

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:) Chapter 11
)
PRS INSURANCE GROUP, INC.,) Case Nos. 00-4070 (MFW)
et al.,)
) (Jointly Administered)
Debtors.)
)
SEAN C. LOGAN, the Chapter 11)
Trustee of PRS INSURANCE)
GROUP, INC., et al.,) Adv. Proc. No. 05-50819
)
Plaintiff,)
)
v.)
)
CREDIT GENERAL INSURANCE)
COMPANY and CREDIT GENERAL)
INDEMNITY COMPANY)
)
Defendants.)
_____)

MEMORANDUM OPINION¹

Before the Court is the Motion of the Liquidator of Credit General Insurance Company and Credit General Indemnity Company (collectively "CGIC") to Dismiss or Stay the above adversary action on the grounds that the McCarran-Ferguson Act prevents this Court from exercising jurisdiction over the chapter 11 Trustee's complaint, which seeks to equitably subordinate CGIC's claim under section 510(c) of the Bankruptcy Code. For the reasons stated below, the Court will deny the Motion.

¹ This Opinion constitutes the findings of fact and conclusions of law of the Court pursuant to Federal Rule of Bankruptcy Procedure 7052.

I. BACKGROUND

The facts underlying this case are detailed in the Court's Memorandum Opinion dated September 23, 2005, in adversary proceeding No. 05-50818 and will not be repeated here. See Logan v. Credit Gen. Ins. Co. (In re PRS Ins. Group), 331 B.R. 580 (Bankr. D. Del. 2005).

Pertinent to this adversary proceeding, however, is the Trustee's allegation that CGIC is an insider of PRS Insurance Group, Inc. (the "Debtor"), and that CGIC engaged in inequitable pre-petition conduct by participating in the transfer of approximately \$20 million in assets from the Debtor to CGIC for little or no consideration.

II. DISCUSSION

CGIC seeks to dismiss the Trustee's adversary complaint by arguing that the McCarran-Ferguson Act reverse preempts this Court's exercise of jurisdiction over the equitable subordination action because it interferes with CGIC's Ohio State Court liquidation proceeding. Even if this Court has jurisdiction, CGIC argues that it should abstain from hearing the dispute or stay the proceedings in deference to CGIC's Ohio proceeding.

In a companion adversary proceeding, No. 05-50818, the Trustee brought fraudulent and preferential transfer actions against CGIC, solely to establish the predicate (pursuant to

section 502(d) of the Bankruptcy Code) for the Trustee's objection to the \$45 million proof of claim filed by CGIC against the Debtor. In the September 23 Memorandum Opinion, this Court held that the McCarran-Ferguson Act did not reverse preempt that action because the Trustee was not seeking affirmative relief from CGIC but was merely objecting to allowance of CGIC's claim. Logan, 331 B.R. at 589. This Court concluded that it had exclusive jurisdiction over the allowance of claims against the estate. Id. at 588. Moreover, this Court held that the Trustee's claim objection did not destroy the efficiency and economy of the Ohio proceeding - where the Trustee had asserted similar claims for affirmative relief - because CGIC chose this forum by filing its proof of claim. Id. Further, this Court concluded that there is relatively little difference in cost to CGIC to litigate the issues raised by the Trustee's adversary proceeding in this Court versus the Ohio State Court, which could not even hear all the issues presented by the Trustee. Id.

For the same reasons articulated in the earlier Memorandum Opinion (and in the Memorandum Opinion dated December 8, 2005, denying reconsideration), the Court concludes that the Trustee's complaint to subordinate CGIC's claim is not reverse preempted by the McCarran-Ferguson Act.

Similarly, abstention is not appropriate under either Younger v. Harris, 401 U.S. 37 (1971) or Burford v. Sun Oil Co.,

319 U.S. 315 (1943), because the Ohio State Court does not have jurisdiction to subordinate CGIC's claim in the Debtor's bankruptcy proceeding. Only this Court has jurisdiction to determine the allowance and priority of claims filed against the Debtor. See, e.g., In re D. M. Barber, Inc., 13 B.R. 962, 965 (Bankr. N.D. Tex. 1981) (holding that the bankruptcy court "retains the exclusive jurisdiction to determine the extent to which any such proof of claim should be allowed and priority treatment accorded it under the distribution hierarchy set forth in the Bankruptcy Code"); 4 Collier on Bankruptcy ¶ 502.030[1][a] (Alan N. Resnick & Henry J. Sommer eds. 15th ed. rev. 2005) ("Regardless of the method chosen for liquidation of a claim, the bankruptcy court always retains the jurisdiction and sole right to determine the 'allowability' of the claim under the applicable standards set forth in section 502.").

For the same reasons, a stay of the Trustee's adversary proceeding here is also not warranted. Further, the Court takes seriously its obligation to exercise the jurisdiction granted to it by Congress. See, e.g., Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 817 (1976) (noting "the virtually unflagging obligation of the federal courts to exercise the jurisdiction given them" by Congress).

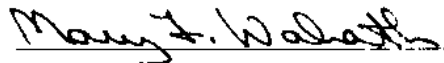
III. CONCLUSION

For the reasons set forth above, and in this Court's Memorandum Opinions dated September 23 and December 8, 2005, in Adversary Proceeding No. 05-50818, the Court will deny the Motion of CGIC to dismiss or stay this case.

An appropriate order is attached.

BY THE COURT:

Dated: December 19, 2005



Mary F. Walrath
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

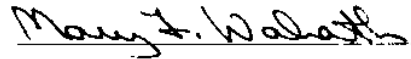
IN RE:)	Chapter 11
)	
PRS INSURANCE GROUP, INC.,)	Case Nos. 00-4070 (MFW)
et al.,)	
)	(Jointly Administered)
Debtors.)	
)	
<hr/>		
SEAN C. LOGAN, the Chapter 11)	
Trustee of PRS INSURANCE)	
GROUP, INC., et al.,)	Adv. Proc. No. 05-50819
)	
Plaintiff,)	
)	
v.)	
)	
CREDIT GENERAL INSURANCE)	
COMPANY and CREDIT GENERAL)	
INDEMNITY COMPANY)	
)	
Defendants.)	
)	
<hr/>		

O R D E R

AND NOW, this **19th** day of **DECEMBER, 2005**, upon consideration of the Motion to Dismiss or Stay filed by Credit General Insurance Company and Credit General Indemnity Company, and the response thereto of the Trustee, it is hereby

ORDERED that the Motion is **DENIED**.

BY THE COURT:



Mary F. Walrath
United States Bankruptcy Judge

cc: Steven K. Kortanek, Esquire¹

¹ Counsel is to distribute a copy of this Order on all interested parties and file a Certificate of Service with the Court.

SERVICE LIST

Steven K. Kortanek, Esquire
Klehr, Harrison, Harvey, Branzburg & Ellers LLP
919 Market Street, Suite 1000
Wilmington, DE 19801
Counsel for Liquidator of CGIC

Stephen G. Schweller, Esquire
Dinsmore & Shohl LLP
1900 Chemed Center
255 East Fifth Street
Cincinnati, Ohio 45202
Counsel for Liquidator of CGIC

Maureen D. Luke, Esquire
Young, Conaway, Stargatt & Taylor, LLP
1100 North Market Street, 11th Floor
Wilmington, DE 19899
Counsel for the Trustee

Harold S. Horwich, Esquire
Bingham, McCutchen LLP
One State Street
Hartford, CT 06103-3178
Counsel for the Trustee