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1ST CIRCUIT COURT
STATE OF HAWAII
FILED

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M.N. TANAKA
CLERK

Attorneys for Plaintiff STATE OF HAWAII

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII,

Plaintiff,

vs.

ACE GROUP HOLDINGS, INC., ACE U.S
HOLDINGS, INC., ACE INA HOLDINGS, INC.,
INA CORPORATION, INA FINANCIAL
CORPORATION, INA HOLDINGS
CORPORATION, BRANDYWINE HOLDINGS
CORPORATION, ACE USA, INC., ACE
AMERICAN INSURANCE COMPANY, ACE FIRE
UNDERWRITERS INSURANCE COMPANY, ACE
INDEMNITY INSURANCE COMPANY, ACE
PROPERTY AND CASUALTY INSURANCE
COMPANY, BANKERS STANDARD INSURANCE
COMPANY, CENTURY INDEMNITY COMPANY,
ILLINOIS UNION INSURANCE COMPANY,
INDEMNITY INSURANCE COMPANY OF
NORTH AMERICA, INSURANCE COMPANY OF
NORTH AMERICA, PACIFIC EMPLOYERS
INSURANCE COMPANY, WESTCHESTER FIRE
INSURANCE COMPANY, and WESTCHESTER
SURPLUS LINES INSURANCE COMPANY,

Defendants.

CIVIL NO. 07-1-2015-10 GJK

COMPLAINT; SUMMONS

I do hereby certify that this is a full, true, and
correct copy of the original on file in this office.

M.N.
Clerk Circuit Court, First Circuit

COMPLAINT

Comes now Plaintiff State of Hawaii, by and through its counsel, Mark J. Bennett, Attorney General, and for a complaint against ACE Group Holdings, Inc., ACE U.S Holdings, Inc., ACE INA Holdings, Inc., INA Corporation, INA Holdings Corporation, INA Financial Corporation, Brandywine Holdings Corporation, ACE USA, Inc., ACE American Insurance Company, ACE Fire Underwriters Insurance Company, ACE Indemnity Insurance Company, ACE Property and Casualty Insurance Company, Bankers Standard Insurance Company, Century Indemnity Company, Illinois Union Insurance Company, Indemnity Insurance Company of North America, Insurance Company of North America, Pacific Employers Insurance Company, Westchester Fire Insurance Company, and Westchester Surplus Lines Insurance Company (collectively referred to as "ACE Companies"), avers and alleges as follows:

I.

NATURE OF SUIT

1. This action is brought by the State of Hawaii by Mark J. Bennett, the Attorney General of Hawaii, acting within the scope of his official duties under the authority granted to him by the Constitution and the laws of the State of Hawaii, and specifically under the authority granted by Haw. Rev. Stat. sections 28-1, 480-2, and 480-20.

II.

2. ACE Limited is a corporation incorporated under the laws of the Cayman Islands whose shares are listed and publicly traded on the New York Stock Exchange with its corporate headquarters in Hamilton, Bermuda. Upon information and belief, various direct and indirect subsidiaries of ACE Limited, listed hereinafter as Defendants, have conducted and continue to conduct business in the State of Hawaii.

DEFENDANTS

3. Defendant ACE Group Holdings, Inc. ("ACE Group") is incorporated under the laws of the State of Delaware. ACE Group is a direct subsidiary of ACE Limited, and is a holding company for the operations of ACE Limited in the United States, including operations in the State of Hawaii.

4. Defendant ACE U.S Holdings, Inc. ("ACE U.S.") is incorporated under the laws of the State of Delaware, is a direct subsidiary of ACE Group, and is a holding company for the operations of ACE Limited in the United States, including operations in the State of Hawaii.

5. Defendant ACE INA Holdings, Inc. ("ACE INA") is incorporated under the laws of the State of Delaware, is a direct subsidiary of ACE Group, and is a holding company for the operations of ACE Limited in the United States, including operations in the State of Hawaii.

6. Defendant INA Corporation is a corporation incorporated under the laws of the State of Pennsylvania, is an indirect subsidiary of ACE Group, and is a holding company for the operations of ACE Limited in the United States, including operations in the State of Hawaii.

7. Defendant INA Financial Corporation is a corporation incorporated under the laws of Delaware, is an indirect subsidiary of ACE Group, and is a holding company for the operations of ACE Limited in the United States, including operations in the State of Hawaii.

8. Defendant INA Holdings Corporation is a corporation incorporated under the laws of Delaware, is an indirect subsidiary of ACE Group, and is a holding company for the operations of ACE Limited in the United States, including operations in the State of Hawaii.

9. Defendant Brandywine Holdings Corporation is a corporation incorporated under the laws of Delaware, is an indirect subsidiary of ACE Group, and is a holding company for the operations of ACE Limited in the United States, including operations in the State of Hawaii.

10. Defendant ACE USA, Inc. ("ACE USA") is a corporation incorporated under the laws of Delaware, is a direct subsidiary of ACE U.S., and is a holding company for the operations of ACE Limited in the United States.

11. Defendant ACE American Insurance Company is incorporated under the laws of the State of Pennsylvania, is an indirect subsidiary of ACE Group, and is licensed to engage in the business of insurance, *inter alia*, in the State of Hawaii.

12. Defendant ACE Fire Underwriters Insurance Company is incorporated under the laws of the State of Pennsylvania, is an indirect subsidiary of ACE Group, and is licensed to engage in the business of insurance, *inter alia*, in the State of Hawaii.

13. Defendant ACE Indemnity Insurance Company is incorporated under the laws of the State of Pennsylvania, is an indirect subsidiary of ACE Group, and is licensed to engage in the business of insurance, *inter alia*, in the State of Hawaii.

14. Defendant ACE Property and Casualty Insurance Company is incorporated under the laws of the State of Pennsylvania, is an indirect subsidiary of ACE Group, and is licensed to engage in the business of insurance, *inter alia*, in the State of Hawaii.

15. Defendant Bankers Standard Insurance Company is incorporated under the laws of the State of Pennsylvania, is an indirect subsidiary of ACE Group, and is licensed to engage in the business of insurance, *inter alia*, in the State of Hawaii.

16. Defendant Century Indemnity Company is incorporated under the laws of the State of Pennsylvania, is an indirect subsidiary of ACE Group, and is licensed to engage in the business of insurance, *inter alia*, in the State of Hawaii.

17. Defendant Illinois Union Insurance Company is incorporated under the laws of the State of Illinois, is an indirect subsidiary of ACE Group, and is licensed to engage in the

business of insurance, *inter alia*, in the State of Hawaii.

18. Defendant Indemnity Insurance Company of North America is incorporated under the laws of the State of Pennsylvania, is an indirect subsidiary of ACE Group, and is licensed to engage in the business of insurance, *inter alia*, in the State of Hawaii.

19. Defendant Insurance Company of North America is incorporated under the laws of the State of Pennsylvania is an indirect subsidiary of ACE Group, and is licensed to engage in the business of insurance, *inter alia*, in the State of Hawaii.

20. Defendant Pacific Employers Insurance Company is incorporated under the laws of the State of Pennsylvania is an indirect subsidiary of ACE Group, and is licensed to engage in the business of insurance, *inter alia*, in the State of Hawaii.

21. Defendant Westchester Fire Insurance Company is incorporated under the laws of the State of New York, is an indirect subsidiary of ACE Group, and is licensed to engage in the business of insurance, *inter alia*, in the State of Hawaii.

22. Defendant Westchester Surplus Lines Insurance Company is incorporated under the laws of the State of Georgia, is an indirect subsidiary of ACE Group, and is licensed to engage in the business of insurance, *inter alia*, in the State of Hawaii.

III.

JURISDICTION AND VENUE

23. Upon information and belief, each Defendant, in person or through an agent, transacted business within this State, committed one or more tortuous acts within this State, contracted to insure persons, property, or risks located within this State at the time of contracting, and transacted the business of insurance within this State. Furthermore, upon information and belief, each Defendant, separately or jointly with other defendants and/or other co-conspirators,

knowingly and willfully participated in unlawful actions and conspiracies to restrain trade in the market for certain insurance products purchased by customers located across the country and in the State of Hawaii. Jurisdiction is proper in this Court pursuant to Haw. Rev. Stat. sections 480-21, 603-21.5, 603-23, 634-35, and 431:1-215. Venue is proper pursuant to Haw. Rev. Stat. sections 431:1-215, 480-21, and 603-36.

IV.

INSURANCE TERMINOLOGY

A. Insurers, Brokers, and Customers

24. In general, there are three categories of participants in the commercial insurance market. First, there are the insureds or policyholders consisting of companies, individuals, and public entities that purchase insurance against various types of risk. Second, there are brokers and independent agents (collectively "brokers") who advise policyholders as to coverage, procure quotes from insurance companies, and make recommendations regarding the insurance companies offering that coverage. Brokers also place and bind coverage with insurers, and often remit premiums from the insureds to the insurance companies. Finally, there are the insurance companies that enter into contracts with policyholders to insure specified risks in exchange for the payment of premiums.

25. In the case of complex commercial insurance products, a high level of expertise can be necessary to ascertain the non-price differences between the products offered by competing insurers. Even sophisticated companies require the kind of specialized insurance advice and advocacy that brokers offer.

26. Brokers represent the insureds - their clients - when advising them as to insurance needs and options, and when obtaining and negotiating the terms of insurance coverage with

insurance companies. Clients rely on the broker's expertise and objective advice to determine which insurance products and services best suit their needs, and from which insurers to purchase those products and services.

B. Premiums, Fees, Commissions, and Contingent Commissions.

27. Brokers are compensated by their clients by payments directly from the clients or indirectly from premiums the clients pay to insurers. The client's payment to the broker is sometimes a flat "fee." Other times, brokers receive a "commission" from the insurer that is calculated as a percentage of the premium the client pays to the insurer.

28. Insurers also pay brokers through arrangements known as "contingent commission" arrangements, in which the insurer pays the broker based on various premium goals, such as volume of business placed with the insurer, retention of previous accounts, and the profitability of the business placed by the broker with the insurer. These arrangements typically were not fully disclosed to the customer.

C. Excess Casualty Insurance.

29. "Casualty insurance" is a kind of insurance that, among other things, protects companies, non-profits, and government entities from the risk of significant unexpected monetary losses. Casualty insurance is often purchased in multiple "layers." Some customers self-insure for the risk of a small dollar loss which is called a "self-insured retention," and is similar to a deductible. If this amount becomes due, the customer pays the damages without assistance from an insurance company. Other customers may opt to purchase casualty insurance to cover the risk of even small losses. Either way, the first layer of risk is known as the "primary layer." Above the "primary layer," many companies pay insurance companies to insure against the risk of greater loss. The first "layer" of insurance above the primary policy is known as the

“lead” or “umbrella” layer. If a customer wants insurance to cover amounts that exceed the ceiling set in the contract with the “lead” or “umbrella” layer insurer, the customer must pay for an additional layer or layers of excess casualty insurance. These are known as the “excess layers.” The excess layer insurer’s obligations are triggered when the cost exceeds the limit or ceiling set in the customer’s contract with the “lead” or “umbrella” insurer.

V.

FACTUAL ALLEGATIONS

30. The ACE Companies are commercial insurance carriers that knowingly and willfully participated in unlawful conspiracies to restrain trade in the market for certain insurance products purchased by customers located across the country and in the State of Hawaii. The conspiracies allowed a group of competing insurance carriers to allocate customers, divide markets for commercial insurance, and charge those customers inflated premiums. Upon information and belief, the conspiracies affected insurance products purchased by policyholders located across the country and in the State of Hawaii.

31. Motivated by the desire to maximize contingent commission income, commercial insurance brokers orchestrated collusive conduct among a group of competing insurance carriers, including the ACE Companies. In exchange for undisclosed contingent commission payments, brokers steered business to the ACE Companies and other preferred insurers.

32. The most sophisticated version of this steering occurred through a bid-rigging conspiracy involving several national insurers and national brokers. The national brokers solicited and obtained intentionally uncompetitive quotes from insurers in order to deceive policyholders into believing that the process had been competitive. Through the national brokers, the insurers involved in the conspiracy protected the incumbent insurer in exchange for

either similar protection on another policyholder's account or protection from competition (and inflated prices) on another "layer" of the same account.

33. As an example, a national broker established broking plans (also known as game plans) which laid out which insurer would quote each layer and often set specific pricing targets. The broker also negotiated the contingent commission agreements with the insurers and created "tiering" reports, designating certain insurers as "partner" or "preferred" insurers. The broking plans favored the insurers who provided the most lucrative contingent commissions to the broker. Moreover, the premiums assessed to the policyholders were not set competitively, nor were they intended to be lowest premium that could be obtained for the policyholders. Rather, the premiums were set by the broker, were heavily influenced by the rate of increase sought by the "partner" insurers, and were calculated to be as high as possible and still result in the placement of the policyholders business with the partner insurers.

34. In many instances, there was a pre-designated winner of the bidding process. The broker would approach the incumbent insurer or "partner" with an inflated premium amount that the broker believed it could sell to the policyholder. The incumbent insurer would be assured that, if it met that premium amount, it would win the business. Then, the broker would approach "back up" insurers involved in the conspiracy and request them to submit fictitious specified premium quotes, sometimes referred to as "B-quotes," "protective quotes," "indications," "fake quotes," or "back-up quotes." The backup insurers understood that the fictitious specified premium quotes set by the broker were higher than the quote provided by the incumbent insurer, that they should not submit lower quotes, and that they would not receive the business. The broker sometimes shared broking plans with insurers so that everyone knew who was predetermined to get each layer. Sometimes, the broker would ask for a B-quote, back-up quote,

indication, fake quote, or protective quote, but would not specify a target amount. In these cases, the backup insurer was instructed to look at the expiring pricing terms and come up with a quote that was high enough to ensure that it would not get the business. In B-quote situations, the backup insurer submitting the B-quote would generally not receive the business, but would be rewarded on another layer of that account or on another account.

35. At the urging of national brokers, the ACE Companies and other insurers submitted artificially high quotes designed to make a predetermined insurer's quote appear to be competitive. Brokers would request these fictitious quotes to deceive the policyholders into believing that they were receiving the best price or terms and conditions for their insurance purchase, and that it was subjected to a competitive bidding process. The national brokers sometimes threatened insurers who did not comply with its requests for B-quotes. In a June 2003 email, one broker explained to an underwriter with an ACE Company, "Currently we have about \$ 6M in new business which is the best in Marsh Global Broking so I do not want to hear that you are not doing 'B' quotes or we will not bind anything."

36. An example of an ACE Company submitting an artificially high quote designed to make a predesignated insurer's quote appear competitive is seen in the 2002 Fortune Brands placement. Fortune Brands, Inc., is a holding company engaged in the manufacture and sale of home products, office products, golf products, and distilled spirits and wine. On December 17, 2002, Patricia Abrams, then an assistant vice president in ACE's Excess Casualty Division, prepared and submitted a \$990,000 quote for the Fortune Brands policy to Greg Doherty at Marsh. Hours later, Abrams faxed a revised bid to Marsh increasing the ACE quote to \$1,100,000. Abrams stated on the fax cover sheet "per our conversation attached is revised confirmation. All terms & conditions remain unchanged." The next day, Abrams emailed

another ACE employee: "Original quote \$990,000. . . . We were more competitive than AIG in price and terms. MMGB requested that we increase premium to \$1.1M to be less competitive, so AIG does not loose [sic] the business."

37. As another example, in July 2003, Marsh Global Broking slotted St. Paul Insurance Company to win the lead layer of the Neiman Marcus excess casualty account. According to the Marsh Broking Plan, on July 10, 2003, St. Paul's target premium for the department store was \$190,000. After St. Paul indicated it could underwrite the risk near the stated target, Marsh proceeded to obtain protective quotes from other insurers. In an internal Marsh email, Edward Keane told Heidi Haber, "I am going to need a B quote from ACE. . . . In fact, please have ACE Excess release a quote for [the lead layer]. St. Paul hit our target. . . ." Haber subsequently sent an email to Curt Pontz, an ACE underwriter, stating:

St. Paul quoted a lead . . . (same attachments as expiring) and hit target of \$200,000. I rated up the program and came to approx. \$460,000 for a lead . . . Can you please provide us with a back-up indication at your soonest. Should you need any additional information, please advise. I await your indication.

Soon afterwards, ACE responded that its price for the St. Paul layer would be \$450,000. Marsh later bound the lead layer with St. Paul for \$196,000 -- an amount which would appear quite favorable compared to ACE's quote.

38. Concerns about the Global Broking business model were raised with ACE executives in a November 2003 memo. An underwriter with an ACE Company warned:

Marsh is consistently asking us to provide what they refer to as "B" quotes for a risk. They openly acknowledge we will not bind these "B" quotes in the layers we are be asked to quote but that they "will work us into the program" at another attachment point. So for example if we are asked for a "B" quote for a lead umbrella then they provide us with pricing targets for that "B" quote. It has been inferred that the "pricing targets" provided are designed to ensure underwriters "do not do anything stupid" as respects pricing.

[Our] concern (as well the whole MMGB Underwriting Team) is that our actions

on "B" quotes could potentially be construed as simply creating the appearance of competition. In this day and age I think we need to be extremely careful in how the MMGB business model seeks to "control" the marketplace. In my opinion ACE cannot be seen as aiding MMGB in providing quotations for "competitive appearance purposes" only.

39. The ACE Companies received protection on some insurance placements in the form of fictitious quotes submitted by other insurers participating in the conspiracy. When an ACE Company was the pre-designated winner, it benefited from the conspiracy by selling insurance policies at above-market levels due to the lack of genuine competition from other insurance companies. In exchange, the ACE Company agreed not to compete for certain business and sometimes provided fictitious quotes knowing it would receive protection or preferential treatment on other insurance placements.

40. Upon information and belief, this unfair and deceptive model also led insurance customers across the country and in Hawaii to suffer substantial harm. Consumers paid more money for insurance services than they would have paid in a competitive system, and may have received an insurance product less well-suited to their needs than would have been the case in a competitive market. Additionally, the participation of the ACE Companies in this scheme to undercut competition distorted the market for commercial insurance, causing consumers generally to pay higher prices and obtain lower quality services from brokers and insurers. The injuries consumers suffered by paying these increased prices were a direct and proximate result of illegal acts by the ACE Companies.

41. The aforementioned actions and conspiracies were and are in violation of Haw. Rev. Stat. sections 480-4 and 480-2.

WHEREFORE, plaintiff, demands judgment against the ACE Companies as follows:

a. Adjudging and decreeing that the ACE Companies engaged in conduct in

violation of Haw. Rev. Stat. sections 480-4 and 480-2.

- b. Awarding Plaintiff injunctive relief to prevent the ACE Companies in the future from engaging in conduct similar to the improper conduct alleged in this complaint;
- c. Awarding Plaintiff such other equitable relief, including, but not limited to, civil penalties, as the Court finds necessary to redress the ACE Companies' violation of Hawaii law;
- d. Awarding Plaintiff its costs of this action, including reasonable attorneys' fees and costs, and where applicable, expert fees; and
- e. Directing such other and further relief as the Court deems just and proper.

DATED: Honolulu, Hawaii

October 25, 2007

MARK J. BENNETT
Attorney General of Hawaii



DEBORAH DAY EMERSON
RODNEY I. KIMURA
Deputy Attorneys General

ATTORNEYS FOR THE STATE OF HAWAII

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII,

Plaintiff,

vs.

ACE GROUP HOLDINGS, INC., ACE U.S
HOLDINGS, INC., ACE INA HOLDINGS, INC.,
INA CORPORATION, INA FINANCIAL
CORPORATION, INA HOLDINGS
CORPORATION, BRANDYWINE HOLDINGS
CORPORATION, ACE USA, INC., ACE
AMERICAN INSURANCE COMPANY, ACE FIRE
UNDERWRITERS INSURANCE COMPANY, ACE
INDEMNITY INSURANCE COMPANY, ACE
PROPERTY AND CASUALTY INSURANCE
COMPANY, BANKERS STANDARD
INSURANCE COMPANY, CENTURY
INDEMNITY COMPANY, ILLINOIS UNION
INSURANCE COMPANY, INDEMNITY
INSURANCE COMPANY OF NORTH AMERICA,
INSURANCE COMPANY OF NORTH AMERICA,
PACIFIC EMPLOYERS INSURANCE COMPANY,
WESTCHESTER FIRE INSURANCE COMPANY,
and WESTCHESTER SURPLUS LINES
INSURANCE COMPANY,

Defendants.

CIVIL NO.

SUMMONS

SUMMONS

STATE OF HAWAII:

TO: ACE GROUP HOLDINGS, INC.
ACE U.S. HOLDINGS, INC.
ACE INA HOLDINGS, INC.
INA CORPORATION
INA FINANCIAL CORPORATION
INA HOLDINGS CORPORATION
BRANDYWINE HOLDINGS CORPORATION
ACE USA, INC.

ACE AMERICAN INSURANCE COMPANY
ACE FIRE UNDERWRITERS INSURANCE COMPANY
ACE INDEMNITY INSURANCE COMPANY
ACE PROPERTY AND CASUALTY INSURANCE COMPANY
BANKERS STANDARD INSURANCE COMPANY
CENTURY INDEMNITY COMPANY
ILLINOIS UNION INSURANCE COMPANY
INDEMNITY INSURANCE COMPANY OF NORTH AMERICA
INSURANCE COMPANY OF NORTH AMERICA
PACIFIC EMPLOYERS INSURANCE COMPANY
WESTCHESTER FIRE INSURANCE COMPANY
WESTCHESTER SURPLUS LINES INSURANCE COMPANY

YOU ARE HEREBY SUMMONED and required to serve upon Rodney I. Kimura, whose address is 425 Queen Street, Honolulu, Hawaii, 96813, an answer to the Complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

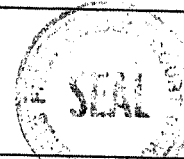
This summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court permits, in writing to this summons, personal delivery during these hours.

A failure to obey this summons may result in an entry of default and default judgment against the disobeying party or person.

OCT 25 2007

DATED: Honolulu, Hawaii, _____

M. N. TANAKA



CLERK OF THE ABOVE-ENTITLED COURT

STATE OF HAWAII vs. ACE GROUP HOLDINGS, INC., et al.; Circuit Court of the First Circuit, State of Hawaii, Civil No. 07-1-2015-10, Summons on Complaint