pursuant to 28 U.S.C.A § 1367.

9. Venue is proper in the District of South Carolina pursuant to 28 U.S.C.A. § 1391 because a substantial part of the events or omissions giving rise to the claims occurred in this district, and pursuant to Local Civil Rule 3.01 DSC, because one or more named Defendants does business relating to the events or omissions alleged in this Complaint within the Anderson Division.

10. No other forum would be more convenient for the parties and witnesses to litigate this action.

FACTS

Workers' Compensation Premium Calculation

11. All employers in South Carolina with more than a designated number of employees are required, by law, to provide workers' compensation benefits for their employees. Employers in South Carolina can purchase workers' compensation insurance from insurance carriers through two programs—the voluntary program and the involuntary program, also known as the assigned risk program. Employers in South Carolina also may participate in self-insurance programs; however, self-insurance programs are not at issue in this lawsuit.

12. The voluntary program consists of all employers whose applications for workers' compensation insurance have been accepted by an agent for a workers' compensation carrier licensed in South Carolina. The employer chooses the insurer in the voluntary program. The involuntary, or assigned risk program, consists of employers whose applications for workers' compensation insurance coverage in the voluntary program have been declined by at least two licensed carriers in this State. Since these employers are unable to secure workers'

compensation insurance in the voluntary program or marketplace, the assigned risk insurance is the program of last resort which provides the required insurance for those employers. The AIG Companies provide workers' compensation insurance in both the voluntary and assigned risk markets.

13. By statute, workers' compensation insurance premiums in the voluntary and involuntary market are calculated on the basis of multiple criteria including an employer's recent claims experience, called the "workers' compensation experience rating."

14. To determine the actual premium due, the workers' compensation experience rating is applied to the "manual premium." The manual premium is calculated using "manual rates" assigned to employers in a given job classification and is the same state-wide for all policyholders in a given job classification insured by the same insurer.

15. In South Carolina, manual rates are calculated using "Loss Cost" factors as determined by the National Council on Compensation Insurance ("NCCI"). NCCI is the largest corporation in the United States dealing with workers' compensation data, statistics, and research. As required by statute, it serves as the workers' compensation statistical agent and rating organization for South Carolina. Every workers' compensation insurer must be a member of the nonpartisan rating bureau.

16. The manual rate applicable to any given company is adjusted or modified by the company's unique workers' compensation loss history. This modification is called the "experience modification rating," "experience modification factor," or "ex-mod." The manual rate is multiplied by the unique experience modification rating, among other factors, to determine a premium for workers' compensation insurance.

17. The ex-mod is designed to adjust an employer's current premium based on prior

loss experience. This adjustment is accomplished by comparing loss information for a particular employer from prior years to average expected losses of similar companies for those same years. The ex-mod is then applied to the manual rate to calculate premiums in future years. However, ex-mods are not static, and under certain circumstances the ex-mod may be adjusted based on reimbursements and recoveries received by the insurer, including reimbursements and recoveries for injuries which qualify for the South Carolina Second Injury Fund and reimbursements or recoveries from responsible third parties. These reimbursements and recoveries must be recorded on unit statistical reports sent by the insurers to NCCI.

18. Where an insurer has been reimbursed or recovered losses from either the South Carolina Second Injury Fund or responsible third parties, NCCI's Workers' Compensation Statistical Plan at Part 5, No. 2, applicable regulations, and principles of good faith and fair dealing require that the employer's loss history be adjusted to reflect that a reimbursement or recovery has been made. This adjustment, in turn, reduces the amount of loss experienced by an employer, and ultimately reduces the premiums of that employer, currently and/or retroactively.

19. NCCI's Workers' Compensation Statistical Plan, Part 5 No. 2 states as follows:

Correction reports must be filed without delay when any of the conditions below occur. The carrier or claimant has received, or anticipates receiving, reimbursement from a Second Injury or similar type fund. When such a recovery is received by the carrier subsequent to the reporting of the claim (between valuation dates), but within one year after the 5th report due date, correction reports must be filed revising the paid and incurred loss on the claim as described in Part 4, Item 11...

20. Loss history for a particular employer is reported to NCCI by the insurer in the form of a "unit statistical report." Similarly, reimbursements and recoveries are reported to NCCI through revised unit statistical reports. When unit statistical reports to NCCI are not revised to reflect reimbursements and recoveries, and reserves are not properly adjusted

downward, the information upon which NCCI relies in formulating an employer's unique exposure is incorrect, and the resulting rates are artificially inflated, to the insurer's advantage and the employer's detriment.

Sources of Reimbursement and Recovery

21. Insurers have several sources of reimbursement and recovery for losses which trigger an obligation to revise unit statistical reports and adjust reserves. Sources of reimbursement and recovery include, but are not limited to, claims against responsible third parties pursuant to subrogation rights, claims on the South Carolina Second Injury Fund for reimbursement for qualifying injuries, and reimbursement of losses for fraudulent claims. These sources of reimbursement and recovery are discussed in more detail below.

22. The South Carolina Second Injury Fund ("SCSIF") has a twofold mission:

To protect employers from the higher cost of insurance that can occur when an injury combines with a prior disability to result in substantially increased medical or disability costs than the accident alone would have produced. This ensures that an employer is not made to suffer a greater monetary loss or increased insurance costs because they hire or retain an employee who has a disability.

To ensure payment of workers' compensation benefits to injured employees whose employers have failed to comply with the coverage provisions of the workers compensation statute.

www.scsif.sc.gov.

23. The first element of SCSIF's mission—to protect employers from higher costs resulting from prior injuries by workers—is one of the subjects of this lawsuit. This mission of SCSIF has been defeated by the AIG Companies' failure to properly revise unit statistical reports to accurately reflect reimbursements and recoveries.

24. The SCSIF was designed to accomplish its mission through a twofold mechanism. First, insurers which have paid out on a claim for an injury which qualifies for SCSIF

reimbursement submit the claim to SCSIF for reimbursement. If accepted by SCSIF, the insurer is reimbursed for the costs of the claim over and above what the claim's cost would have been had the worker not had a prior disability. Second, the insurer passes the benefit of that recovery on to the employer by revising the unit statistical reports to reflect the reimbursement or recovery. Based on the revised report, the ex-mod of the employer is reduced, and the current and past premiums of the employer are also reduced.

25. When an insurer (such as the AIG Companies) fails to revise a unit statistical report after being reimbursed for a portion of the claim by SCSIF, the employer continues to pay an inflated premium and is not reimbursed for premiums paid. Failure to revise unit statistical reports utterly defeats the mission and purpose of the SCSIF by paying funds directly into the coffers of the insurers to the detriment of the employer.

26. Insurers also may seek reimbursement or recovery of claims paid for work-related injuries from responsible third parties. As is the case with SCSIF recoveries, insurers are obligated to report these reimbursements or recoveries in revised unit statistical reports. Part 5 No. 2 of NCCI's Workers' Compensation Statistical Plan states as follows:

The carrier or claimant has obtained a subrogation recovery in an action against a third party. When such a recovery is received by the carrier subsequent to the reporting of the claim (between valuation dates), but within one year after the 5th report due date, correction reports must be filed revising the paid and incurred loss on the claim as described in Part 4, Item 15. If an anticipated recovery becomes known by the carrier, or a recovery is paid to the carrier as of the 6th report due date or subsequent, a correction report is not required; all adjustments are reported at the next valuation date if the claim is open. Correction reports are required only for prior reports that reflected an amount higher than the net incurred cost. If the total recovery amount is less than 10 percent of the gross incurred cost of the claim, do not file a correction report.

27. In this manner, the employer's loss history (and corresponding premiums), do not continue to reflect a loss which was the responsibility of another party. If such reimbursements

or recoveries are not reported, an employer continues to pay an inflated premium for losses which were not the responsibility of the employer. The end result is that the insurer has recovered from the responsible party, as it is entitled, but also continues to reap the benefit of a higher premium charged to an employer for a loss which was and should not remain the responsibility of the employer.

28. In addition to the above, insurers may seek reimbursement or recovery for claims paid as a result of fraudulent conduct by the injured employee or a third party. As with the SCSIF recoveries and subrogation reimbursements discussed above, when an insurer is reimbursed for fraudulent claims, unit statistical reports and reserves must be adjusted to reflect the recovery. As is the case with SCSIF and subrogation recoveries, NCCI's Workers' Compensation Statistical Plan requires that insurers revise unit statistical plans upon reimbursement or recovery of losses paid out on fraudulent claims.

AIG Companies' Failure to Report Reimbursements and Recoveries

29. The Defendant AIG Companies insured Thrift under workers' compensation policy No. WC 0008943905-011-000, effective June 1, 2006 to June 1, 2007.

30. Sometime in early 2007, a Thrift employee experienced an industrial injury and on February 7, 2007, filed a workers' compensation claim, Claim No. 709457125. This employee had a prior injury.

31. The claim was accepted by the AIG Companies and the AIG Companies paid benefits totaling \$75,595.61 to the employee. The claim was closed by the AIG Companies on August 11, 2010.

32. After paying benefits to the employee, the AIG Companies, operating under the name "Chartis" submitted a claim to SCSIF for reimbursement and recovery of benefits paid on

behalf of the AIG Companies.

33. While the claim was pending with SCSIF, Thrift paid workers' compensation premiums to Defendants which reflected the full loss value of the claim.

34. The claim was accepted by SCSIF on January 20, 2010, and SCSIF reimbursed the AIG Companies \$49,848.05. The AIG Companies' total incurred losses for this claim after SCSIF recovery were \$44,270.60, including \$18,523.04 in expenses. The difference between the benefits paid to the employee and the recovery made by the AIG Companies was \$25,774.56.

35. Despite having been reimbursed by SCSIF, the AIG Companies failed to revise the unit statistical reports it submitted to NCCI in 2009 and 2010 to accurately reflect the reimbursement and recovery.

36. The AIG Companies' failure to revise the unit statistical reports for those two years deprived Thrift of the reimbursement of premiums paid during that time period. In particular, Thrift's ex-mod for the year 2009 was calculated at 1.02. Had the AIG Companies properly revised the unit statistical report, Thrift's ex-mod would have been recalculated at 0.98. For the year 2010, Thrift's ex-mod was calculated at 1.07. Had the AIG Companies properly revised the unit statistical report, the ex-mod would have been recalculated at 1.03.

37. The AIG Companies' failure to revise the unit statistical reports denied Thrift a premium reimbursement of \$4,500 for the two years that the ex-mods were not properly recalculated.

38. The AIG Companies' failures to properly report reimbursements and recoveries and to revise unit statistical reports accordingly are also occurring with reimbursements from subrogation, fraudulent claims and other recoveries through the same mechanism as recoveries from SCSIF. Upon information and belief the AIG Companies have consistently failed to

properly report recoveries, whether SCSIF recoveries, subrogation, fraud or otherwise for its insureds in the voluntary and assigned risk programs throughout the State of South Carolina.

39. Upon information and belief the actions complained about herein, in particular the AIG Companies' failure to properly revise unit statistical reports, have been of an ongoing and continuous nature, commencing with the adoption of NCCI's Worker's Compensation Statistical Plan and continuing to the present day.

AIG and its Property/Casualty Insurance Subsidiaries Operate as a Unified Entity

40. Defendant AIG conducts its property casualty business through its worldwide property casualty organization, Defendant Chartis, Inc. Chartis is headquartered at 175 Water Street, 18th Floor, New York, NY 10038. Chartis, in turn, conducts its property casualty business through insurance company subsidiaries.

41. Chartis has at least ten subsidiary insurance companies licensed to transact business in the State of South Carolina, including, but not limited to, AHA. Each of these subsidiary insurers shares a common main administrative office and mail address, at 175 Water Street, 18th Floor, New York, NY 10038.

42. During the relevant time period to this complaint, AIG, Chartis, AHA and other unnamed subsidiary insurance companies of Chartis were under common control and centralized operations. Contracts for workers compensation insurance entered into under the name of an AIG and/or Chartis subsidiary were entered into by, and on behalf of AIG, Chartis, and its subsidiaries and in furtherance of the property casualty business of AIG.

43. Upon information and belief, responsibility for all reporting and revising of data to NCCI, including unit statistical reports, was held by a single unit owned by AIG. Decisions regarding reporting and revising of data to NCCI were made by the same entity and applicable to

all AIG subsidiaries.

44. Accordingly, the wrongdoing and misconduct complained of herein was committed in concert and jointly by AIG, Chartis, AHA and unnamed subsidiary insurance companies through which AIG conducted its business.

Contracts of Insurance with the Plaintiff and Proposed Plaintiff Class

45. At all times relevant to this Complaint, the Defendants existed and operated as a workers' compensation insurer within the State of South Carolina. As part of the privilege to operate within this State, they were subject to the statutory and regulatory laws relevant to workers' compensation and they entered into contracts with Thrift and other members of the proposed plaintiff class wherein they promised to adhere to all rules and regulations mandated by the State of South Carolina.

46. Plaintiff Thrift and other members of the proposed plaintiff class each purchased South Carolina workers' compensation insurance policies from AIG and its subsidiaries. These policies contained stock or form language that was identical for all purposes relevant to these claims. The policies contained the following provision:

All premiums for this policy will be determined by our manuals of rules, rates, rating plans and classifications. We may change our manuals and apply the changes to this policy if authorized by law or governmental agency regulating this insurance.

* * *

The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by the policy.

CLASS ACTION ALLEGATIONS

47. Plaintiff Thrift brings this action on behalf of itself and as representative of the class of policyholders, defined as follows:

All business entities insured by Defendants or any of Defendants' subsidiary insurance entities operating in South Carolina, that had a workers' compensation claim filed in South Carolina for which a subsequent recovery was made from the South Carolina Second Injury Fund or a responsible third party which was not properly reported by Defendants to the National Council on Compensation Insurance.

48. The Plaintiff's claims are typical of those of the proposed class members.

Plaintiff Thrift and the members of the proposed plaintiff class were damaged in the same way by the same conduct of the Defendants.

49. Plaintiff Thrift will fairly and adequately protect and represent the interests of the proposed plaintiff class. The interests of the Plaintiff are allied with, and not antagonistic to, those of the proposed plaintiff class.

50. Plaintiff Thrift is represented by attorneys who are experienced and competent in the prosecution of complex class action litigation, insurance fraud, and the insurance rate-making process.

51. Questions of law and fact common to the class include, but are not limited to the following:

- a. Were Defendants required to timely revise the unit statistical reports of the proposed plaintiff class?
- b. Were Defendants required to adjust reserves after receiving reimbursements and recoveries from third parties and the SCSIF?
- c. Would the failure to timely revise unit statistical reports constitute a breach of the contracts entered into with the proposed plaintiff class?
- d. Would the failure to timely adjust reserves after receiving reimbursements and recoveries constitute a breach of the contracts entered into with the proposed plaintiff class?

- e. Would the failure to timely revise unit statistical reports constitute a breach of the covenant of good faith and fair dealing arising out of the insurance contracts Defendants entered into with the proposed plaintiff class?
- f. Would the failure to timely adjust reserves after receiving reimbursements and recoveries constitute a breach of the covenant of good faith and fair dealing arising out of the insurance contracts Defendants entered into with the proposed plaintiff class?
- g. Would the failure to timely revise unit statistical reports result in unjust enrichment to the Defendants at the expense of the proposed plaintiff class?
- h. Would the failure to timely adjust reserves after receiving reimbursements and recoveries result in unjust enrichment to the Defendants at the expense of the proposed plaintiff class?
- i. Is the proposed plaintiff class entitled to recover damages as a result of the Defendants' conduct?
- j. The proper methodology for calculating any damages suffered by the proposed plaintiff class.
- k. The meaning and effect of any terms contained in the contracts between the Defendants and proposed plaintiff class.
- l. Any affirmative defense raised by the Defendants applicable to all class members.

52. The above-identified common questions predominate over questions, if any, that may affect only individual class members.

53. The prosecution of separate actions by individual class members would create a

risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for the Defendants.

54. Class action treatment is a superior method for the fair and efficient adjudication of the controversy, in that such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the necessary duplication of evidence, effort and expense that numerous individual actions would require.

FIRST CAUSE OF ACTION

(Breach of Contract)

55. Plaintiff Thrift repeats and realleges each and every allegation of this Complaint as if fully set forth herein verbatim.

56. Defendants entered into contracts to provide workers' compensation insurance to Thrift and the other members of the proposed plaintiff class in exchange for premiums to be paid by the insureds in the proposed plaintiff class.

57. These insurance contracts provided that the premiums paid by Thrift and the other members of the proposed plaintiff class would be "determined by [Defendants'] manuals of rules, rates, rating plans and classifications" and that the "final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by the policy."

58. Defendants breached these contracts with Thrift and the other members of the proposed plaintiff class by failing to timely revise unit statistical reports and failing to timely adjust reserves after receiving reimbursements and recoveries as provided for in the contracts and required by State law and regulations.

59. Defendants' breach of the contracts has resulted in Thrift and other members of the proposed plaintiff class paying premium amounts greater than those owed by the terms of the contracts.

60. Thrift and the other members of the proposed plaintiff class performed all conditions, covenants, and promises required on their part to be performed in accordance with the terms and conditions of the contracts with the Defendants

61. Defendants' breach of the material terms of the contracts has proximately caused actual and consequential damages to Thrift as well as the other members of the proposed plaintiff class.

SECOND CAUSE OF ACTION

(Breach of Implied Covenant of Good Faith and Fair Dealing)

62. Plaintiff repeats and realleges each and every allegation of this Complaint as if fully set forth herein verbatim.

63. Plaintiff Thrift and the other members of the proposed plaintiff class entered into contracts with the Defendants to obtain workers' compensation insurance coverage as mandated by the laws of South Carolina.

64. Inherent in each of those contracts was an implied covenant of good faith and fair dealing that neither the members of the proposed plaintiff class nor the Defendants would do anything to injure the rights of the other under those contracts.

65. Defendants breached that implied covenant of good faith and fair dealing when they knowingly and intentionally failed to timely revise unit statistical reports and failed to timely adjust reserves after receiving reimbursements and recoveries.

66. Defendants' breach of the implied covenant of good faith and fair dealing has

resulted in Thrift and other members of the proposed plaintiff class paying premium amounts greater than those owed by the terms of the contracts.

67. Defendants' breach of the covenant of good faith and fair dealing has proximately caused actual and consequential damages to Thrift as well as the other members of the proposed plaintiff class.

THIRD CAUSE OF ACTION

(Unjust Enrichment)

68. Plaintiff repeats and realleges each and every allegation of this Complaint as if fully set forth herein verbatim.

69. Plaintiff Thrift and the other members of the proposed plaintiff class have conferred a valuable benefit upon Defendants through the payment of premiums for workers' compensation insurance.

70. The Defendants have knowingly and intentionally failed to timely revise unit statistical reports and failed to timely adjust reserves after receiving reimbursements and recoveries from third parties and the SCSIF.

71. The Defendants have deprived Thrift and the other members of the proposed plaintiff class of monies which are due and owing to them by failing to adjust the premium payment amounts to reflect reimbursements and recoveries.

72. The intentional failure to adjust premium payment amounts has unjustly enriched the Defendants in that they are not lawfully entitled to keep the monies due and owing to the Plaintiff and the other members of the proposed plaintiff class.

73. Under these circumstances, it would be inequitable for Defendants to retain the monies due and owing Plaintiff and the other members of the proposed plaintiff class.

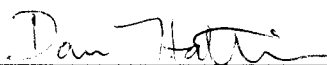
WHEREFORE, Plaintiff prays for relief and judgment as follows:

- a. Certification of the proposed plaintiff class and appointment of Plaintiff Thrift as a class representative under Rule 23 of the Federal Rules of Civil Procedure;
- b. For actual and consequential damages in an amount to be determined by the trier of fact;
- c. For exemplary damages, in an amount to be determined by the trier of fact, from Defendants for their breach of the covenant of good faith and fair dealing and the intentional, willful, wanton, and reckless disregard for the rights of the Plaintiff and the proposed plaintiff class;
- d. For prejudgment interest;
- e. Awarding Plaintiff and the other members of the proposed plaintiff class their reasonable costs and expenses incurred in this action; and
- f. Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Respectfully submitted,



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Dated: March 26, 2012