

**06 CA 11901 GAO**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

FILED  
IN CLERK'S OFFICE

2006 OCT 18 P 4:01

LIBERTY MUTUAL INSURANCE COMPANY,

Petitioner,

v.

WHITE MOUNTAINS INSURANCE GROUP,  
LTD.

Respondent.

CIVIL ACTION NO. 06-11901  
DISTRICT OF MASS.

**MEMORANDUM OF LIBERTY  
MUTUAL INSURANCE COMPANY IN  
SUPPORT OF ITS PETITION UNDER 9  
U.S.C. § 7 FOR ORDER ENFORCING  
ARBITRATION PANEL'S SUBPOENA  
DUCES TECUM TO WHITE  
MOUNTAINS INSURANCE GROUP,  
LTD.**

Liberty Mutual Insurance Company ("Liberty") submits this Memorandum in support of its petition, pursuant to section 7 of the Federal Arbitration Act, 9 U.S.C. § 7, for an order compelling the compliance of White Mountains Insurance Group, Ltd. ("White Mountains") with a subpoena issued in an arbitration proceeding between its wholly owned subsidiary, One Beacon Insurance Company ("OBIC"), and Liberty.

**ARGUMENT**

Section 7 of the Federal Arbitration Act ("FAA") provides that arbitrators may "summon in writing an person to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document, or paper which may be deemed material as evidence in the case." 9 U.S.C. § 7. It goes on to provide that

if any person . . . so summoned . . . shall refuse or neglect to obey said summons, upon petition to the United States district court for the district in which such arbitrators, or a majority of them, are sitting may compel the attendance of such person or persons before said arbitrator or arbitrators, or punish said person or persons for contempt in the same manner provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the courts of the United States.

Id. It is well established that this statutory authority grants arbitrators the lesser power to compel the pre-hearing production through subpoenas duces tecum issued to third parties. See, e.g., In re Security Life Ins. Co. of America, 228 F.3d 865, 870-71 (8<sup>th</sup> Cir. 2000); Schlumbergersema, Inc. v. Xcel Energy, Inc., 02-4304, 2004 WL 67647, \*1-3 (D. Minn. Jan. 9, 2004); In re Brazell, M-82 AGS, 2000 WL 364997, \*1-3 (S.D.N.Y. Apr. 7, 2000). Accordingly, this Court unquestionably has the authority to compel White Mountains to comply with the Arbitration Panel's subpoena.

The Court should exercise that authority here. White Mountains' meager production of documents in response to the Arbitration Panel's broad subpoena cannot possibly constitute full compliance with the subpoena. That production does not include a single document that bears upon the extensive disclosures in White Mountains' 2001 Form 10-K regarding the state of the claims operations of those portions of the Aviva Business that it transferred to Liberty. Nor has White Mountains objected to the subpoena in any way. To the contrary, it has waived all such objections by representing that it would "cooperate" in producing all non-privileged, responsive documents sought by the subpoena. Claiming to cooperate is one thing; actually cooperating is another. Here, it is apparent that White Mountains has failed to comply with the requirements of the subpoena. This Court should therefore enter an Order enforcing the subpoena pursuant to the FAA.

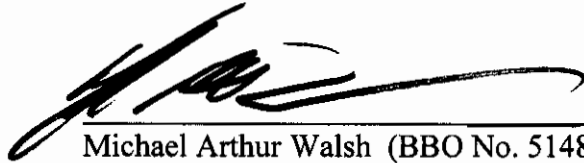
### CONCLUSION

WHEREFORE, Respondent-Petitioner Liberty Mutual Insurance Company respectfully requests that this Court enter an order compelling White Mountains Insurance Group, Ltd. to

immediately produce all non-privileged documents responsive to the Arbitration Panel's subpoena.

LIBERTY MUTUAL INSURANCE CO.

By its attorneys,



Michael Arthur Walsh (BBO No. 514875)  
Laurence D. Pierce (BBO No. 399283)  
Julie Rising  
CHOATE, HALL & STEWART LLP  
Two International Place  
Boston, Massachusetts 02110  
(617) 248-5000

Dated: October 18, 2006