

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

Thrift Development Corporation, )  
**Plaintiff,** )  
)  
)  
)  
)  
v. )  
)  
)  
American International Group, Inc.; )  
Chartis Inc. and )  
American Home Assurance Co., )  
**Defendants.** )  
)  
\_\_\_\_\_ )

C/A No.: 8:12-cv-00861-MGL

Jury Trial Requested

**DEFENDANTS' ANSWER AND  
AFFIRMATIVE DEFENSES TO THE COMPLAINT**

Defendants American International Group, Inc., Chartis Inc., and American Home Assurance Company (collectively, "Defendants"), by their attorneys, Nelson Mullins Riley & Scarborough, LLP and Quinn Emanuel Urquhart & Sullivan, LLP, respectfully submit their Answer and Affirmative Defenses to the Complaint. Except as herein specifically admitted, each and every allegation in the Complaint is expressly denied.

**ANSWER**

1. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in the first sentence of Paragraph 1 of the Complaint. Defendants deny the allegations set forth in the second sentence of Paragraph 1 of the Complaint.

2. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 2 of the Complaint.

3. Paragraph 3 of the Complaint states the legal conclusion of the pleader, to which no answer is required. To the extent further response is required, Defendants deny the allegations set forth in Paragraph 3 of the Complaint.

4. Defendants admit the allegations set forth in the first sentence of Paragraph 4 of the Complaint. Defendants deny the allegations set forth in the second sentence of Paragraph 4 of the Complaint.

5. Defendants admit that Chartis Inc. is a subsidiary of American International Group, Inc. and has its headquarters and principal place of business at 175 Water Street, New York, New York. Defendants deny the remaining allegations set forth in Paragraph 5 of the Complaint.

6. Defendants admit the allegations set forth in Paragraph 6 of the Complaint.

7. Paragraph 7 of the Complaint states the legal conclusion of the pleader, to which no answer is required. To the extent further response is required, Defendants deny the allegations set forth in Paragraph 7 of the Complaint.

8. Paragraph 8 of the Complaint states the legal conclusion of the pleader, to which no answer is required. To the extent further response is required, Defendants deny the allegations set forth in Paragraph 8 of the Complaint.

9. Paragraph 9 of the Complaint states the legal conclusion of the pleader, to which no answer is required. To the extent further response is required, Defendants deny the allegations set forth in Paragraph 9 of the Complaint.

10. Paragraph 10 of the Complaint states the legal conclusion of the pleader, to which no answer is required. To the extent further response is required, Defendants deny the allegations set forth in Paragraph 10 of the Complaint.

11. Defendants admit that under South Carolina law, certain employers are required to provide workers compensation benefits for their employees, and that workers compensation may be obtained through self-insurance programs, the voluntary program, or the assigned risk program. Defendants further admit that self-insurance programs are not at issue in this lawsuit. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations set forth in Paragraph 11 of the Complaint.

12. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in the first, second, third and fourth sentences of Paragraph 12 of the Complaint. Defendants deny the allegations set forth in the fifth sentence of Paragraph 12 of the Complaint.

13. Paragraph 13 of the Complaint states the legal conclusion of the pleader, to which no answer is required. To the extent further response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 13 of the Complaint.

14. Paragraph 14 of the Complaint states the legal conclusion of the pleader, to which no answer is required. To the extent further response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 14 of the Complaint.

15. Paragraph 15 of the Complaint states the legal conclusion of the pleader, to which no answer is required. To the extent further response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 15 of the Complaint.

16. Paragraph 16 of the Complaint states the legal conclusion of the pleader, to which no answer is required. To the extent further response is required, Defendants deny the allegations set forth in Paragraph 16 of the Complaint.

17. Paragraph 17 of the Complaint states the legal conclusion of the pleader, to which no answer is required. To the extent further response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in the first, second and fourth sentences of Paragraph 17 of the Complaint; and Defendants deny the allegations set forth in the third and fifth sentences of Paragraph 17 of the Complaint.

18. Paragraph 18 of the Complaint states the legal conclusion of the pleader, to which no answer is required. To the extent further response is required, Defendants deny the allegations set forth in Paragraph 18 of the Complaint and refer to NCCI's Workers Compensation Statistical Plan and the applicable regulations for their contents.

19. Paragraph 19 of the Complaint states the legal conclusion of the pleader, to which no answer is required. To the extent further response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 19 of the Complaint and refer to NCCI's Workers Compensation Statistical Plan for its contents.

20. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in the first and second sentences of Paragraph 20 of the Complaint. Defendants deny the allegations set forth in the third sentence of Paragraph 20 of the Complaint.

21. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in the first and second sentences of Paragraph 21 of the

Complaint. Defendants admit that the Complaint purports to describe sources of reimbursement and recovery in subsequent paragraphs.

22. Paragraph 22 of the Complaint states the legal conclusion of the pleader, to which no answer is required. To the extent further response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 22 of the Complaint and refer to [www.scsif.sc.gov](http://www.scsif.sc.gov) for its contents.

23. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in the first sentence of Paragraph 23 of the Complaint. Defendants deny the allegations set forth in the second sentence of Paragraph 23 of the Complaint.

24. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 24 of the Complaint.

25. Defendants deny the allegations set forth in Paragraph 25 of the Complaint.

26. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in the first and second sentences of Paragraph 26 of the Complaint. The third sentence of Paragraph 26 of the Complaint states the legal conclusion of the pleader, to which no answer is required. To the extent further response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in the third sentence of Paragraph 26 of the Complaint and refer to NCCI's Workers Compensation Statistical Plan for its contents.

27. Defendants deny the allegations set forth in Paragraph 27 of the Complaint.

28. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in the first sentence of Paragraph 28 of the Complaint,

and deny the allegations set forth in the second sentence of Paragraph 28 of the Complaint. The third sentence of Paragraph 28 of the Complaint states the legal conclusion of the pleader, to which no answer is required. To the extent further response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in the third sentence of Paragraph 28 of the Complaint and refer to NCCI's Workers Compensation Statistical Plan for its contents.

29. Defendants admit that American Home Assurance Company issued workers compensation policy No. WC 008943905, effective June 1, 2006 to June 1, 2007, to Thrift. Defendants deny the remaining allegations set forth in Paragraph 29 of the Complaint.

30. Defendants deny the allegations set forth in the first sentence of Paragraph 30 of the Complaint, but admit that on February 9, 2007, a Thrift employee filed a workers compensation claim designated Claim No. 709-457135. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in the second sentence of Paragraph 30 of the Complaint.

31. Defendants admit that American Home Assurance Company accepted Claim No. 709-457135 and ultimately closed the claim on August 11, 2010. Defendants deny the remaining allegations set forth in Paragraph 31 of the Complaint.

32. Defendants admit that American Home Assurance Company submitted Claim No. 709-457135 to the SCSIF for reimbursement and recovery of benefits paid on behalf of American Home Assurance Company. Defendants deny the remaining allegations set forth in Paragraph 32 of the Complaint.

33. Defendants deny the allegations set forth in Paragraph 33 of the Complaint.

34. Defendants admit that Claim No. 709-457135 was accepted by the SCSIF on January 20, 2010. Defendants deny the remaining allegations set forth in Paragraph 34 of the Complaint.

35. Defendants deny the allegations set forth in Paragraph 35 of the Complaint.

36. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 36 of the Complaint.

37. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 37 of the Complaint.

38. Defendants deny the allegations set forth in Paragraph 38 of the Complaint.

39. Defendants deny the allegations set forth in Paragraph 39 of the Complaint.

40. Defendants admit that Chartis Inc. is the corporate parent to property and casualty insurance company subsidiaries and is headquartered at 175 Water Street, New York, New York. Defendants deny the remaining allegations set forth in Paragraph 40 of the Complaint.

41. Defendants admit that Chartis Inc. has at least ten property and casualty insurance company subsidiaries, including American Home Assurance Company, authorized by the South Carolina Department of Insurance to do business in the State of South Carolina. Defendants deny the remaining allegations set forth in Paragraph 41 of the Complaint.

42. Defendants deny the allegations set forth in Paragraph 42 of the Complaint.

43. Defendants deny the allegations set forth in Paragraph 43 of the Complaint.

44. Defendants deny the allegations set forth in Paragraph 44 of the Complaint.

45. Defendants deny the allegations set forth in Paragraph 45 of the Complaint.

46. Defendants deny the allegations set forth in Paragraph 46 of the Complaint.

47. Paragraph 47 of the Complaint states the legal conclusion of the pleader, to which no answer is required. To the extent further response is required, Defendants deny the allegations set forth in Paragraph 47 of the Complaint.

48. Defendants deny the allegations set forth in Paragraph 48 of the Complaint.

49. Defendants deny the allegations set forth in Paragraph 49 of the Complaint.

50. Defendants deny the allegations set forth in Paragraph 50 of the Complaint.

51. Defendants deny the allegations set forth in Paragraph 51, including subparagraphs a-1 of Paragraph 51, of the Complaint.

52. Defendants deny the allegations set forth in Paragraph 52 of the Complaint.

53. Defendants deny the allegations set forth in Paragraph 53 of the Complaint.

54. Defendants deny the allegations set forth in Paragraph 54 of the Complaint.

55. Defendants incorporate by reference their responses to Paragraphs 1-54 of the Complaint.

56. Defendants deny the allegations set forth in Paragraph 56 of the Complaint.

57. Defendants deny the allegations set forth in Paragraph 57 of the Complaint and refer to workers compensation insurance policy No. WC 008943905 for its contents.

58. Defendants deny the allegations set forth in Paragraph 58 of the Complaint.

59. Defendants deny the allegations set forth in Paragraph 59 of the Complaint.

60. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 60 of the Complaint.

61. Defendants deny the allegations set forth in Paragraph 61 of the Complaint.

62. Defendants incorporate by reference their responses to Paragraphs 1-61 of the Complaint.



63. Defendants deny the allegations set forth in Paragraph 63 of the Complaint.
64. Defendants deny the allegations set forth in Paragraph 64 of the Complaint.
65. Defendants deny the allegations set forth in Paragraph 65 of the Complaint.
66. Defendants deny the allegations set forth in Paragraph 66 of the Complaint.
67. Defendants deny the allegations set forth in Paragraph 67 of the Complaint.
68. Defendants incorporate by reference their responses to Paragraphs 1-67 of the Complaint.
69. Defendants deny the allegations set forth in Paragraph 69 of the Complaint.
70. Defendants deny the allegations set forth in Paragraph 70 of the Complaint.
71. Defendants deny the allegations set forth in Paragraph 71 of the Complaint.
72. Defendants deny the allegations set forth in Paragraph 72 of the Complaint.
73. Defendants deny the allegations set forth in Paragraph 73 of the Complaint.
74. Defendants deny every allegation in the Complaint that is not specifically admitted in this Answer.

**JURY TRIAL DEMAND**

Defendants hereby request a trial by jury in this case.

**AFFIRMATIVE AND ADDITIONAL DEFENSES**

Defendants incorporate by reference all preceding paragraphs as if fully set forth herein.

**FOR A FIRST DEFENSE**

Plaintiff's Complaint, and each and every claim stated therein, fails to allege facts sufficient to state a claim upon which relief can be granted.

**FOR A SECOND DEFENSE**

Some or all of Plaintiff's claims against Defendants are barred by the applicable Statute of Limitations and/or laches.

**FOR A THIRD DEFENSE**

Plaintiff's claims against Defendants are barred by the express terms of the contract.

**FOR A FOURTH DEFENSE**

Plaintiff's claims against Defendants are barred because Defendants have complied with all applicable laws and regulations of the federal government and the State of South Carolina.

**FOR A FIFTH DEFENSE**

Plaintiff's claims against Defendants are barred, in whole or in part, because Plaintiff failed to exhaust its administrative remedies.

**FOR A SIXTH DEFENSE**

Plaintiff's claims against Defendants are barred by the Filed Rate Doctrine.

**FOR A SEVENTH DEFENSE**

Each Defendant denies that it or any of its agents or representatives breached any duty or obligation owed to Plaintiff, or any member of the purported class, arising out of the contract at issue in this action.

**FOR AN EIGHTH DEFENSE**

The Complaint, to the extent that it seeks to prosecute claims as a class action, violates Defendants' rights to procedural and substantive due process under the Fifth and Fourteenth Amendments of the United States Constitution.

**FOR A NINTH DEFENSE**

All claims against Defendants are barred because neither Plaintiff nor the putative class members have suffered any actual injuries as alleged in the Complaint.

**FOR A TENTH DEFENSE**

The defenses alleged in this Answer will apply, or will not apply, in varying degrees, to members of the putative class other than Plaintiff. The extent to which this is true will depend upon the factual circumstances of each individual member of the putative class.

**FOR AN ELEVENTH DEFENSE**

Plaintiff's claims against Defendants are barred, in whole or in part, because Plaintiff would be unjustly enriched if it was allowed to recover damages.

**FOR A TWELFTH DEFENSE**

Plaintiff's alleged damages are speculative and impossible to ascertain or allocate.

**FOR A THIRTEENTH DEFENSE**

Defendants' alleged conduct was lawful and caused no harm.

**FOR A FOURTEENTH DEFENSE**

Plaintiff's claim for breach of contract against Defendants is barred to the extent that the alleged contract between Plaintiff and any Defendant includes a limitation of warranties, limitation of remedies, or waiver of consequential damages.

**FOR A FIFTEENTH DEFENSE**

Any alleged acts or omissions on the part of Defendants were not the actual or proximate cause of Plaintiff's alleged injuries.

**FOR A SIXTEENTH DEFENSE**

Plaintiff's alleged injuries or damages were not a foreseeable consequence of any alleged act or omission on the part of Defendants.

**FOR A SEVENTEENTH DEFENSE**

Upon information and belief, Plaintiff has waived its claims and/or is estopped from asserting its claims based on Plaintiff's own knowledge, conduct and other allegations with respect to their allegations in this case.

**FOR AN EIGHTEENTH DEFENSE**

Plaintiff is barred from recovery in this case because of Plaintiff's failure to mitigate its alleged damages.

**FOR A NINETEENTH DEFENSE**

Plaintiff is not entitled to punitive damages because an award of punitive damages in this case would violate the Fifth and Fourteenth Amendments to the United States Constitution, as well as Article I, § 3 and Article I, § 14 of the South Carolina Constitution. In particular, an award of punitive damages must strictly comply with the guidelines set forth in *State Farm Mutual Automobile Insurance Company v. Campbell*, and the failure to do so renders any such award unconstitutional.

**FOR A TWENTIETH DEFENSE**

Defendants are entitled to receive indemnification or contribution from other insurers if they were to incur liability as a result of this action.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendants American International Group, Inc., Chartis Inc., and American Home Assurance Company hereby pray to

this Honorable Court for dismissal of Plaintiff's Complaint, with prejudice, for a trial before a duly constituted jury on any claims which are not dismissed, and for such other and further relief as the Court may deem just and proper.

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