

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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AXA VERSICHERUNG AG, on its own
behalf and as successor in interest to
Albingia Versicherungs AG,

Case No. 05-CV-10180 (JSR)

Plaintiff,

-against-

**SECOND AMENDED
COMPLAINT
AND
JURY DEMAND**

NEW HAMPSHIRE INSURANCE
COMPANY; AMERICAN HOME
ASSURANCE COMPANY; and NATIONAL
UNION FIRE INSURANCE COMPANY
OF PITTSBURGH, PENNSYLVANIA,

Defendants.
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AXA Versicherung AG (“AXAV”), on its own behalf and as successor in interest to Albingia Versicherungs AG (“Albingia”), as its Second Amended Complaint, alleges as follows:

1. From November 1996 through December 1998, Defendants, insurance company subsidiaries of the American International Group (the Defendants are collectively referred to as “AIG”), and their agents, insurance brokerage firms acting on behalf of AIG, conspired to fraudulently induce AXAV to participate in a \$10,000,000 primary loss reinsurance facility (the “Primary Facility”). As a part and means of the conspiracy, AIG and its agents misrepresented or omitted to disclose material facts about the nature of the reinsurance program AXAV would be underwriting, about the premium, rating, loss history and quality of the risks AXAV would be reinsuring, and about AXAV’s liability exposure on each risk reinsured under the program.

2. The misrepresentations caused AXAV to suffer millions of dollars in losses because, contrary to their representations and legal obligations, the Defendants used the Primary Facility as a dumping ground for volatile, risky or unprofitable insurance policies AIG would not have otherwise written for its own account.

3. As a ceding insurer and agents to a ceding insurer, AIG and its agents were obligated to exercise utmost good faith in their dealings with AXAV relating to the reinsurance contract. However, AIG's internal documents demonstrate it acted in bad faith. AIG (a) knew its agents made material misrepresentations to AXAV; (b) knew that its agents were continuing to defraud AXAV during the operation of the Primary Facility, and, instead of making truthful disclosures, (c) AIG and its agents continued to conceal the fraudulent conspiracy for their pecuniary benefit.

4. AXAV therefore brings this action for rescission and for compensatory and punitive damages, and such other damages as may be appropriate against the Defendants, for intentional misrepresentation, negligent misrepresentation, material nondisclosure, breach of the duty of utmost good faith, and conspiracy to commit fraud.

PARTIES

Plaintiff

5. Plaintiff AXAV is a corporation organized pursuant to the laws of the Federal Republic of Germany with its principal place of business in Cologne, Germany.

6. In 1999, AXAV's ultimate parent, Paris-based AXA S.A., acquired a U.K.-based insurance group known as Royal Guardian Exchange ("RGE"). One of RGE's affiliates involved in this acquisition was a German insurer and reinsurer known as Albingia. At the time of this acquisition, Albingia's principal place of business was located in Hamburg, Germany.

7. As a result of the acquisition of RGE, Albingia was merged into AXAV in October, 2000. At that time, AXAV, among other things, assumed full responsibility for all of Albingia's inwards reinsurance contracts.

8. AXAV is the legal successor-in-interest to Albingia and all references to AXAV herein include Albingia.

Defendants

9. Defendant New Hampshire Insurance Company is a Pennsylvania corporation with its principal place of business in New York, New York.

10. Defendant American Home Assurance Company is a New York corporation with its principal place of business in New York, New York.

11. Defendant National Union Fire Insurance Company of Pittsburgh, Pennsylvania is a Pennsylvania corporation with its principal place of business in New York, New York.

12. New Hampshire Insurance Company, American Home Assurance Company, and National Union Fire Insurance Company of Pittsburgh, Pennsylvania are all insurance companies that are owned, controlled, and/or operated by the American International Group.

JURISDICTION

13. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because the Plaintiff and the Defendants are citizens of different states and the amount in controversy exceeds \$75,000. This Court has personal jurisdiction over the Defendants as they all do business or transact business in the State of New York.

FACTUAL ALLEGATIONS

A. General Background

14. AXAV was solicited to be a member of a reinsurance facility that provided primary reinsurance coverage to Defendants and other subsidiaries and/or affiliates of AIG. This Primary Facility was intended to provide reinsurance for AIG's participation in certain energy-related risks.

15. Reinsurance is an insurance contract issued to an insurer. The insurer is known as the "ceding insurer" or "cedent" in a reinsurance relationship. A reinsurance contract provides a right of reimbursement pursuant to its terms and conditions when the cedent incurs losses by

making payments to resolve claims under insurance policies or reinsurance contracts it has issued to others.

16. Reinsurance functions to spread risk among a broader group of insurers. Direct insurers (such as AIG) cede portions of the risk they assume to reinsurers (and a share of premium related to the percentage of risk assumed by the reinsurer). Those reinsurers can further cede (or “retrocede”) portions of the risk they assume to other reinsurers (called “retrocessionaires”).

17. Primary reinsurance agreements such as the Primary Facility cover the first losses experienced on an underlying insurance policy. A \$10 million primary loss reinsurance agreement reinsures the first \$10 million of losses experienced on an insured risk.

18. AIG, as a ceding insurer, is bound by reinsurance industry custom and by law to act in “utmost good faith” (or *uberrimae fidei*) in its dealings with Plaintiff and other participants in the Primary Facility. The cedent’s duties include an obligation of absolute and perfect candor. “Utmost good faith” requires the ceding insurer to disclose to its reinsurer all facts that materially affect the risk being ceded so that the reinsurer can properly evaluate the risk prior to making an underwriting decision. Failure by the cedent to comply with this obligation renders the reinsurance contract void as of its inception date.

19. As a ceding insurer, AIG owed to Plaintiff the obligation to act in “utmost good faith” with respect to all issues relating to the Primary Facility, including the initial placement of the Primary Facility and subsequent submissions of information in connection with the Primary Facility.

20. There are two basic forms of reinsurance: treaty and facultative reinsurance. Treaty reinsurance obligates insurers to cede and reinsurers to accept an entire group or category of policies written during a specific period. Treaty reinsurers make only one underwriting decision: whether or not to participate in the treaty. In this respect, the reinsurer is said to be

underwriting the insurer, or AIG in this case. Under the custom and practice of the industry, the cedent undertakes to use its skill and underwriting expertise to assume and cede risks to the treaty that, based on sound underwriting practices, the insurer expects will yield a gross profit to the insurer and reinsurer. Once a treaty reinsurer signs onto a treaty, it does not analyze individual risks as they are ceded. Rather, it depends completely on the underwriting skill and the good faith of its ceding insurer.

21. With facultative reinsurance, the ceding insurer presents each risk individually to the reinsurer prior to a cession. The reinsurer depends upon the ceding insurer to provide complete and accurate information about the risk in advance of the cession, but the reinsurer independently evaluates that information and either accepts or rejects the risk on a case-by-case basis prior to the inception of the insurance. Accordingly, facultative underwriting typically requires more time and resources on the part of the reinsurance underwriter since the reinsurer, and not the cedent, is primarily responsible for evaluating the quality of the risk. For that reason, some reinsurers do not write facultative reinsurance because they do not have the resources or expertise to evaluate risks on a case-by-case basis. Such reinsurers choose instead to participate in treaties so that they can rely on the underwriting expertise of a large company such as AIG.

22. Facultative obligatory reinsurance is a hybrid of treaty and facultative reinsurance, combining characteristics of both. Under this form of agreement, ceding insurers do not automatically cede every risk in a category, but the reinsurer is bound to accept those risks the insurer does cede. A heightened duty of utmost good faith exists on the part of the ceding insurer in a facultative obligatory facility because a facultative obligatory reinsurer, similar to a treaty reinsurer, has no right to decide whether to accept or reject an individual risk. The reinsurer depends entirely on the underwriting skill and good faith of the ceding insurer.

23. At all times relevant to the issues in this action, the Albingia reinsurance department that participated in the Primary Facility wrote treaty and facultative obligatory reinsurance. It did not have the capability or resources to write facultative reinsurance.

B. The Primary Facility

24. AIG and its agents conceived the Primary Facility some time during 1996. Under its terms, AIG ceded certain risks to the reinsurers of the Primary Facility, including AXAV (collectively, the “Reinsurers”). The Reinsurers were to receive a percentage of the original premium of the ceded policies in exchange for the risks assumed.

25. AIG engaged the New York-based insurance brokerage firm of Nausch, Hogan & Murray, Inc. (“NHM”) to assist in the development of the Primary Facility as well as to act as its agent to solicit reinsurers to participate in the Primary Facility.

26. NHM acted as AIG’s agent for all purposes in connection with the Primary Facility including initial solicitation, negotiation and placement, the submission of information on AIG’s behalf, and submission of losses, premium income and statistical information to the participating Reinsurers.

27. The London-based insurance brokerage firm of Sedgwick International Broking Services Limited (“Sedgwick”) was also enlisted by AIG and/or its agents to, among other things, solicit reinsurers to participate in the Primary Facility.

28. In addition, the London-based insurance brokerage firm of Newman, Martin & Buchan, Ltd. (“NMB”) was enlisted by AIG and/or its agents to, among other things, solicit reinsurers to participate in the Primary Facility.

29. NMB acted as agent for AIG for purposes of initial solicitation, negotiation and placement, the submission of information on AIG’s behalf, and submission of losses, premium income and statistical information to the participating Reinsurers.

30. Prior to the initial placement of the Primary Facility, NMB had developed a close relationship of trust and confidence with Albingia's lead underwriter. NMB had regular dealings with Albingia prior to November 1996. In addition, NMB had previously placed with Albingia another facultative obligatory reinsurance contract that reinsured AIG business. This contract was known as the AIG Oil Rig Treaty.

31. On information and belief, NMB knew that Albingia did not write facultative reinsurance as a result of its prior course of dealing with Albingia.

32. For the 1996/97 year, AIG and its agents represented that AIG would cede risks to the Primary Facility on a facultative obligatory basis and that such risks would constitute "[p]roperty risks including associated construction risks written as direct and indirect insurance by American International Underwriters Energy Division" limited to "American International Group Offices of the Southern Pacific Rim which report to the Melbourne [Australia] regional office and/or affiliated and/or associated companies as may be agreed."

33. Based on the representations and disclosures provided to AXAV that are more fully pleaded below, as well as its existing relationship of trust and confidence with NMB, AXAV agreed to take a 20% participation of AIG's risk in the Primary Facility for the period commencing on November 1, 1996 (the "1996/97 Facility").

34. In 1997, AIG expanded the scope of the Primary Facility to include: "Property and Construction risks written as direct and indirect insurance including Advance Loss of Profits and/or Business Interruption. Construction risks (CAR/EAR) also to include associated Third Party Liabilities, Operating risks for Oil and Petrochemical, Chemical, Utilities, Boiler and Machinery and Power Generation and as agreed."

35. The placement information for renewal of the Primary Facility represented that the geographical scope of the 1997/98 Facility would be expanded to include "[a]ll risks submitted by American International Group's Energy Department offices Worldwide other than

the United States of America and United Kingdom other than incidental [*sic*] and/or as may be agreed.”

36. Based on its understanding that it was underwriting a facultative obligatory contract and based on the representations and disclosures made by AIG and its agents in 1997, which are more fully pleaded below, as well as its existing relationship of trust and confidence with NMB, AXAV agreed to take a 25% participation in the Primary Facility for the period commencing on December 1, 1997 (the “1997/98 Facility”).

37. Other Reinsurers participating in the 1997/98 Facility included such entities as Farm Bureau Mutual Insurance Company (“Farm Bureau”), and David Preston Mann and other members of Lloyd’s Syndicate 435 (collectively, “DP Mann”).

C. The Fraudulent Scheme

38. Beginning in 1996 and through 1998, AIG intended to treat, and in fact did treat, the Primary Facility as facultative in order to cede to the Reinsurers inferior, volatile or unprofitable policies that did not meet AIG’s underwriting standards. Knowing, on information and belief, that Albingia would not and could not underwrite facultative reinsurance, AIG, NHM and NMB agreed to engage in a conspiracy and pattern of deceptive conduct, the object of which would and did: (a) mislead AXAV into believing that it was underwriting a facultative obligatory contract in connection with the Primary Facility (similar to the AIG Oil Rig Treaty also brokered by NMB on behalf of AIG); (b) conceal from AXAV AIG’s intent to cede facultative risks to the Primary Facility and engage in adverse selection of risks; and (c) create a record to defend AIG in litigation that AIG anticipated could result from its adverse selection of risks.

39. To carry out the scheme, AIG and its brokers agreed that they would misrepresent certain key facts to AXAV regarding the Primary Facility.

40. In furtherance of the conspiracy, AIG and its brokers intentionally represented to AXAV, both explicitly and implicitly, *inter alia*, that: (1) the Primary Facility would operate on a facultative obligatory basis, under which AXAV would automatically accept all risks ceded to the facility and rely entirely on Defendants' underwriting skill and utmost good faith in ceding risks to the facility; (2) Defendants would cede risks that were written in accordance with AIG's "blue chip" underwriting guidelines and reputation, and there would not be adverse selection; (3) risks that would be ceded to the Primary Facility had low loss ratios, afforded attractive premium flows, and would constitute a diversified portfolio of risks; and (4) AXAV's exposure under the Primary Facility would be limited to 20% of AIG's exposure to the underlying risks for the 1996/97 year and 25% for the 1997/98 year.

41. In truth and in fact, each of AIG's representations was false: (1) Defendants misrepresented that the Primary Facility was a facultative obligatory contract, when in fact AIG intended to treat the facility as facultative in an attempt to avoid its obligations of utmost good faith to AXAV; (2) in violation of their duty of utmost good faith, the Defendants intended to, and did misrepresent, omit, manipulate and obscure material information relating to the loss history, expected premium income, and the identity of risks that would be ceded to the Primary Facility; (3) Defendants intended to and, on information and belief, did use the Primary Facility as a dumping ground for risks that AIG would not underwrite for its own account and which would and did cause AXAV to suffer massive losses; and (4) Defendants misrepresented and omitted to disclose that they manipulated AXAV's 20% participation in the 1996/97 Facility so that AXAV was exposed to 72.72% of AIG's exposure to underlying risks, and manipulated AXAV's 25% participation in the 1997/98 Facility so that AXAV was exposed to 52.08% of AIG's exposure to underlying risks.

42. In furtherance of the conspiracy, AIG and its agents also took affirmative steps to conceal the fraud from AXAV. Knowing that AXAV and other reinsurers believed they had

accepted a facultative obligatory contract, AIG directed its brokers to create a record that would purportedly provide it support to argue in court that the Primary Facility was in fact simply a collection of individual facultative reinsurance risks underwritten individually by the Reinsurers and that any adverse risks ceded and accepted into the Primary Facility would, therefore, be the Reinsurers' responsibility.

43. On May 1, 1997, an AIG executive internally circulated the Primary Facility agreement and requested "thoughts as to how this would stand up on a facultative basis should we have to go to court sometime in the future for recoveries"

44. In August 1997, AIG's brokers began to send individual declarations for risks that had been previously ceded to the Primary Facility. Declarations on individual risks are sometimes used on facultative obligatory contracts. However, under industry custom and practice, in a purely facultative reinsurance relationship, information on individual risks is delivered in advance of the cession and contains extensive disclosures about each risk so that the reinsurer can make an underwriting determination about the individual risk.

45. In this case, however, AIG delivered most of the declarations *after* the risks had been ceded. Further, contrary to industry practice and in violation of their duty of utmost good faith, neither AIG nor its brokers provided sufficient information about the risks themselves to allow a reinsurance underwriter to perform its own underwriting analysis of the individual risk.

46. This deception was intentional. On September 11, 1997, shortly after the first batch of declarations was sent to AXAV, NHM advised AIG that it was not providing the Reinsurers with all of the information it had on the risks being declared because it did not want to reveal to the Reinsurers that they could reject the declarations. NHM told AIG, "[W]e are reluctant to include an excessive amount of information, because . . . [w]e do not in any way want to contradict the facility wording and give the appearance that any underwriting aspects require reinsurers [*sic*] approval."

47. In furtherance of the conspiracy, AIG and its brokers failed to disclose to AXAV and other reinsurers that AIG was treating the Primary Facility as facultative. Instead, as pleaded in more detail below, AIG and its brokers made false and misleading disclosures about the loss history of the 1996/97 Facility and about the business to be ceded to the 1997/98 Facility in order to induce AXAV to renew its participation on the Primary Facility. AIG and its agents knew that AXAV and other reinsurers were signing onto the Primary Facility under false understandings.

48. Upon information and belief, AIG also engaged in a pattern of adverse selection in order to cede inferior risks that caused massive losses to AXAV.

49. As part of the scheme, in mid-1998 AIG insisted on variations to contract wording for the 1997/98 Facility that would make it easier for AIG to argue that the Primary Facility was purely facultative rather than facultative obligatory. NMB initially rejected the proposed language, telling NHM that “[r]isks within the scope of the contract are obligatory to reinsurers.” But AIG insisted on the wording. Despite this debate among AIG and its brokers, neither AIG nor its brokers ever disclosed to AXAV or other reinsurers that they were operating under false premises about the nature of the Primary Facility.

50. Almost two years after the Primary Facility had inceptioned, NMB and AIG met on October 2, 1998 and discussed the continuing fraud that was being perpetrated on the Reinsurers. A memorandum written by an AIG executive regarding that meeting states that (a) NMB had placed the Primary Facility “on the basis of a facultative obligatory treaty rather than a semi-automatic facultative arrangement;” (b) “Reinsurers believe that this is a Facultative Obligatory Treaty with an attractive premium flow;” (c) “the reinsurers would not have agreed to participate if they had known what is required is a facility where individual facultative risks are offered on a selective basis;” and (d) the estimated premium projections that AIG’s brokers had provided to the Reinsurers “were far too optimistic.”

51. Despite the knowledge that its agents placed the Primary Facility “on the basis of a facultative obligatory treaty” and the knowledge (a) that AXAV would not have participated in the Primary Facility on a pure facultative basis, and (b) AXAV continued to participate in the Primary Facility believing that it was a facultative obligatory treaty, AIG never corrected AXAV’s understanding.

1. 1996/97 Facility

a. AIG’s Misrepresentations

52. On or about November 1, 1996, NHM sent a summary of AIG’s goals regarding the Primary Facility to NMB. The information represented, among other things, that AIG wished “to arrange a USD 10,000,000 Primary First Loss Facultative Obligatory Treaty on all risks submitted by AIG’s Energy Department in the Austral Asia region on both Construction and/or Operating risks” and that the premium for the Primary Facility would be based on the size of the activity.

53. AXAV was initially solicited by Sedgwick to participate in the Primary Facility. On or about November 4, 1996, Sedgwick, in its capacity as agent for AIG, provided AXAV with placement information representing that AIG wished to place a “USD10,000,000 Primary First Loss Facultative *Obligatory* Treaty on all risks submitted by AIG’s Energy Department in the Austral Asia region . . .” (emphasis added). AXAV did not respond to this solicitation from Sedgwick because, in part, the reinsurance underwriter at AXAV did not have a close relationship with any of the brokers at Sedgwick.

54. On or about November 22, 1996, NMB, in its capacity as agent for AIG, provided initial placement disclosure materials to AXAV to solicit AXAV’s participation in the Primary Facility (the “Initial Placement Disclosure”). The Initial Placement Disclosure represented that the business would be ceded by AIG’s offices of the Southern Pacific Rim which “report to the Melbourne regional office and/or affiliated and/or associated companies as may be agreed;” that

the Primary Facility would cede “[p]roperty risks including associated construction risks;” that the Primary Facility would operate on a “[r]isks attaching” basis for the period twelve months commencing November 1, 1996; that AXAV already had a “very good relationship” with AIG and that the Primary Facility would be a “similar contract” to the facultative obligatory AIG Oil Rig Treaty that NMB had previously broked to AXAV; and that the estimated premium income (“EPI”) to the Primary Facility was \$10,000,000 to \$12,500,000.

55. The Initial Placement Disclosure included a schedule of eight “risks already written” that would be ceded “straight away” to the Primary Facility. According to the Initial Placement Disclosure, the eight risks were representative of the “quality of risks being written and ceded, whilst providing an immediate source of income to kick start the account.” The materials further identified AIG as a “‘Blue Chip’ Reassured” with the ability to generate premium income.

56. Finally, the Initial Placement Disclosure directed AXAV to review an attached premium income worksheet (the “Premium Income Worksheet”). The Premium Income Worksheet demonstrated that the premium reinsurers would receive would be calculated as a percentage of AIG’s share of the premium on each risk. AXAV would thus participate in the Primary Facility by reinsuring a percentage of AIG’s share of each risk and receiving a corresponding percentage of the premium for that risk. AXAV’s 20% participation in the Primary Facility reinsured 20% of AIG’s share of each risk ceded to the facility. If AIG insured 100% of a \$10 million primary risk, AXAV would reinsure \$2 million of AIG’s \$10 million primary exposure and receive 20% of AIG’s premium ceded to the Primary Facility. Similarly, if AIG insured 50% of a \$10 million primary risk, AXAV would reinsure \$1 million of AIG’s \$5 million primary exposure and again receive 20% of AIG’s premium ceded to the Primary Facility.

57. Because the Premium Income Worksheet calculated cessions to the Primary Facility as a percentage share of AIG's share of each particular risk, which varied from 30% to 100%, AXAV reasonably believed that AIG would rarely insure 100% of the types of risks it would cede to the Primary Facility. Based on this representation, AXAV reasonably believed that it would rarely be exposed to its maximum loss amount of \$2 million.

58. The terms of the original "slip," which served as the written contract for the 1996/97 Facility, were subsequently amended by endorsement. Specifically, on or about January 23, 1997, AXAV executed an endorsement amending the rating scale graph attached to the original slip. NMB represented that the endorsement gave "a much more accurate position on the rates." This endorsement also amended the description of the attached "schedule of current risks" to read: "schedule of 7 [*sic*] anticipated declarations." This amended schedule was the same schedule that had been submitted to AXAV in November 1996 save for the removal of one of the risks.

59. AXAV relied on the representations alleged in paragraphs 52 to 58 in deciding to reinsure 20% of AIG's risk on the 1996/97 Facility.

b. The Falsity of AIG's Misrepresentations

60. In furtherance of the conspiracy, AIG and its agents' representations were false and misleading:

a. In truth and in fact, beginning in 1996 and throughout the conspiracy, AIG intended to and did treat the Primary Facility as a purely facultative reinsurance agreement and in no way similar to the AIG Oil Treaty, as represented. As alleged herein, AIG and its brokers knew that AXAV and other reinsurers had participated in the Primary Facility based on false representations, and neither AIG nor its agents revealed the truth. Instead, they deprived AXAV and reinsurers of material information about the Primary Facility.

b. In truth and in fact, a number of the eight risks set forth in the Initial Placement Disclosure in November 1996 and again in January 1997, which had been purportedly written by AIG and ceded to the Primary Facility, would not be ceded to the Primary Facility.

c. In truth and in fact, rather than applying its purported “blue chip” reputation and skill to underwrite risks that met AIG’s underwriting criteria, AIG intended to, and upon information and belief, did cede risks to the Primary Facility that it would not have written for its own account because they were likely to be unprofitable, including risks with unreasonably low deductibles.

d. In truth and in fact, AIG and its brokers omitted to disclose that AXAV would have a much larger exposure than 20% of AIG’s share of each declared risk. AIG and its brokers intended to expose, and did expose, AXAV to 72.72% of liability on each individual risk declared to the 1996/97 Facility without any meaningful disclosure to AXAV.

61. Had the truth about the foregoing misrepresentations and omissions been disclosed to AXAV, AXAV would not have participated in the 1996/97 Facility.

c. AIG's Misrepresentations to Expand the 1996/97 Facility

62. Another object of AIG's conspiracy was to induce AXAV and other reinsurers to agree to expand the scope of coverage under the Primary Facility. Once AXAV and other Reinsurers signed on to the Primary Facility, AIG and its brokers, NHM and NMB, began attempting to persuade AXAV to accept a broader array of risks, including other types of energy risks beyond construction (such as operating risks policies for oil, chemicals and utilities) and to accept a greater geographic scope of coverage beyond Southeast Asia. To that end, AIG and its agents supplied AXAV and other reinsurers statistical information, including historical loss and premium information. AIG and its agents knew that AXAV and other reinsurers would rely on the accuracy of such information to agree to an expansion of the Primary Facility.

63. AIG and its agents, NHM and NMB, also knew that Reinsurers were expecting that the policies ceded to the Primary Facility would be representative of 100% of AIG's energy-related risks to ensure that there would be diversification of the ceded business and that there would be no adverse selection of risks ceded to the Primary Facility.

64. On or around March 13, 1997, Defendants provided AXAV with the premium and loss statistics to induce AXAV to agree to an expansion of the Primary Facility to include oil and petroleum, chemical and utility insurance policies in Southeast Asia. The historical experience demonstrated a favorable loss ratio for this business written by AIG, indicating to reinsurers that ceding this business to the Primary Facility would be likely to result in profits for reinsurers.

65. AXAV relied on the material information provided with regard to an expansion of 1996/97 Facility. On or about March 19, 1997, AXAV agreed to the expansion of the 1996/97 Facility.

66. In truth and in fact, the loss ratio, rating scheme, and purported premium income in AIG's material presented on or about March 13, 1997 were false and misleading. The Primary Facility operated on a "risks-attaching" basis, meaning that AIG could cede to the Primary

Facility policies with an inception date during the period of the Facility (*i.e.*, risks that “attached” during the period of the Facility) and the Reinsurers would reinsure losses relating to such policies, even if the losses occurred after the period of the Facility expired. For example, if a policy with a four-year period incepted in 1997 and was declared to the 1996/97 Facility, AIG could be liable for a loss on that policy that occurred in 1999 and the Reinsurers for the 1996/97 Facility would be liable to indemnify AIG for their reinsured share of that 1999 loss. Under industry custom and practice, historical data for a risks-attaching contract, such as the Primary Facility, is presented on a risks-attaching basis, which measures premium versus claims with regard to a specific risk which has attached during a particular underwriting year.

67. Even though AIG had several years of claims experience relating to the policies it sought to add to the Primary Facility, AIG and its agents misrepresented the historical loss ratio experience by failing to disclose it on a risks-attaching basis. AXAV did not know that AIG was not presenting the information on a risks-attaching basis. AIG's brokers knew this was a material omission. According to an NMB document dated December 8, 1998, NMB informed NHM that the reinsurers believed the information supplied to them in connection with 1996/97 Facility expansion had been provided “on the same basis as the placement of the facility, *i.e.* a comparison between earned premium versus incurred losses on a risks attaching basis, per underwriting year.” NMB acknowledged that the information had not been presented on a risks-attaching basis and went on to state, “It is our concern that unless we can provide this information then Underwriters will look to unwind the facility and not accept liability for those risks already bound.”

68. In addition, despite knowing that Reinsurers expected a diverse book of business without adverse selection, AIG stated internally that it would use the Primary Facility “. . . for all accounts not matching our underwriting criterias [*sic*] . . .” Upon information and belief, AIG in fact engaged in adverse selection with respect to the Primary Facility.

2. The 1997/98 Facility

a. AIG's Misrepresentations

69. On or about November 12, 1997, NMB, as agent for AIG, faxed written placement information to AXAV in order to induce AXAV to renew its participation in the Primary Facility. This information represented that the EPI for the 1996/97 Facility had “almost reached the overall \$15m estimated at inception.” NMB further represented that “[o]n a combined basis the revised estimated income is now \$13.9m compared to \$15m.” The November 12, 1997 renewal package included historical statistics for the Primary Facility, which it called the “Energy CAR/EAR Treaty,” setting forth favorable loss ratios and premium income.

70. The November 12, 1997 renewal information also represented, “With regard to losses there have only been four to date and as you will see from the attached schedule two of these are unlikely to result in a claim at all and a third has been closed as a fee payment only.” AIG and its broker repeated that representation on December 12, 1997, when AIG sought to expand the 1997/98 Facility further to include European Chemical and Latin American risks.

71. On or about December 12, 1997, NMB, as agent for AIG, submitted further written placement information to AXAV regarding the renewal. This information represented that the reinsurance for the Primary Facility would be in respect of risks attaching during the period 13 months commencing December 1, 1997; that the limit would be US\$10,000,000 (100%) or currency equivalent each risk each and every loss; and that the total estimated premium income for the period totaled US\$31,000,000. In addition, the placement information represented that the scope of the Primary Facility would be expanded to include “all risks submitted by American International Group’s Energy Department offices Worldwide other than the United States of America and United Kingdom other than incidental [*sic*] and/or as may be agreed.”

72. The December 12, 1997 placement information provided by NMB, in its capacity as agent for AIG, further represented that the 1997/98 Facility would cover a block of 66 risks in connection with AIG's "Chemical Division – Europe," which had generated premium income for AIG of \$7,118,734 in 1997, and had produced annual average gross losses of \$901,965 from 1993 to 1997. These figures produced a gross loss ratio to AIG of approximately 12% on the business. AIG further represented that, if the Primary Facility had been in effect for the business during that time period, it would have incurred a loss ratio for the European "Chemical Division" of 56%. In other words, AIG represented that it would be ceding a historically profitable block of 66 risks from its European "Chemical Division" to the 1997/98 Facility.

73. The December 12, 1997 placement information also represented that AIG would be ceding its highly profitable Latin America energy business to the Primary Facility. AIG represented that its gross premium in Latin America from 1993 to 1996 averaged \$34,756,000 per year and gross losses averaged \$3,428,000, producing a low loss ratio for AIG of 10%. AIG further represented that, if the Primary Facility had been in effect from 1993 to 1996 for the Latin America business, it would have incurred a loss ratio of 47%. The placement information represented that Latin America premium to the Primary Facility for the forthcoming year was expected to be \$7,250,000.

74. AXAV relied on the information set forth in paragraphs 69 through 73 in deciding to reinsure 25% of AIG's risk on the 1997/98 Facility.

b. The Falsity of AIG's Misrepresentations

75. In furtherance of the conspiracy, AIG's and its agents' representations were false and misleading:

(a) In truth and in fact, AIG's November 12 and December 12, 1997 disclosures of only four losses on the Primary Facility were false and misleading. On information and belief, AIG had in fact experienced over 60 losses as of the dates of these submissions.

(b) In truth and in fact, the favorable 56% loss ratio for AIG's "Chemical Division - Europe" that was disclosed in the December 12 Renewal placement information was false and misleading. In fact, this book of business was experiencing a loss ratio of over 150%. AIG's brokers had cherry-picked 66 specific risks out of a larger book of business to create an artificial loss ratio of 56%. AIG actually ceded only a fraction of those 66 risks to the Primary Facility, thereby making the rating scheme presented with the European Chemical business false and misleading.

(c) In truth and in fact, the favorable loss ratios on AIG's Latin American business was not presented on a risks-attaching basis as required by industry custom and practice. It was, therefore, misleading in presenting an inaccurate, and likely more favorable loss ratio than what the business was actually incurring. The placement information also disclosed an EPI to the Primary Facility for which neither AIG nor its brokers had any reasonable basis to estimate.

76. In furtherance of the conspiracy, to obtain approval for the renewal and expansion of the Primary Facility in 1997/98, AIG and its brokers omitted to disclose the following material facts:

(a) AIG and its brokers knew that AXAV and other Reinsurers were operating under the false assumption that the Primary Facility was facultative obligatory and, therefore, AXAV was relying entirely on underwriting judgment and good faith of AIG;

(b) AIG knew by September 1997 that its brokers were not disclosing material information to Reinsurers in order to ensure that Reinsurers would not discover that they had a right to reject the cessions;

(c) AIG intended to cede, and, upon information and belief, did cede risks to the Primary Facility that it would not ordinarily have written. This adverse selection against the Primary Facility was in breach of the representations to Reinsurers and of AIG's duty of utmost good faith; and

(d) For the 1997/98 Facility, AIG would and did make AXAV liable for greater than 25% of AIG's share of each risk. In fact, AIG would and did expose AXAV to 52.08% of AIG's share of each risk that AIG ceded to the Primary Facility.

77. Had the truth about the foregoing misrepresentations and omissions been disclosed to AXAV, AXAV would not have participated in the 1997/98 Facility.

D. AXAV's Discovery of AIG's Misrepresentations

78. The Primary Facility resulted in enormous losses to the Reinsurers, far in excess of the alleged "historical performance" represented by AIG at time of placement. The various placement materials submitted by NMB reflected loss ratios for portions of the 1997/98 Facility of 47% and 56%. In contrast, by the end of September 2004, AXAV had already experienced a 227% loss ratio for the 1996/97 Facility and a staggering 646% loss ratio for the 1997/98 Facility.

79. While the poor performance of the Primary Facility was a mounting concern to AXAV, suspicions about the nature of the representations made by or on behalf of AIG during placement were not discovered by AXAV until mid-2004.

80. Specifically, by letter dated May 24, 2004, one of AXAV's own reinsurers, Everest Reinsurance Company ("Everest"), advised that it had learned that loss and premium information provided at placement of the 1997/98 Facility was misleading. Everest further advised that it had identified losses which were not disclosed by AIG at time of placement. Accordingly, Everest sought to void its reinsurance contract with AXAV.

81. Following receipt of the Everest letter, AXAV initiated an investigation into the circumstances surrounding placement of the Primary Facility. This investigation included an audit of certain AIG claim files in Australia in late-2004.

82. As a result of this investigation, AXAV learned that AIG, either directly or through its agents, made material misrepresentations or omissions to AXAV in connection with the placement of the Primary Facility as alleged in Paragraphs 1 through 77 hereof.

83. AXAV has also learned that virtually all other participants in the Primary Facility are or were engaged in litigation or arbitration with AIG and others relating to misrepresentations and/or omissions made during the placement of these reinsurance contracts. This includes litigation between Farm Bureau and AIG in the U.S. District Court for the Southern District of Iowa; arbitration in New York between DP Mann and AIG; arbitration in London between DP Mann and its reinsurer, Egyptian Reinsurance Company (“Egypt Re”); and litigation between Egypt Re and Everest in the High Court in London.

84. In late 2006, AXAV discovered that, while AIG had represented that AXAV’s participation in the Primary Facility would reinsure 20% and 25% of AIG’s share of each risk for the 1996/97 Facility and the 1997/98 Facility, respectively, AIG in fact had ceded 72.72% of the risk of loss to AXAV for the 1996/97 Facility and 52.08% of the risk of loss for the 1997/98 Facility.

85. AXAV has now determined that the information provided by AIG, NHM and/or NMB in furtherance of this conspiracy concerning the underwriting, operation, participation, losses-versus-premium-income statistics, and general loss experience of the Primary Facility was incorrect, false, and/or materially misleading, and that AIG knew, was reckless in not knowing, or should have known such information was incorrect, false, and/or materially misleading.

COUNT I

INTENTIONAL MISREPRESENTATION

86. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 85 as though fully set forth herein.

87. AIG, acting alone or through its agents, intentionally and/or recklessly made representations of fact to AXAV that were false, as set forth above in Paragraphs 1 through 77.

88. Each of the foregoing representations was material to AXAV's decision to participate in the Primary Facility.

89. AXAV acted in reliance on the information supplied to it by AIG through its agents, was justified in so relying, and AIG took no actions to provide the true facts concerning this material information.

90. As a direct and proximate cause of the material misrepresentations made by or on behalf of AIG, AXAV has suffered damage, will continue to suffer damage in the future, and is entitled to rescission of its participation in the Primary Facility.

91. The Defendants' fraudulent conduct was intentional, deliberate, gross, wanton and willful. Further, Defendants' fraudulent scheme was aimed not only at Plaintiff but also at all persons that might potentially have been induced to join the Primary Facility. As such, Defendants' conduct manifested a high degree of moral culpability, and Plaintiff is now entitled to recover punitive damages in an amount to be established at trial.

COUNT II

NEGLIGENT MISREPRESENTATION

92. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 91 as though fully set forth herein.

93. At all times material hereto, NHM and NMB were acting as agents of AIG as it pertains to the Primary Facility.

94. NHM and NMB are in the business or profession of supplying information to reinsurers such as AXAV.

95. As detailed herein, NHM and/or NMB provided AXAV with certain information regarding the underwriting, operation, and loss experience of the Primary Facility.

96. NHM and NMB had knowledge of AXAV's specific need for accurate and complete information and provided information to AXAV in the course of their capacity as insurance brokers and agents of AIG.

97. As detailed above, NHM and NMB provided incorrect, incomplete and/or misleading information to AXAV regarding the Primary Facility which NHM and NMB should have known was incorrect, incomplete and/or misleading.

98. AXAV reasonably relied upon the information under circumstances in which NHM and/or NMB knew or should have known that AXAV was relying upon the information.

99. As the principal, AIG is liable for the negligent acts of its agents, NHM and NMB.

100. As a direct and proximate result of the negligence of AIG's, as stated above, AXAV has suffered damage and will continue to suffer damage in the future and is entitled to rescission of its participation in the Primary Facility.

COUNT III

MATERIAL NONDISCLOSURE

101. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 100 as though fully set forth herein.

102. AIG and its agents, NHM and NMB, owed a duty of "utmost good faith" to AXAV as a reinsurer of business ceded by AIG.

103. Such duty included the obligation to disclose material facts and information.

104. As set forth above, AIG and/or its agents failed to disclose material facts and information to AXAV

105. AIG knew, or was reckless in not knowing, that its concealment and/or nondisclosure of the foregoing facts and information would mislead AXAV into participating and/or continuing participation in the Primary Facility.

106. Each of the foregoing nondisclosures was material to AXAV's decision to participate in the Primary Facility.

107. AXAV acted in reasonable reliance on the absence of the above disclosures, was justified in so relying, and AIG took no actions to provide the true facts and information to AXAV.

108. As a direct and proximate cause of the material nondisclosures by AIG and/or its agents NHM and NMB, AXAV has suffered damage and will continue to suffer damage in the future and is entitled to rescission of its participation in the Primary Facility.

COUNT IV

BREACH OF DUTY OF UTMOST GOOD FAITH

109. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 108 as though fully set forth herein.

110. As a ceding company, AIG owed its reinsurer AXAV a duty of "utmost good faith."

111. This duty required AIG to disclose all material facts and circumstances relating to the reinsurance.

112. AIG breached that duty by failing to disclose material facts and circumstances as set forth above.

113. AXAV did not otherwise have knowledge of the facts and circumstances that AIG failed to provide it with, nor should AXAV have known those facts and circumstances.

114. Each of these facts and circumstances was material to AXAV's participation. With respect to each of these facts and circumstances, AXAV would not have agreed to participate in the Primary Facility had AIG disclosed to AXAV the true facts and circumstances. Accordingly, AXAV has suffered damages and is entitled to rescission of its participation in the Primary Facility.

COUNT V

CONSPIRACY TO COMMIT FRAUD

115. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 114 as though fully set forth herein.

116. AIG and its agents, NHM and NMB, entered into an agreement to misrepresent material facts regarding the Primary Facility to AXAV and other reinsurers with the intention that AXAV would rely on those misrepresentations, agree to participate in the Primary Facility in 1996/97, and renew its participation in the Primary Facility for 1997/98.

117. In furtherance of their agreement, AIG and its agents, NHM and NMB, explicitly and implicitly made representations to AXAV that were fraudulent, as set forth in paragraphs 1 to 77 hereof.

118. In furtherance of their agreement, AIG and its agents also failed to disclose material facts to AXAV, in breach of AIG's legal duty to AXAV and the doctrine of utmost good faith, as set forth in paragraphs 1 to 85 hereof.

119. The fraudulent actions and inactions of AIG and its agents were intentional and were performed in furtherance of their agreement to wrongfully induce AXAV to participate in the Primary Facility so that AIG could cede to such facility poor, unprofitable risks on a facultative basis that it would not ordinarily have written for its own account, engage in adverse selection, and attempt to hold AXAV and other reinsurers liable for large losses on those risks.

120. As a direct and proximate cause of the acts taken by AIG and/or its agents NHM and NMB in furtherance of their conspiracy, AXAV has suffered damages, will continue to suffer damages in the future and is entitled to rescission of its participation in the 1996/97 Facility and 1997/98 Facility.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

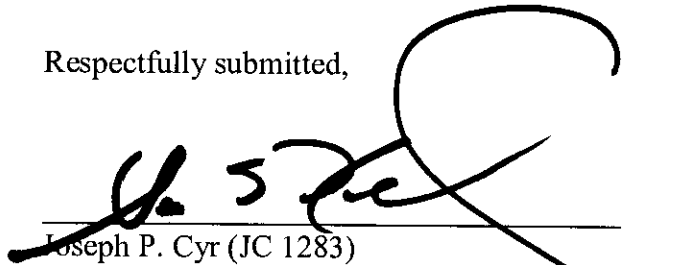
- (a) Rescission of its participation in the Primary Facility;
- (b) Judgment against each of the Defendants herein jointly and severally, for a sum which will fully and fairly compensate Plaintiff for the damages incurred (including the losses that AXAV has paid to AIG under the Primary Facility in excess of the premiums received);
- (c) Punitive damages in an amount to be established at trial;
- (d) Pre and post-judgment interest as provided by law; and
- (e) Such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby requests trial by jury on all counts included herein for all issues triable thereto.

Dated: New York, New York
March 22, 2007

Respectfully submitted,



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