

No. _____

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
	§	
PLAINTIFF,	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
ALLIED WORLD ASSURANCE	§	
COMPANY HOLDINGS, LTD, and its	§	_____ JUDICIAL DISTRICT
insurance subsidiaries, including	§	
ALLIED WORLD ASSURANCE	§	
COMPANY, LTD,	§	
	§	
DEFENDANTS.	§	
	§	

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, the State of Texas, by and through its Attorney General, Greg Abbott sues Allied World Assurance Holdings, Ltd and its insurance subsidiaries, including Allied World Assurance Company, Ltd (collectively referred to as “AWAC”) and for its cause of action would respectfully show the Court:

I.

DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 2 pursuant to Texas Rule of Civil Procedure 190.3.

II.

NATURE OF SUIT

2. This action is brought in the name of the State of Texas by the Attorney General of Texas, acting within the scope of his official duties under the authority granted to him by the

Constitution and the laws of the State of Texas, and specifically under the authority granted by the Texas Free Enterprise and Antitrust Act of 1983. TEX. BUS. & COM. CODE § 15.01 et seq. (“the Texas Antitrust Act” or “the Act”).

III.

JURISDICTION AND VENUE

3. Jurisdiction and venue are proper in this Court pursuant to Article 5, Section 8 of the Texas Constitution and Sections 15.20 and 15.26 of the Texas Antitrust Act.

IV.

DEFENDANTS

4. Defendants, Allied World Assurance Company Holdings, Ltd (“AWAC Holdings”) and Allied World Assurance Company, Ltd (“AWAC Ltd”) are incorporated under the laws of Bermuda and are headquartered in Bermuda. AWAC Holdings owns AWAC Ltd and other insurance companies, including U.S. insurance companies that do business throughout the United States and in Texas. AWAC Ltd is a commercial property and casualty insurance and reinsurance company that operates in Bermuda and underwrites risks located throughout the United States and in Texas

5. Allied World Assurance Company (U.S.), Inc. (“AWAC U.S.”) is incorporated under the laws of Delaware and is headquartered in Boston, Massachusetts. AWAC U.S. is a commercial property casualty insurance and reinsurance company that does business throughout the United States and in Texas.

6. Newmarket Underwriters Insurance Company (“Newmarket”) is incorporated under the laws of New Hampshire and is headquartered in Boston, Massachusetts. Newmarket is a commercial property casualty insurance and reinsurance company that does business throughout the United States and in Texas.

V.

FACTUAL ALLEGATIONS

A. Casualty and Excess Casualty Insurance

7. Casualty insurance is a kind of insurance that, among other things, protects companies, non-profits, and governmental entities from the risk of significant unexpected monetary losses. Casualty insurance is often purchased in multiple layers. The first layer of coverage is known as the primary policy. If a customer wants insurance to cover amounts that exceed the ceiling set in primary policy, the customer must purchase additional layers of coverage which are generally referred to as excess casualty insurance. Specifically, the layer of insurance above the primary layer is known as the lead or umbrella layer. Any layers above the umbrella are referred to as excess or tower layers. In order to spread the risk of loss, several insurance companies will underwrite different layers of risk for the same excess casualty customer.

B. Facts Concerning an Agreement Not to Compete

8. AWAC was formed in November 2001, when it entered the market as a new Bermuda-based surplus lines property and casualty insurer with a focus on the tower layers of excess casualty coverage. Founding investors AIG, Chubb and Goldman Sachs, along with an affiliate of Swiss Reinsurance Company and over 250 other non-principal shareholders, capitalized AWAC with \$1.5 billion in equity to meet the post-9/11 demand for additional insurance capacity. Following

their investments, AIG owned approximately 24% of AWAC, while Chubb held 19% of its equity, and Goldman Sachs held 16%.

9. AWAC was the brainchild of AIG Chairman Maurice (“Hank”) Greenberg, who was personally involved in AWAC’s creation. Greenberg served as AWAC’s Board Chairman from its inception until April 2004. In addition, a former AIG executive, Michael Morrison, was named AWAC’s first President and CEO; several other top posts at AWAC were similarly filled with former AIG executives.

10. Despite its close ties with AIG, however, AWAC was structured as an independent company, and was not a subsidiary of AIG or its founding investors. AWAC’s formation documents contemplate that AWAC would function independently of, and compete with, its founders.

11. The October 2001 Private Placement Memorandum issued by Goldman Sachs as part of AWAC’s initial \$473 million capital stock offering states, “AIG, Chubb and other Investors and their respective affiliates will be free to underwrite risks in the same lines and layers as [AWAC] and to compete with [AWAC]. AIG and Chubb and certain of the other Investors currently offer or may offer coverage in various lines in which [AWAC] may offer coverage.” In fact, at least three of AIG’s affiliates, Lexington Insurance Company, Starr Excess Liability Insurance Company, and (beginning in 2004) American Home Assurance Company were in the business of underwriting risks in the same excess casualty layers that AWAC was targeting in its business model.

12. Moreover, section 7.6(c) of the AWAC Shareholder Agreement states, “The Shareholders acknowledge that certain Shareholders (including AIG, Chubb and Affiliates of Securitas) are, and may in the future be, engaged in businesses and activities which, directly or indirectly, compete with the businesses of [AWAC].”

13. The Goldman Sachs Private Placement Memorandum also acknowledges that “[w]hile a significant portion of revenues may come through AIG and Chubb referrals, neither AIG nor Chubb has any contractual obligation to refer business to the Company,” further underscoring the fact that AWAC was structured as an independent company and potential competitor of its founding investors.

14. In practice, however, AWAC and AIG informally agreed not to compete against one another. AWAC and AIG frequently refused brokers’ requests for quotes when one learned that the other was the incumbent carrier or was intending to quote the same piece of business.

15. Brokers in the Bermuda market were told that AIG and AWAC would not compete against one another for the same business. For example, in May 2004, in response to a broker’s request for a quote for the Children’s Hospital of Orange County, an AWAC underwriter said, “I am going to have to decline to look at this. We have elected not to compete against our investor companies and as [Lexington] is the incumbent on this program xs of \$25M I am not going to be able to offer a quote for that layer.”

16. AIG and AWAC shared information about, and coordinated responses to bidding opportunities through AIG’s universal reservations system, called E-Start. Before an AIG subsidiary provides a quote for a prospective insured, the underwriter must reserve that customer’s business in the E-Start database. If another AIG entity has already reserved that business, the system tells the underwriter that the account is “blocked,” and the system prevents the underwriter from providing a quote.

17. AIG provided AWAC with access to E-Start when AWAC first entered the market in December 2001, and AWAC used E-Start through January 2006. When presented with

prospective new business, AWAC would log into E-Start to determine whether AIG had already reserved the business and “blocked” AWAC from competing for that business. Sometimes AWAC underwriters and managers would contact AIG underwriters and managers requesting that AIG to release or “unblock” a certain piece of business so that AWAC could provide a quote. AIG often refused, in order to preserve its incumbent position or prevent AWAC from competing for the business. The reverse sometimes happened too, where AWAC reserved a piece of business and refused to release it so that AIG could provide a quote. In this manner, for at least four years AIG and AWAC unlawfully allocated customers between themselves.

18. For example, in June of 2004, an underwriter at Starr Excess emailed AWAC regarding a pending insurance placement for the Baylor College of Medicine. Noting that a London insurance broker had said AWAC was quoting this business, the Starr underwriter wrote to AWAC: “I can’t find anything in e-start for you guys; can you have the [AWAC] underwriter contact me to ensure that we are not competing against each other.” AWAC replied that Lexington was quoting the first excess layer, AWAC was on the second and third excess layers, and Starr London was on the fourth excess layer.

19. On several occasions, AIG executives complained to AWAC about certain excess casualty accounts where AWAC’s pricing was deemed too low. AIG attempted to exert an upward influence AWAC’s pricing so that AIG would not be forced to lower its pricing on or decline to quote other layers in the same placement. Under the industry practice of rate relativity, an excess casualty insurer expects to receive a proportionately similar increase in premium (or a similar price per million dollars of coverage) as its competitors in other layers. This practice is facilitated by a broker sharing bidding information with the insurance companies invited to quote the various layers

of coverage in an excess casualty placement. AIG used its access with AWAC to discipline the market further by directly contacting AWAC when its pricing was considered to be too aggressive.

20. AWAC and AIG's agreement not to compete was unrelated to the joint venture, and not ancillary to the formation or operation of the joint venture. Therefore, the coordination of bids and pricing terms by AIG and AWAC, and their customer allocation scheme are *per se* violations of Texas Business and Commerce Code section 15.05(a).

C. Facts Concerning Illegal Bidding Conduct

21. On at least one occasion, AWAC supplied a false bid at the request of a broker in order to make another insurer's bid appear more competitive. On May 21, 2003, an AWAC employee provided a bid to a broker indicating that AWAC would cover a certain risk for a Texas insured for a premium of \$2 million. The broker subsequently requested that AWAC revise its bid upward so that it would exceed a different insurance company's bid. On May 22, 2003, AWAC complied with the broker's request by forwarding a bid for the same policy for a premium of \$2.3 million. The broker did not disclose AWAC's previous \$2 million bid to the customer who ultimately bound coverage with AWAC's competitor.

VI.

FIRST CAUSE OF ACTION

22. The State incorporates and adopts by reference the allegations contained in every paragraph of this complaint.

23. The State alleges that beginning with AWAC's formation in late 2001 and continuing until at least December 2004, Defendants and others entered into a combination and conspiracy to suppress and eliminate competition by allocating customers, and coordinating bids and pricing terms

for insurance placements on risks located in Texas, in an unreasonable restraint of interstate trade and commerce, in violation of Texas Business and Commerce Code section 15.05(a).

VII.

SECOND CAUSE OF ACTION

24. The State incorporates and adopts by reference the allegations contained in every paragraph of this complaint.

25. The State alleges that on or about May 22, 2003, AWAC and others entered into a combination and conspiracy to suppress and eliminate competition by rigging a bid for commercial insurance covering risks located in Texas, in an unreasonable restraint of interstate trade and commerce, in violation of Texas Business and Commerce Code section 15.05(a).

VII.

PRAYER

WHEREFORE, plaintiff, demands judgment against Defendants as follows:

- a) Adjudging and decreeing that AWAC engaged in conduct in violation of Texas Business and Commerce Code section 15.05(a);
- b) Awarding the State of Texas injunctive relief to prevent AWAC in the future from engaging in conduct similar to the improper conduct alleged in this complaint;
- c) Awarding the State of Texas such other relief, including, but not limited to civil penalties, as the Court finds necessary to redress AWAC's violation of Texas law;
- d) Awarding the State of Texas its costs of this action, including reasonable attorneys' fees, costs, and where applicable, expert fees as provided in Business and Commerce Code section 15.20(b) and Texas Government Code section 402.006(c); and
- e) Directing such other and further relief as the Court deems just and proper.

Respectfully submitted,

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