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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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LIBERTY MUTUAL INSURANCE COMPANY,)

Petitioner,)

v.)

WHITE MOUNTAINS INSURANCE GROUP,)
LTD.)

Respondent.)

CIVIL ACTION NO. _____
DISTRICT OF MASS.

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

MAGISTRATE JUDGE Serkin

Liberty Mutual Insurance Company hereby petitions this Court pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. § 7, for an order identical in form to Exhibit 1 hereto compelling compliance by White Mountains Insurance Group, Ltd. with a subpoena duces tecum issued by an arbitration panel in connection with an arbitration arising under a contract affecting interstate commerce. The panel issued the subpoena, a copy of which is attached hereto as Exhibit 2 (the "Subpoena"), on September 18, 2006 in the matter of *OneBeacon Insurance Company and Liberty Mutual Insurance Company*.

Parties

1. Petitioner Liberty Mutual Insurance Company ("Liberty") is a Massachusetts corporation with a principal place of business in Boston, Massachusetts.

2. Respondent White Mountains Insurance Group, Ltd. ("White Mountains") is a Bermuda limited liability company with a principal place of business located at 80 South Main Street, Hanover, New Hampshire. White Mountains is a holding company that conducts business operations through wholly owned subsidiaries. One Beacon Insurance Company ("OBIC") is one such wholly owned subsidiary of White Mountains.

Jurisdiction

3. Pursuant to 9 U.S.C. § 7, this Court has subject matter jurisdiction over this petition for an order compelling compliance with an arbitration subpoena issued by an arbitration panel sitting in Boston, Massachusetts in a proceeding arising out of a contract affecting interstate commerce.

Factual Background

4. Petitioner Liberty is currently a respondent in an arbitration proceeding brought against it by OBIC (the "Arbitration"). That arbitration is being conducted in the District of Massachusetts.

5. OBIC is one member of a family of companies that were born out of a series of mergers and acquisitions that began in 1998. In 1998, Commercial Union plc and General Accident plc, both UK Corporations, merged to form CGU plc. The U.S. operations of these companies, General Accident Corporation of America ("GA") and Commercial Union Corporation ("CU"), then merged to form CGU Corporation ("CGU"). In September 2000, White Mountains, the parent of OBIC, entered into an agreement to purchase CGU from Aviva, plc. That transaction closed on June 1, 2001. White Mountains thereupon changed the name of the business that it acquired (the "Aviva Business") to OneBeacon.

6. Soon after the June 1, 2001 acquisition of OneBeacon, Liberty was approached by representatives of White Mountains seeking to ascertain Liberty's interest in purchasing the operations of the Aviva Business in states other than New York, New Jersey and New England. On October 30 and November 1, 2001, Liberty entered into a series of agreements pursuant to which it acquired those operations of what had been the Aviva Business. Those agreements affected interstate commerce.

7. The claims alleged by OBIC in its arbitration with Liberty arise under a so-called Pre-Closing Serviced Policies Administrative Services Agreement (the "PCASA") dated as of November 1, 2001. The PCASA was one of the ancillary agreements to a "Master Agreement" entered into in order to effect Liberty's acquisition of a substantial part of what had been the Aviva Business. The parties to the ancillary PCASA agreement were Liberty, OneBeacon Corporation (now known as OneBeacon Insurance Group LLC) and twenty individual operating subsidiaries of One Beacon Corporation (the "OneBeacon Insurers") that conducted the property and casualty insurance operations that constituted the Aviva Business. For the sake of convenience, Liberty shall herein refer to One Beacon Corporation and the OneBeacon Insurers collectively as "OneBeacon."

8. Under the PCASA, each of the twenty OneBeacon Insurers, including OBIC, appointed Liberty as its independent contractor to provide so-called "Pre-Closing Administrative Services" to it. Pursuant to that appointment, Liberty, through the claims offices that it acquired when it purchased a substantial part of the Aviva Business, administered a universe of claims alleged against the OneBeacon Insurers upon policies of insurance issued by each of them prior to November 1, 2001. The Arbitration concerns OBIC's allegations that Liberty breached its obligations under the PCASA because those claims offices failed to properly handle claims on behalf of the OneBeacon Insurers.

9. As mentioned above, the PCASA was an ancillary agreement to the "Master Agreement" for the sale of the non-core Aviva Business. The parties to the Master Agreement were White Mountains, OneBeacon Corporation, and Liberty. Pursuant to the Master Agreement, White Mountains "unconditionally and irrevocably guarantee[d] the prompt and faithful performance and discharge of the obligations, responsibilities, duties and liabilities of

OneBeacon under [the Master Agreement] and of OneBeacon and the OneBeacon subsidiaries, as applicable, under the Ancillary Agreements,” including the PCASA. See Master Agreement by and among White Mountains Insurance Group, Ltd., OneBeacon Corporation, and Liberty Mutual Insurance Company dated as of October 30, 2001 (attached hereto as Exhibit 3) § 5.16.

10. White Mountains is not merely a guarantor of OneBeacon’s performance. As disclosed in White Mountains’ Form 10-K filing with the U.S. Securities and Exchange Commission (“SEC”) for the fiscal year ending December 31, 2005, White Mountains conducts its “principal businesses . . . through its subsidiaries and affiliates in the business of property and casualty insurance and reinsurance,” including OneBeacon. See White Mountains Insurance Group, Ltd.’s Form 10-K Filing for year ending Dec. 31, 2005 (excerpts attached hereto as Exhibit 4) at 2.

Documents Sought

11. In section I(a) of Schedule 4 of the PCASA (a copy of which is attached hereto as Exhibit 5), the OneBeacon Insurers, including OBIC, represented and warranted to Liberty that the claims offices that Liberty was acquiring – each of which was a part of the Aviva Business – were “in compliance with all applicable claim standards and procedures.”

12. The Form 10-K filed by White Mountains for the period ending December 31, 2001 (excerpts of which are attached hereto as Exhibit 6) makes statements that constitute evidence that the representation of the OneBeacon Insurers was not true. Specifically, White Mountains’ 2001 Form 10-K disclosed that, after the GA/CU merger in 1998, the Aviva Business was plagued by “confused claims management and reserving.” Exhibit 6 at 6. White Mountains further disclosed that since its acquisition of the Aviva Business, its management had “been seeking to improve the claim function by increasing staffing levels in many areas and

introducing programs and tools geared toward controlling indemnity costs.” *Id.* at 5. White Mountains explained that “[s]pending on major systems initiatives has been substantially scaled back to focus on delivering meaningful improvements to existing systems while eliminating the multitude of redundant systems left over from the [GA/CU merger]. Significant efforts *are underway* to rebuild coherent management information *that has been lacking since the merger.*” *Id.* at 5 (emphasis added). White Mountains also disclosed that the Aviva Business had suffered from “systematically depressed case reserves,” which “resulted in ineffective claims management and higher costs.” *Id.* at 7. Depressed case reserves can be indicative of inadequate claim handling functions.

13. White Mountains further disclosed that the reserve suppression problem had been compounded by a “lack of reliable historical data for much of the claims converted from legacy General Accident systems.” *Id.* at 7-8. Moreover, White Mountains disclosed that, as of that time – i.e., December 31, 2001, two months after it sold a substantial part of the Aviva Business to Liberty – OneBeacon’s management was “working diligently to reconstruct” the reserve data, and that “actual loss and loss adjustment expenses may deviate, *perhaps substantially*, from estimates in White Mountains’ consolidated financial statements.” *Id.* at 8 (emphasis added).

14. In view of these disclosures, Arbitration Panel issued the Subpoena to White Mountains. The Subpoena commanded White Mountains to produce “All documents that discuss, describe, refer to, memorialize, evidence, or concern the condition of the Aviva Business at any time during the period from January 1, 2001 to October 31, 2001,” and “All documents that discuss, describe, refer to, memorialize, evidence, or concern the claims operations of the Aviva Business at any time during the period from January 1, 2001 to October 31, 2001.” The Subpoena required White Mountains to produce all such documents by September 30, 2006.

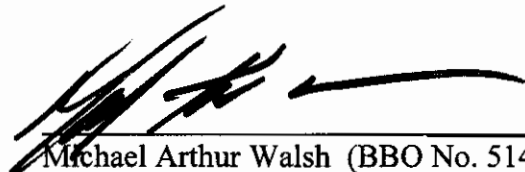
15. Following due service of the Subpoena, White Mountains' general counsel sent a letter on September 29, 2006, stating that White Mountains would "cooperate with the subpoena" and produce responsive non-privileged documents. See Letter from White Mountains' General Counsel dated September 29, 2006 attached hereto as Exhibit 7.

16. White Mountains, represented by the same firm that represents OBIC in the arbitration, then produced documents in response to the Subpoena. In total, White Mountains produced a mere 299 pages of documents. These documents consist exclusively of drafts of White Mountains' public filings and copies of financial statements. Nothing in any of these documents substantiates or even bears upon any of the observations made in White Mountains' SEC filings regarding the disarray in the claims operations of those portions of the Aviva Business that White Mountains transferred to Liberty. It is impossible that this meager production constitutes all documents in the possession, custody or control of White Mountains concerning claims operations of a business that spanned the continental United States. It is equally impossible that an insurance business whose claims operations were plagued by the kinds of problems described in White Mountains' 2001 Form 10-k did not generate a great many documents discussing those problems and possible solutions to those problems. White Mountains has failed to produce a single such document. Accordingly, Liberty has been left with no choice but to seek relief from this Court enforcing the Subpoena.

WHEREFORE Petitioner Liberty Mutual Insurance Company hereby petitions this Court to enter an order pursuant to 9 U.S.C. § 7 identical in form to Exhibit 1 hereto enforcing the subpoena issued by the Arbitration Panel to White Mountains.

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

In the Matter of the Arbitration Between
ONE BEACON INSURANCE COMPANY,
Claimant,
and
LIBERTY MUTUAL INSURANCE COMPANY,
Respondent.

SUBPOENA DUCES TECUM

TO: White Mountains Insurance Group, Ltd.
80 South Main Street
Hanover, New Hampshire 03755

YOU ARE HEREBY COMMANDED, pursuant to the Federal Arbitration Act, 9 U.S.C. § 7 (2006), to produce the documents identified on Exhibit A attached hereto to Russell F. Hilliard, Esq., Upton & Hatfield LLP, 159 Middle Street, Portsmouth, New Hampshire, no later than September 30, 2006.

For the Arbitration Panel

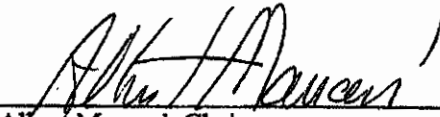

Albert Mauceri, Chair

EXHIBIT A

DEFINITIONS

1. "White Mountains" means White Mountains Insurance Group, Ltd. and each of its present and former officers, directors, employees, representatives, attorneys, agents, and any other persons or entities acting or purporting to act on its behalf.

2. "Aviva Business" means the business acquired by White Mountains from Aviva, plc (formerly CGNU plc) on June 1, 2001.

DOCUMENTS REQUESTED

Unless otherwise indicated, the dates of the requested documents are from January 1, 2001 through the present.

1. All documents that discuss, describe, refer to, memorialize, evidence, or concern the condition of the Aviva Business at any time during the period from January 1, 2001 to October 31, 2001.

2. All documents that discuss, describe, refer to, memorialize, evidence, or concern the claims operations of the Aviva Business at any time during the period from January 1, 2001 to October 31, 2001.

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