Randall & Quilter Inv. Holdings PLC v Ace INA Intl. Holdings, Ltd.

2013 NY Slip Op 30303(U)

January 22, 2013

Sup Ct, New York County

Docket Number: 653371/2011

Judge: Shirley Werner Kornreich

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: JUSTICE SHIRLEY WERNER KORNREICH
Justice

PART 54

Index Number : 653371/2011
RANDALL & QUILTER INVESTMENT
vs.
ACE INA INTERNATIONAL
SEQUENCE NUMBER : 008
DISMISS ACTION

INDEX NO. ______
MOTION DATE 12/21/12
MOTION SEQ. NO. ______

The following papers, numbered 1 to ____, were read on this motion to/for ______

Notice of Motion/Order to Show Cause — Affidavits — Exhibits ______ **No(s).** 182-184
Answering Affidavits — Exhibits ______ **No(s).** 189-208
Replying Affidavits ______ **No(s).** 212-213

Upon the foregoing papers, it is ordered that this motion is

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION AND ORDER.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE ______ FOR THE FOLLOWING REASON(S): ______

Dated: 1/22/13

SHIRLEY WERNER KORNREICH J.S.C., **J.S.C.**

1. **CHECK ONE:** ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. **CHECK AS APPROPRIATE: MOTION IS:** ☒ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. **CHECK IF APPROPRIATE:** ☐ SETTLE ORDER ☐ SUBMIT ORDER ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54
---X
RANDALL & QUILTER INVESTMENT HOLDINGS PLC and R&Q REINSURANCE COMPANY,

Index No.: 653371/2011

DECISION & ORDER

Plaintiffs,

-against-

ACE INA INTERNATIONAL HOLDINGS, LTD., CENTURY INDEMNITY COMPANY, HORACE MANN INSURANCE COMPANY and BANKERS STANDARD INSURANCE COMPANY,

Defendants.
---X
SHIRLEY WERNER KORNREICH, J.:

Defendants ACE INA International Holdings, Ltd. (ACE), Century Indemnity Company (Century), and Bankers Standard Insurance Company (Bankers) move to dismiss the Amended Complaint pursuant to CPLR 3211(a)(1) & (7). Defendants' motion is granted for the reasons that follow.

I. Factual Background & Procedural History

As this decision involves a motion to dismiss, the facts recited are taken from the Amended Complaint (AC).

Plaintiff Randall & Quilter Investment Holdings PLC (R&Q) is a reinsurance company organized under the laws of England and Wales. AC ¶ 7. Plaintiff R&Q Reinsurance Company (R&Q Re) is a Pennsylvania corporation that also engages in the reinsurance business. ¶ 8. ACE is a Delaware company that owns Century and Bankers, which are both incorporated in

Pennsylvania. ¶¶ 9-11. Defendant Horace Mann Insurance Company (Horace Mann) is an Illinois corporation. ¶ 12.

R&Q Re was originally called INA Reinsurance Corporation (INA Re). ¶ 17. In the 1970s, INA Re was owned by INA Corporation (INA). ¶ 18. Effective October 1, 1971, INA and INA Re entered in a Quota Share Reinsurance Treaty (the 1971 Treaty) which provided that INA would cede, and INA Re would accept, 100% of INA's gross liabilities under all contracts and treaties written by INA's Reinsurance Department. ¶ 38.

In October 1975, INA Re entered into the Horace Mann Insurance Company and Bankers Standard Insurance Company Quota Share Treaty (the 1975 Treaty) whereby INA Re reinsured 100% of Horace Mann and Bankers Standard's net liabilities with respect to direct insurance policies written by specified underwriters. The 1975 Treaty was made effective retroactive to January 1, 1975 to coincide with INA's acquisition of Horace Mann and Bankers Standard. ¶¶ 30-31.

In 1982, INA merged with Connecticut General Corporation to become CIGNA Corporation (CIGNA). ¶ 33. INA Re's name was changed to CIGNA Re. ¶ 17. The 1975 Treaty was amended (the 1982 Treaty) to include two additional underwriting sources, and all parties under the 1982 Treaty became CIGNA-owned companies. ¶ 33. In 1989, CIGNA sold Horace Mann (but not Bankers Standard), and effective August 1, 1989, the 1982 Treaty was amended and titled the Amended and Restated Horace Mann Insurance Company and Bankers Standard Insurance Company Quota Share Treaty (the 1989 Treaty). ¶¶ 29, 34-35. Under the 1989 Treaty, two additional underwriters were added and CIGNA Re was granted claims handling authority on

behalf of Horace Mann and Bankers Standard. ¶ 35. In 1999, ACE purchased CIGNA Re and renamed it AARe. ¶ 14.

In 2006, R&Q entered in a Stock Purchase Agreement dated as of January 5, 2005 (the SPA) with ACE and Century whereby R&Q acquired all of the issued and outstanding shares of three companies, including AARe. ¶ 1. Thereafter, AARe's name was changed to R&Q Re. *Id.* In 2007, ACE asserted that R&Q Re was liable for certain claims under Horace Mann policies that were covered by the 1989 Treaty on the grounds that the obligations under the 1989 Treaty were transferred to R&Q Re as part of the AARe sale under the SPA. ¶¶ 43, 46. R&Q Re objected, but agreed to participate in defense and indemnity costs-sharing agreements with respect to these claims on a without prejudice basis. ¶¶ 44-45. ACE's third-party claims handler, Resolute Management, Inc., sent purportedly complete copies of its Horace Mann files to ACE, which were forwarded to R&Q Re. ¶ 47.

The sale of AARe to R&Q was subject to the approval of the Pennsylvania Commissioner of Insurance, Diane Koken. ¶ 19. In a Decision and Order dated July 3, 2006, Koken approved the sale of AARe to R&Q. ¶ 22. During the approval process, the parties agreed to unwind certain affiliate contracts and inter-company reinsurance agreements. ¶ 21. The SPA memorializes the contracts that were commuted and refers to them as Commuted Affiliate Reinsurance Agreements (the Commuted Agreements). Schedule A-1 of the SPA lists six AARe Commuted Agreements, including the 1971 Treaty. Schedule A-2 of the SPA list seven Surviving Affiliate Reinsurance Agreements (the Surviving Agreements). The 1989 Treaty does not appear on either Schedule A-1 or Schedule A-2 (Schedule A-2 does include three Quota Sharing Agreements, none of which relate to the 1989 Treaty). The seventh item on Schedule A-2 is "Reinsurance agreements entered

into between AARe . . . and any Seller or any Affiliate of any Seller . . . in the ordinary course of business on an arm's length basis."

During the approval process, ACE provided R&Q with a report prepared by Towers Perrin Tillinghast that included data on Horace Mann insurance policy reserves (the Tillinghast Report). ¶¶ 116-17. The Tillinghast Report segregated liabilities for asbestos and environmental policies. ¶ 117. Plaintiffs contend that the Tillinghast Report did not include data for three policies (two Time Oil Company environmental policies and a Yuba Heat policy that covers asbestos liability) under which a substantial portion of the claims under the 1989 Treaty are based. ¶ 118.

Section 9.12 of the SPA provides that it is governed by New York law and that the parties consent to the jurisdiction of this Court to resolve disputes arising out of it. ¶ 131.

On December 6, 2011, plaintiffs commenced this action to seek a declaratory judgment on whether the SPA included the transfer of the 1989 Treaty to plaintiffs. In an Order dated December 16, 2011, this court issued an injunction ordering R&Q Re to continue handling the defense and indemnity of the Horace Mann insurance claims pending the outcome of this case. On March 23, 2012, plaintiffs filed an Amended Complaint, asserting seven causes of action: (1) a declaratory judgment that the SPA excluded the 1989 Treaty (the Declaratory Judgment), or in the alternative, reformation of the 1989 Treaty (Reformation) due to mutual mistake; (2) the Declaratory Judgment, or in the alternative, Reformation due to unilateral mistake; (3) the Declaratory Judgment, or in the alternative, Reformation due to fraud; (4) the Declaratory Judgment, or in the alternative, Reformation due to impossibility; (5) the Declaratory Judgment, or in the alternative, Reformation due to illegality; (6) money had and received for payments made under the 1989 Treaty and Horace Mann policies; and (7) indemnity against Century.

II. Discussion

On a motion to dismiss, the court must accept as true the facts alleged in the complaint as well as all reasonable inferences that may be gleaned from those facts. *Amaro v Gani Realty* Corp., 60 NY3d 491 (2009); *Skillgames, L.L.C. v Brody*, 1 AD3d 247, 250 (1st Dept 2003) (citing *McGill v Parker*, 179 AD2d 98, 105 (1992)); *see also Cron v Harago Fabrics*, 91 NY2d 362, 366 (1998). The court is not permitted to assess the merits of the complaint or any of its factual allegations, but may only determine if, assuming the truth of the facts alleged, the complaint states the elements of a legally cognizable cause of action. *Skillgames, id.* (citing *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 (1977)). Deficiencies in the complaint may be remedied by affidavits submitted by the plaintiff. *Amaro*, 60 NY3d at 491. "However, factual allegations that do not state a viable cause of action, that consist of bare legal conclusions, or that are inherently incredible or clearly contradicted by documentary evidence are not entitled to such consideration." *Skillgames*, 1 AD3d at 250 (citing *Caniglia v Chicago Tribune-New York News Syndicate*, 204 AD2d 233 (1st Dept 1994)). Further, where the defendant seeks to dismiss the complaint based upon documentary evidence, the motion will succeed only if "the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law [citation omitted]." *Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 (2002); *Leon v Martinez*, 84 NY2d 83, 88 (1994).

The first five causes of action seek a declaratory judgment as to whether R&Q acquired the 1989 Treaty under the SPA. Additionally at issue are the five purported bases for reforming the SPA and plaintiffs' claims for money had and received and indemnification.

A. Declaratory Judgment

CPLR 3001 provides that "[t]he supreme court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed." *See also* 43 N.Y. Jur2d Declaratory Judgments §§ 4, 22. "The general purpose of the declaratory judgment is to serve some practical end in quieting or stabilizing an uncertain or disputed jural relation either as to present or prospective obligations." *Thome v Alexander & Louisa Calder Found.*, 70 AD3d 88, 99 (1st Dept 2009) (quoting *James v Alderton Dock Yards*, 256 NY 298, 305 (1931)). Although a court may address and resolve questions of fact in the context of an action for a declaratory judgment (Siegel, NY Prac § 436, at 739 (5th ed) (citing *Rockland Power & Light Co. v City of New York*, 289 NY 45 (1942)), "the point and the purpose of the relief is to declare the respective legal rights of the parties based on a given set of facts, not to declare findings of fact." *Thome*, 70 AD3d at 100; *see also QBE Ins. Corp. v ADJO Constr. Corp.*, 32 Misc3d 1231[A], NY Slip Op 51508 [U], at *3 (Sup Ct, Nassau County 2011).

"Construction of an unambiguous contract is a matter of law, and the intention of the parties may be gathered from the four corners of the instrument and should be enforced according to its terms. The court should construe the agreements so as to give full meaning and effect to the material provisions. A reading of the contract should not render any portion meaningless. Further, a contract should be read as a whole, and every part will be interpreted with reference to the whole; and if possible it will be so interpreted as to give effect to its general purpose." *Beal Savings Bank v Sommer*, 8 NY3d 318, 324-25 (2007) (internal citations and quotation marks omitted). "Whether a contract is ambiguous is a question of law, and extrinsic evidence may not be considered unless the document itself is ambiguous." *Savoy Mgmt. Corp. v Leviev Fulton Club, LLC*, 51 AD3d 520, 521 (1st Dept 2008).

Many of the allegations in the AC regarding the commutation of the 1989 Treaty go beyond the "four corners" of the SPA (e.g., the parties' intent to only include reinsurance, and not direct insurance, contracts in the SPA). The Court will not consider or accept such allegations as true because there is no relevant ambiguity in the SPA.

The SPA was a contract for the sale of AARe, and not merely a contract for the sale of a bundle of reinsurance agreements. Unless the SPA explicitly excluded the 1989 Treaty, R&Q would have acquired it along with the rest of AARe's assets and liabilities. Indeed, Schedule A-2 (which lists the Surviving Agreements) includes a catch-all for all reinsurance agreements that were entered into "in the ordinary course of business on an arm's length basis." In contrast, Schedule A-1, which lists the commuted contracts, does not contain such a catch-all. This further indicates that only contracts specifically listed in Schedule A-1 were commuted.

Plaintiffs set forth two arguments that seek to avoid this straightforward reading of the SPA: (1) that the 1989 Treaty was not entered into in the ordinary course of business on an arm's length basis; and (2) that the 1989 Treaty was written pursuant to the 1971 Treaty, which was listed on Schedule A-1.

As for the first argument, plaintiffs allege that the 1989 Treaty was not entered into in the ordinary course of business on an arm's length basis because it was a balance sheet liability allocation mechanism rather than a true reinsurance contract. This allegation, which appears to imply some sort of nefarious motive behind the treaty, even if true, is irrelevant. The absence of the 1989 Treaty from Schedule A-1 precludes the argument that it was commuted, regardless of whether it falls into the catch-all in Schedule A-2.

As for the second argument, the AC and documentary evidence establish that the 1975 Treaty, whereby INA Re reinsured 100% of Horace Mann, was amended multiple times, the last

and operative iteration being the 1989 Treaty. The fact that the 1971 Treaty is listed in Schedule A-1 has no bearing on whether plaintiffs have obligations under the 1989 Treaty because the 1971 Treaty was not part of the sequence of amended treaties (beginning with the 1975 Treaty and ending with the 1989 Treaty).[1] The commutation of the 1971 Treaty is irrelevant because the 1989 Treaty is the operative document. That being said, the question of what specific insurance claims are covered by the 1989 Treaty is not before the Court because plaintiffs have not sought a deceleration on this issue. Rather, the question at hand is whether the 1989 Treaty was commuted. The answer is no.

B. Reformation

It is well established that "[o]nce a contract is made, only in unusual circumstances will a court relieve the parties of the duty of abiding by it." *George Backer Mgmt. Corp. v Acme Quilting Co.*, 46 NY2d 211, 218 (1978). "Reformation is not a mechanism to interject into the writings terms or provisions not agreed upon or suggested by one party but rejected by the other. . . The burden upon a party seeking reformation is a heavy one since it is presumed that a deliberately prepared and executed written instrument accurately reflects the true intention of the parties: '[T]he proponent of reformation must show in no uncertain terms not only that mistake or fraud exists, but exactly what was really agreed upon between the parties.'" *William P. Pahl Equipment Corp. v Kassis*, 182 AD2d 22, 29 (1st Dept 1992) (quoting *George Backer*, 46 NY2d at 219). Plaintiffs set forth five grounds for reforming the SPA to include the 1989 Treaty: (1) mutual mistake; (2) unilateral mistake; (3) fraud; (4) impossibility; and (5) illegality.

1. Mutual Mistake

[1] There also are substantive differences between the 1971 Treaty and the 1975 Treaty, such that the former ceded *gross* liabilities and the latter ceded *net* liabilities.

It is well settled that there is a "strong presumption against mutual mistake claims." *Stonebridge Capital, LLC v Nomura Int'l PLC*, 68 AD3d 546, 548 (1st Dept 2009) (citing *Harris v Uhlendorf*, 24 NY2d 463, 467 (1969)). To maintain a claim of mutual mistake, the plaintiff must allege that "the parties have reached an oral agreement and, unknown to either, the signed writing does not express that agreement." *Chimart Assocs. v Paul*, 66 NY2d 570, 573 (1986). "[T]he mutual mistake must exist at the time the contract is entered into and must be substantial. Put differently, the mistake must be so material that . . . it goes to the foundation of the agreement. Court-ordered relief is therefore reserved only for exceptional situations. The premise underlying the doctrine of mutual mistake is that the agreement as expressed, in some material respect, does not represent the meeting of the minds of the parties." *Simkin v Blank*, 19 NY3d 46, 52-53 (2012) (internal citations and quotation marks omitted); 27 Lord, Williston on Contracts § 70:12 (4th ed) ("The parties must have been mistaken as to a basic assumption of the contract . . . Basic assumption means the mistake must vitally affect the basis upon which the parties contract.").

Plaintiffs argue that "the inclusion of the [1989 Treaty] in the SPA transaction is a mistake because it was not intended by the parties" and that this "does not reflect a meeting of the minds on the issue of whether the [1989 Treaty] was among the surviving liabilities of AARe." Amended Complaint ¶¶ 136-37. As discussed *supra*, part II.A, plaintiffs argue that the nature of the 1989 Treaty – either as a "sham agreement" or direct insurance agreement – was exactly the sort of agreement that was intended to be excluded from the SPA because it was not a true arm's length reinsurance agreement. This is irrelevant. The SPA is "a deliberately prepared and executed written instrument" for the sale of AARe that only commuted contracts specifically delineated on Schedule A-1. *See Chimart Assocs.*, 66 NY2d at 574. If the parties clearly bargained for and intended that the 1989 Treaty was to be commuted, it should have appeared on Schedule A-1. The

statements about the parties' intent made during the Pennsylvania regulatory approval process are not sufficient to sustain a claim for mutual mistake. Here, as in *Chimart Assocs.*, "[i]t was uncontroverted that the negotiations had been conducted by sophisticated, counseled businessmen and . . . [v]arious statements allegedly made during negotiations were, as a matter of law, too indefinite to form the basis for a claim [for reformation]." Finally, as discussed *infra*, part II.B.3, plaintiffs cannot rely on the doctrine of mistake because the alleged mistake was caused by their own failure to conduct due diligence. *See Da Silva v Musso*, 53 NY2d 543, 548 (1981) (citing Pomeroy, Specific Performance of Contracts (3d ed), § 245). In conclusion, the cause of action for mutual mistake is dismissed.

2. Unilateral Mistake

"[R]eformation cannot be sustained on the ground of unilateral mistake alone." *Kassis*, *supra*, 182 AD2d at 29. Rather, the plaintiff must show that the alleged mistake was "induced by the other party's fraudulent representations." *Id.* As discussed *infra*, part II.B.3, plaintiffs have failed to properly allege that ACE or Century made a fraudulent representation or omission in connection with the SPA. Hence, the cause of action for unilateral mistake is dismissed.

3. Fraud

To properly plead a cause of action for fraud, the complaint must contain allegations of a representation of material fact, falsity, scienter, reliance, and injury. *Small v Lorillard Tobacco Co.*, 94 NY2d 43, 57 (1999). Moreover, pursuant to CPLR 3016(b), the circumstances constituting the fraud must be stated in detail. *Id.*

"It is well established that, absent a fiduciary relationship between the parties, a duty to disclose arises only under the 'special facts' doctrine where one party's superior knowledge of essential facts renders a transaction without disclosure inherently unfair." *Jana L. v West 129th St.*

Realty Corp., 22 AD3d 274, 277 (1st Dept 2005) (internal quotation marks omitted). "The [special facts] doctrine requires satisfaction of a two-prong test: that the material fact was information 'peculiarly within the knowledge' of [defendant], and that the information was not such that could have been discovered by [plaintiff] through the 'exercise of ordinary intelligence.'" *Id.* at 278 (quoting *Black v Chittenden*, 69 NY2d 665, 669 (1986); *Schumaker v Mather*, 133 NY 590, 596 (1892) ("if the other party has the means available to him of knowing . . . he must make use of those means, or he will not be heard to complain that he was induced to enter into the transaction by misrepresentation")).

Plaintiffs' fraud claim is based on ACE's and Century's alleged failures to disclose financial information to R&Q indicating that liability for the subject Horace Mann claims was being acquired by R&Q in the SPA. Specifically, plaintiffs allege that the Tillinghast Report omitted certain Horace Mann policy reserves, such as the Time Oil and Yuba Heat policy reserves.

Plaintiffs, however, have failed to properly plead reasonable reliance and the elements of the special facts doctrine. R&Q is a highly sophisticated commercial entity and by its own admission, the SPA "was a highly complex agreement." R&Q was given complete access to AARe's financial records prior to executing the SPA. R&Q declined to avail itself of such access. R&Q's admitted failure to conduct its own due diligence precludes a fraud claim. *See UST Private Equity Invs. Fund v Salomon Smith Barney*, 288 AD2d 87, 88 (1st Dept 2001) ("a sophisticated plaintiff cannot establish that it entered into an arm's length transaction in justifiable reliance on alleged misrepresentations if that plaintiff failed to make use of the means of verification that were available to it, such as reviewing the files of the other parties."). Plaintiffs' cause of action for fraud, therefore, is dismissed.

4. Impossibility

"Impossibility excuses a party's performance only when the destruction of the subject matter of the contract or the means of performance makes performance objectively impossible. Moreover, the impossibility must be produced by an unanticipated event that could not have been foreseen or guarded against in the contract." *Kel Kim Corp. v Central Markets, Inc.*, 70 NY2d 900, 902 (1987).

Plaintiffs' impossibility claim is patently implausible. Under the 1989 Treaty, R&Q Re is responsible for servicing the Horace Mann claims. R&Q Re is currently servicing these claims pursuant to the December 16, 2011 injunction and has participated in the defense and indemnity of the claims since 2007. To claim such performance is impossible belies the status quo. Moreover, as discussed *supra*, part II.B.3, liability for the Horace Mann claims would have been foreseeable if R&Q had conducted its own due diligence. Thus, this cause of action is dismissed.

5. *Illegality*

"To constitute a valid defense to an action on a contract, the alleged illegality must be central to or a dominant part of the plaintiff's whole course of conduct in performance of the contract." *FCI Group, Inc. v City of New York*, 54 AD3d 171, 177 (1st Dept 2008).

Plaintiffs' argument that they do not have the legal authority under Pennsylvania law to service the Horace Mann claims falls flat. Even if this were true, a contention that lacks support in the record, plaintiffs are capable of paying a licensed third-party to perform their obligations under the 1989 Treaty, which is exactly what they have done to date.

Finally, plaintiffs contend that servicing the claims would be in violation of the conditions of the sale set forth in commissioner of Insurance Koken's decision. This bare allegation is not supported by the record, and this Court will not adopt plaintiffs' strained reading of Koken's decision. If the parties had any questions about the meaning of that decision, they could have

sought clarification from Koken before executing the SPA. Instead, the parties executed the SPA after having ample opportunity to conduct due diligence about AARe's liabilities. Moreover, if plaintiffs had a serious concern that servicing the Horace Mann claims would be illegal, they should have sought a declaratory judgment in 2007, when they were first on notice of the claims. Plaintiffs' delay belies the plausibility of this claim. As such, the cause of action for illegality is dismissed.

F. Other Causes of Action

Plaintiffs' final two causes of action are for (1) money had and received; and (2) indemnity.

1. Money Had and Received

A cause of action for money had and received is a quasi-contractual claim "in the absence of an agreement when one party possesses money that in equity and good conscience [it] ought not to retain and that belongs to another. It allows [a] plaintiff to recover money which has come into the hands of the defendant impressed with a species of trust because under the circumstances it is against good conscience for the defendant to keep the money." *Bd. of Educ. of Cold Spring Harbor Cent. School Dist. v Rettaliata*, 78 NY2d 128, 138 (1991). This cause of action must be dismissed because the subject matter of plaintiffs' claims is governed by the SPA. *Atria Builders, L.L.C. v Morgan 32 Holdings, L.L.C.*, 84 AD3d 508, 509-10 (1st Dept 2011) (quasi-contract claim for money had and received is barred by existence of written contract); *see also Clark-Fitzpatrick, Inc. v Long Island R.R. Co.*, 70 NY2d 382 (1987)).

2. Indemnity

Century has no obligation to indemnify plaintiffs. As discussed above, the 1989 Treaty was not commuted in the SPA, rendering plaintiffs liable for all claims thereunder. None of the

contracts discussed herein, referred to in the pleadings, or contained in the record provide a basis for a claim for indemnity against Century. Ergo, this cause of action is dismissed.

C. Conclusion

Though this Court hereby dismisses all of plaintiffs' claims against defendants, none of the defendants have moved for summary judgment on Horace Mann's counterclaims for a declaratory judgment and permanent injunction. Given the disposition of this motion, defendants are granted leave to do so. Accordingly, it is

ORDERED that the motion to dismiss by defendants ACE INA International Holdings, Ltd., Century Indemnity Company, and Bankers Standard Insurance Company against plaintiffs Randall & Quilter Investment Holdings PLC and R&Q Reinsurance Company is granted, and the Clerk is directed to enter judgment dismissing said plaintiffs' claims with prejudice; and it is further

ORDERED that the parties are to contact the Court for a telephone conference on January 30, 2013 at 11:00 am.

Dated: January 22, 2013

ENTER:

J.S.C.