REINSURERS, RECEIVERS AND ABSTENTION[1]

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I. Introduction

Reinsurance is often the largest single asset of an insurer in receivership. As a result, receivers place a high priority on collection of losses from reinsurers in order to pay debts to policyholders, claimants and other creditors. Reinsurers place an equally high priority on asserting certain rights and defenses, primarily setoff and arbitration, to assure that they do not pay any more than that which is actually due to the estate.

From the receiver's standpoint, it is desirable to have all possible proceedings in the state court supervising the receivership. This makes use of the acquired expertise of the receivership court, avoids the expense to the estate of defending actions in many jurisdictions and promotes consistency of judicial rulings. Reinsurers, in contrast, sometimes wish to invoke their right to federal jurisdiction for diversity reasons or assert their contractual rights to have disputes arbitrated by a panel of insurance industry executives. Reinsurers often believe that receivers have a home court advantage in the receivership court.

Given these opposing viewpoints on the appropriate forum for the resolution of disputes, the doctrine of abstention is particularly vital to both receivers and reinsurers. Abstention is the principle by which a federal court having jurisdiction to hear a particular case defers to a state court under certain prescribed circumstances. Whether or not the standards for abstention are met can prescribe the manner and forum in which a dispute is heard, such as litigation in the state receivership court, litigation in federal court or arbitration before a panel of insurance industry executives.

The nature and scope of the abstention doctrine has received great scrutiny in recent years. While there are several types of abstention, the one most relevant to the receivership context is *Burford* abstention.[3] This type of abstention was applied to the Mission Insurance Company receivership in the recent Supreme Court case of *Quackenbush v. Allstate Ins. Co.*, ___ U.S. ___, 116 S.Ct. 1712 (1996). The purpose of this article is to analyze the scope of the abstention doctrine with respect to the most common disputes between receivers and reinsurers (setoff and arbitration) in the post-*Quackenbush* context.

II. Background of *Burford* Abstention

A number of circumstances exist under which a federal court may decline to hear the merits of a case even though it has jurisdiction over the matter under the United States Constitution.[4]These circumstances have been recognized in a number of decisions which have established the "abstention" doctrine.[5] Abstention is generally recognized: (1) to avoid decision of a federal constitutional question where the case may be disposed of on questions of state law; (2) to avoid needless conflict with a state's administration of its own affairs; (3) to leave to the states the resolution of unsettled questions of state law; and (4) to ease the congestion of the federal court docket.[6] The second type of abstention noted above is known as the *Burford* abstention doctrine because it takes its name from the leading case of *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943).

In *Burford*, the Texas legislature developed a regulatory body, known as the Railroad Commission, and endowed it with exclusive regulatory authority over the oil industry. The Texas legislature further granted the authority to review the Railroad Commission's orders to a single set of state courts. The federal court was asked to enjoin the enforcement of an order of the Railroad Commission. The Supreme Court upheld the federal district court's abstention from exercising federal jurisdiction: (1) due to the thorny regulatory issues involved which the Texas legislature had assigned to a specialized regulatory body and court; (2) to avoid the confusion of multiple review; and (3) to avoid contrary adjudication by state and federal courts.[7] As such, the *Burford* court held that abstention in that case was warranted in order to avoid interference with a state's administration of its own affairs.

The scope of the *Burford* abstention doctrine was clarified and limited in *New Orleans Public Service, Inc. v. Council of the City of New Orleans ("NOPSI")*, 491 U.S. 350 (1989), in which the Supreme Court declared that *Burford* did not require abstention whenever there exists a complex state administrative process or even in all cases where a "potential for conflict" existed with state regulatory law or policy. In *NOPSI*, the Supreme Court stated:

Where timely and adequate state-court review is available, a federal court sitting in equity must decline to interfere with the proceedings or orders of state administrative agencies: (1) when there are "difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar"; or (2) where the "exercise of federal review of the question in the case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern."[(8)] As discussed in section VI, *infra*, the Supreme Court further clarified and limited *Burford* abstention in *Quackenbush*.

III. McCarran-Ferguson Issues

A strong factor favoring abstention in the receivership context is the McCarran-Ferguson Act, 15 U.S.C. §§ 1011-1012 (1976 and 1996 Supp.). This act allows state insurance statutes to pre-empt conflicting federal statutes which do not specifically relate to insurance. Pursuant to 15 U.S.C. § 1012(b):

- No act of Congress shall be construed to invalidated, impair or supersede any law enacted by any State *for the purpose of regulating the business of insurance* . . . unless such Act specifically relates to the business of insurance . . . (emphasis added).

To date, the Supreme Court has declined to rule as to whether reinsurance constitutes the "business of insurance" despite several recent opportunities to do so.[(9)] Lower courts, however, have generally supported the proportion that reinsurance constitutes the "business of insurance". *See*, *e.g.*, *Stephens v. American Int'l Ins. Co.*, 66 F.3d 41 (2d Cir. 1995); *Feinstein v. Nettleship Co.*, 714 F.2d 928 (9th Cir. 1983), *cert. denied*, 466 U.S. 972 (1984); and *In re Antitrust Litigation*, 723 F. Supp. 464 (N.D. Cal. 1989), *rev'd on other grounds and remanded*, 938 F.2d 919 (9th Cir. 1991).

Receivers have relied upon the McCarran-Ferguson pre-emption to support their position that all disputes involving an insolvent insurer should be heard within the state insolvency proceeding rather than in federal court or before a panel of arbitrators. Similarly, receivers also rely upon the decision in *United States Dep't of the Treasury v. Fabe*, 508 U.S. 491 (1993), in which the Supreme Court held that receiverships are the "business of insurance," at least with respect to policyholder claims. Such decisions may lend factual support to the argument that insolvency proceedings constitute the type of state regulatory scheme which is appropriate for *Burford* abstention.

IV. State Receivership Statutes

The National Association of Insurance Commissioners ("NAIC") has adopted an Insurers Rehabilitation and Liquidation Model Act ("Model Act"), portions of which have been enacted in many states. Several sections of the Model Act mirror several of the requirements for *Burford* abstention and the McCarran-Ferguson exemption. For example, § 1 D. states:

- The purpose of this Act is the protection of the interests of insureds, claimants, creditors and the public generally; . . . through:

  (7) Providing for a comprehensive scheme for the rehabilitation and liquidation of insurance companies and those subject to the Act as part of the regulation of the business of insurance in this state. Proceedings in cases of insurer insolvency and delinquency are deemed an integral aspect of the business of insurance and are of vital public interest and concern.

Section 4 of the NAIC Model Act prohibits any party other than the insurance commissioner of the domiciliary state from commencing a receivership action, prohibits any state court from entertaining any receivership action except in accordance with the receivership law and provides the receiver with jurisdiction over a variety of parties relevant to the receivership including reinsurers and intermediaries which have dealt with the insolvent insurer. Section 10 of the Model Act specifies a court for the receivership proceeding.

Section 5 of the Model Act notes that the efficient administration of the receivership requires the supervision of a single court and that the receivership court may exercise its jurisdiction to the exclusion of all other courts. In addition, the receivership court may issue a stay of all actions at law or equity by any party against the insolvent insurer. Section 5 A. (4) of the Model Act states: "All matters that may be stayed, enjoined or barred under this section and all matters involving its interpretation or operation shall remain within the exclusive jurisdiction of the domiciliary receivership court."

As a result, the Model Act makes the receiver and the receivership court the focal point of a complex state regulatory scheme to administer receiverships which, for certain purposes at least, have been deemed the business of insurance under *Fabe*, 508 U.S. 491 (1993). To the extent that this Model Act language is reflected in state law, receivers are statutorily well positioned to take maximum advantage of *Burford* abstention.

V. *Burford* Abstention in the Lower Courts

There is a considerable amount of case law applying *Burford* abstention in the receivership context, particularly in the Second and Third Circuits. The Second Circuit is quite liberal in its allowance of *Burford* abstention. The Third Circuit is more restrictive and fact-oriented and the case law in other circuits is mixed. Rather than survey the general topic of *Burford* abstention in the receivership context, this article focuses primarily on the most common application in reinsurance disputes: a receiver who seeks to collect reinsurance recoverables, a reinsurer which asserts its right to setoff mutual debts and/or a reinsurer which seeks to arbitrate the dispute.

A. The Expansive View of *Burford* Abstention

A number of courts, particularly those in the Second Circuit, have taken an expansive view of abstention in the context of disputes between receivers and reinsurers over reinsurance recoverables, setoff and arbitration. For example, *Law Enforcement Ins. Co., Ltd. v. Corcoran*, 807 F.2d 38 (2d Cir. 1986), *cert. denied*, 481 U.S. 1017 (1987), involved a suit by a reinsurer of the insolvent to establish its rights under certain agreements. The Superintendent of Insurance, as receiver, moved for remand and the district court granted the motion. On appeal to the Second Circuit, the court did not focus on the nature of the action brought by the reinsurer or the disruption it might cause to the state's regulatory scheme to marshall assets and run-off obligations of insolvent insurers. Instead, the court upheld abstention finding that New York has a complex regulatory scheme for receiverships and assuming interference by an action in federal court.[(10)]

The rationale of *Law Enforcement* has been elaborated upon in several other Second Circuit decisions involving the more common fact situation of a receiver bringing an action against the reinsurer for reinsurance recoverables. In one such case, *Corcoran v. Ardra Ins. Co. Ltd.*, 842 F.2d 31 (2d Cir. 1988), the reinsurer removed the action and sought to compel arbitration. In another, *Corcoran v. Universal Reinsurance Corp.*, 713 F. Supp. 77 (S.D.N.Y. 1989), the reinsurer removed the action and sought to enforce setoff and recoupment rights. In both of these decisions, the court, in upholding abstention, focused on the possible financial impact of the issue being litigated on the estate rather than the disruption of the receivership regulatory scheme caused by a suit outside the receivership court.[(11)]

Courts in other jurisdictions have added certain nuances to the Second Circuit approach. For example, the court in *In re Integrity Ins. Co. v. Mid-American General Agency*, No. 91-1380, 1991 U.S. Dist. LEXIS 15214 (D.N.J. Oct. 21, 1991), added uniformity, the cost of prosecuting actions in various federal fora and the possibility of inconsistent decisions to the factors supporting abstention.[(12)] The possibility of inconsistent interpretation of contractual terms was also cited as a basis to approve abstention in *Doughty v. Underwriters at Lloyd's*, 812 F. Supp. 13 (D. Mass. 1993), *appeal dismissed*, 6 F.3d 856 (1st Cir. 1993). Finally, the fact that the insurance department had granted

credit for reinsurance for a particular transaction was found to be a basis for abstention in *Grimes v. Crown Life Ins. Co.*, 857 F.2d 699 (10th Cir. 1988), *cert. denied*, 489 U.S. 1096 (1989).[(13)]

B. The More Restrictive View of *Burford* Abstention

In contrast to Second Circuit decisions, there is a series of cases led by *Grode v. Mutual Fire, Marine & Inland Ins. Co.*, 8 F.3d 953 (3d Cir. 1993), which take a narrower view of abstention with respect to setoff and arbitration. In *Grode*, the receiver brought suit for reinsurance recoverables against two Bermuda reinsurers which removed the case to federal district court and moved to compel arbitration. The district court declined to compel arbitration and granted abstention. On appeal, the Court of Appeals for the Third Circuit reversed. While the court acknowledged that the regulation of insolvent insurers is an important state interest, it found that the case involved a simple contract action, rather than complex and highly regulated issues of state interest.[(14)] Also noteworthy and in accord with *Grode* on the factual circumstances and holding is *Crawford v. Employers Reinsurance Corp.*, 896 F. Supp. 1101 (W.D. Okla. 1995).[(15)] A similar case from the Ninth Circuit is *Bennett v. Liberty Nat'l Fire Ins. Co.*, 968 F.2d 969 (9th Cir. 1992), in which the receiver brought suit against reinsurers for reinsurance recoverables and the reinsurers removed the action and sought to assert setoff and arbitration rights. The Ninth Circuit found that compelling arbitration pursuant to the Federal Arbitration Act would not disrupt the orderly liquidation of the cedent.[(16)]

Several other decisions outside the reinsurance context have provided very similar rulings on this issue. *Ruthardt v. Sandmeyer Steel Co.*, No. 94-6105, 1995 WL 434373 (E.D. Pa. July 21, 1995), involved a suit by the receiver against an insured for retrospective premiums and a counterclaim for breach of contract. The court found no difficult issues of state law to be resolved or disruption to the state system for regulating insolvent insurers. In addition, the court noted that the insured was seeking only to setoff or recoup against premiums due to the estate rather than to obtain assets in the possession of the receiver. A similar case is *Melahn v. Pennock Ins. Inc.*, 965 F.2d 1497 (8th Cir. 1992), which involved a suit by a receiver against an agent for unearned commissions. The court declined to abstain, noting that issues of setoff between the agent and the estate are clear-cut issues of law which are neither particularly complex nor difficult and that resolution of these issues by a federal court would not interfere with the receiver's control of the estate.

One of the most significant decisions to date results from the remand of the *Quackenbush* case. In this unreported order, the district court declined to grant a stay of the suit based on unresolved issues of state law regarding setoff and arbitration, finding that the law in these areas is relatively clear. The court found that no California statute on arbitrations would conflict with the Federal Arbitration Act and create the reverse pre-emption contemplated in the McCarran-Ferguson Act. The court compelled arbitration, rejecting the receiver's arguments that: (1) the multiplicity of contracts renders arbitration impractical and frustrates the purpose of arbitration to streamline the proceedings; (2) that statutory issues (setoff) cannot be arbitrated; and (3) that a declaratory judgment action cannot be arbitrated.

C. *Burford* Abstention on Issues Other than Setoff and Arbitration

Several abstention cases involving reinsurance may provide a more compelling argument for abstention than the typical suit by a receiver against a reinsurer for reinsurance recoverables. One such decision is *Hartford Casualty Ins. Co. v. Borg-Warner Corp.*, 913 F.2d 419 (7th Cir. 1990), in which a cedent brought suit against the parent and affiliates of the insolvent reinsurer for their role in the insolvency. The court abstained on the bases that: (1) to calculate a recovery, the court would have to determine how much is recoverable by the cedent from the reinsurer, which would inject the district court into the receivership claim approval process;[(17)] and (2) Hartford's suit was an attempt to place itself ahead of other similarly situated creditors of the estate.[(18)]

A similar result was reached in *Maleski v. Conning & Co.*, No. 94-7507, 1995 U.S. Dist. LEXIS 14064 (E.D. Pa. Sept. 27, 1995), in which the receiver of the cedent had hired an affiliate of the reinsurer to help sell a solvent subsidiary of the cedent. The receiver alleged breach of fiduciary duty on behalf of the affiliate in its sales efforts and by the reinsurer in transferring its obligations which reduced the reinsurer's ability to pay the cedent's claims. Distinguishing the straight-forward contract claims involved in *Grode*, 8 F.3d 953 (3d Cir. 1993), discussed *supra*, the *Maleski* court allowed abstention on the bases that the claim involved complex relationships involved in the

receiver's marshalling of assets and that the receivership court was already thoroughly familiar with the matter having issued two prior orders on point.

VI. *Quackenbush v. Allstate* and Its Impact

The Supreme Court decision originated as a suit by the receiver of Mission Insurance Company for breach of reinsurance contracts and seeking contract and tort damages. Allstate, the reinsurer, removed the case to federal district court and asked the court to compel arbitration of the disputes between Mission and Allstate which included the scope of the right of setoff. The receiver asked that the district court abstain on the basis that the federal action interfered with a complex state regulatory scheme for the administration of insolvent insurers and to avoid inconsistent rulings on such issues as setoff which was then on appeal to the California Supreme Court. The district court granted abstention and remanded to the receivership court. Allstate appealed.

The Court of Appeals for the Ninth Circuit reversed the district court, ruling that abstention applied only to matters in equity and not to matters at law such as the receiver's suit for damages against Allstate. The court ordered that the matter proceed to arbitration. The receiver appealed. In a unanimous decision, the United States Supreme Court affirmed the holding of the Ninth Circuit, but on a somewhat more limited basis.

The Supreme Court's analysis began with the proposition "that federal courts have a strict duty to exercise the jurisdiction that is conferred upon them by Congress"[(19)] and may decline to exercise this jurisdiction only under very limited circumstances. The Court then reviewed these circumstances including the *Burford* decision. The Court noted:

- We have thus held that in cases where the relief being sought is equitable in nature or otherwise discretionary, federal courts not only have the power to stay the action based on abstention principles, but can also, in otherwise appropriate circumstances, decline to exercise jurisdiction altogether by either dismissing the suit or remanding it to state court. By contrast, while we have held that federal courts may stay actions for damages based on abstention principles, we have not held that those principles support the outright dismissal or remand of damages actions.[(20)]

This characterization of prior rulings set the stage for a major restriction in the scope of *Burford* abstention.

Turning to the merits of *Quackenbush*, the Supreme Court commented that: "[T]he federal interests in this case are pronounced, as Allstate's motion to compel arbitration under the Federal Arbitration Act implicates a substantial federal concern for the enforcement of arbitration agreements."[(21)] The Court noted an "emphatic federal policy in favor of arbitral dispute resolution."[(22)] This language reflects favorably on the Ninth Circuit's view of arbitration as expressed in *Bennett*, 968 F.2d 969 (9th Cir. 1992).[(23)]

The Court did not reach the issue of the appropriateness of a receivership proceeding for abstention generally but, in effect, ruled that this dispute did not warrant abstention. Balancing the strong federal interest in arbitration with the interests of the state, the Court commented:

- With regard to the state interests, however, the case appears at first blush to present a *run-of-the-mill contract dispute*. . . . What differentiates this case from other diversity actions seeking damages for breach of contract, *if anything*, is the impact federal adjudication of the dispute might have on the ongoing liquidation proceedings in state court: The Commissioner claims that any recovery by Allstate on its setoff claims would amount to an illegal "preference" under state law. This question appears now to have been conclusively answered by the California Supreme Court, *see Prudential Reinsurance Co. v. Superior Court of Los Angeles City*, 3 Cal. 4th 1118, 14 Cal. Rptr. 2d 749, 842 P.2d 48 (1992) (emphasis added).[(24)]

This language reflects negatively on the case law supporting an expansive view of *Burford* abstention (*see* Section V.A., *supra*), and positively on the case law supporting a more restrictive view (*see* Section V.B, *supra*).

The Court went on to limit dismissals or remands based on *Burford* abstention to cases for equitable or discretionary relief. In the instant case, where the issue of setoff was on its way to the California Supreme Court, the Court noted that: "in the interest of avoiding inconsistent adjudications on that point, the District Court might have been justified in entering a stay to await the outcome of the state court litigation."[(25)] Because this case was one for damages and the California Supreme Court had long since ruled on setoff, the Court held that remand by the district court based on *Burford* abstention was inappropriate.

A. Impact of *Quackenbush* on Abstention in Future Reinsurance Disputes

The Supreme Court's *Quackenbush* decision sends a very strong message concerning application of *Burford* abstention to disputes between receivers and reinsurers. The Court:

• Rendered a rare unanimous decision;

• Emphasized the limited scope of abstention generally;

• Did not indicate whether a receivership proceeding is an appropriate forum for *Burford* abstention under any circumstances;

• Noted a strong federal preference for arbitration in the balancing of federal and state interests;

• Suggested that *Burford* abstention is not appropriate for run-of-the-mill contract disputes such as setoff and arbitration; and

• Ruled that *Burford* abstention is not available for the typical action at law by receivers to collect damages in the form of reinsurance recoverables.

As such, the Court demonstrated a view of abstention which is even more limited than lower court decisions which provided a restrictive view of *Burford* abstention as described in section V. B., *supra*. In order to successfully maintain an action in the receivership court to collect reinsurance recoverables in the face of a removal, it appears that the receiver must: (1) plead an equitable or discretionary court action that adequately supplants an action at law for damages; (2) justify an insurance company receivership as appropriate for abstention; (3) overcome the strong federal preference for arbitration of disputes; (4) demonstrate that the issue is not an ordinary contract dispute; and (5) demonstrate that a resolution of the issue in federal court may seriously impede a complex state regulatory system for insurer receiverships.

Compliance by a receiver with these five factors is a very formidable task but may not be impossible, at least in cases which involve substantive issues of receivership law other than setoff or arbitration. With respect to the first factor (equitable substitute), it is probably unwise to discount the creativity of trial counsel in recharacterizing the nature of an action for damages against reinsurers into an equitable action. It may not be overly burdensome to comply with the second factor (receivership appropriate for abstention) based on favorable language in receivership statutes and considerable lower court case law. It may be possible to overcome the third factor (federal preference for arbitrations) with a state statute prohibiting arbitration of disputes between reinsurers and receivers. *See Stephens*, 66 F.3d 41 (2d Cir. 1995). There are situations in which it is possible to comply with factors four (ordinary contract dispute) and five (impede complex regulatory system) (*see* Section V.C., *supra*, dealing with disputes other than setoff and arbitration). Nonetheless, it will prove very challenging to comply with all five factors when the issue is collection of reinsurance recoverables, setoff and/or arbitration.

VII. Conclusion

Often, reinsurance is one of the largest assets of an insolvent insurer. When disputes arise concerning reinsurance recoverables, receivers generally prefer to resolve these disputes in the receivership court. Reinsurers, on the other hand, prefer a resolution in federal court or through arbitration by a panel of insurance industry experts.

Abstention is the practice by which a federal court which has jurisdiction over a matter defers to a state court with concurrent jurisdiction. The proper basis for abstention has been litigated extensively in the reinsurance/receivership context with considerably varying results.

The Supreme Court's decision in *Quackenbush* clarifies and greatly restricts the federal courts' ability to abstain from considering an action involving reinsurance recoverables, setoff and/or arbitration which is filed in or removed to a federal court. This significant alteration in the balance of power between receivers and reinsurers may result in more frequent: (1) litigation of such issues in federal court; and (2) arbitration of those reinsurance contracts with insolvent insurers that contain arbitration clauses. As such, *Quackenbush* must be regarded as a clear victory for reinsurers.

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ENDNOTES

1. This article was previously published by Mealey's Reinsurance Reports.

2. Mr. Hall practices insurance and reinsurance law, and is active in both arbitrations and mediations. The views expressed in this article do not represent the opinions of Mr. Hall's clients. Copyright 1997 Robert M. Hall and Kathryn L. Cervon. Comments and questions can be addressed to *robertmhall@erols.com*.

3. The name is derived from *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943).

4. *See generally* Charles Alan Wright, *Handbook of the Law of Federal Courts*, § 52 at 303 (1983).

5. *Id.*

6. *Id*.

7. 319 U.S. at 326-328.

8. 491 U.S. at 361 (citations omitted).

9. *See generally* Robert M. Hall, *Is Reinsurance The 'Business of Insurance?'*, Mealey's Litigation Reports Reinsurance, vol. 7 no. 9 (Sept. 11, 1996) at 18.

10. Specifically, the *Law Enforcement* court found that New York provides: [A] unified method for the formation of policy and determination of cases by the [Superintendent] and by the state courts, . . . a method which would only be impaired by federal court intervention, the district court acted correctly in abstaining.

807 F.2d at 44 (citation omitted). Arguably, this case was effectively overruled by *NOPSI*, 491 U.S. 350 (1989).

11. The *Arda* court stated:

- [T]he Superintendent's power to collect on reinsurance agreements entered into by a liquidated company is a matter of no little concern, for policy holders have no direct right of action against reinsurers; . . . The extent to which the Superintendent is able to collect thus affects the degree to which the insolvent insurer's estate will have assets sufficient to satisfy the claims of its creditors. It is clear that these questions are important to the state regulatory scheme . . . ."

842 F.2d at 37.

The *Universal Reinsurance Corp.* court stated: Two of defendant's affirmative defenses claim "recoupment" and "set-off" for monies owing to Universal from [the cedent] on other contracts (citation omitted). If Universal succeeds in its set-off or recoupment defense, it would be drawing assets away from the estate, which monies would otherwise be distributed for the benefit of [the cedent's] creditors.
713 F. Supp. at 81-82.

12. Stated the *Integrity* court:

- [E]xercising federal jurisdiction would serve to improperly disrupt New Jersey's regulatory scheme of this important state interest and would destroy uniformity. This interference by the federal court would encourage defendants to remove actions to various federal fora and would force the Commissioner to prosecute cases without the control of New Jersey's Superior Court. This could lead to inconsistent decisions regarding the same general issues. Thus, the purpose for New Jersey's vesting original jurisdiction only in the Superior Court would be destroyed.

1991 U.S. Dist. LEXIS 15214 at *12-13. It appears that this case was effectively overruled by *Grode v. Mutual Fire, Marine & Inland Ins. Co.*, 8 F.3d 953 (3d Cir. 1993).

13. The *Grimes* court noted:

- In this case, [the Commissioner] asserts that he determined that the contract between [the insolvent cedent] and [the reinsurer] qualified [for credit for reinsurance] and he thus allowed [the cedent] to take the credit, remain in business and write more insurance contracts. Such a determination by the Commissioner's office has major ramifications for the policyholders of insurers which eventually end up in insolvency proceedings. What effect the Commissioner's previous determination has on his ability to collect from [the reinsurer], or on a subsequent judicial construction of the contract is unclear, but it is a fundamental and important question of state law and policy which the Oklahoma County District Court should be allowed to answer in the first instance.

857 F.2d at 705.

14. The *Grode* court observed:

- Although the regulation of insolvent insurance companies is surely an important state interest, this case does not involve the complex and highly regulated issues of insurance regulation; rather, it is a simple contract action involving an allegedly unpaid debt. . . . Although the state regulates insolvent insurance companies, simple contract actions that happen to involve such companies are not matters of important regulatory concern or actions interfering with important state policies. . . . The action instituted by the Commissioner in this case has nothing to do with Pennsylvania's regulation of insurance.

8 F.3d at 959-960.

15. The *Crawford* court noted:

- The [receiver's] claims against the [reinsurer] will not require this Court to determine issues which are directly relevant to the liquidation proceeding or state policy in the regulation of the insurance industry. Nor are the issues difficult or unusual. A review of [the receiver's] allegations evidences the [receiver's] lawsuit against [the reinsurer] is essentially one for breach of contract between two insurance companies and will not involve complex and specialized determinations.

896 F. Supp. at 1103.

16. The *Bennett* court stated:

- The liquidator contends that Montana's interest in regulating insolvent insurers should outweigh the federal interest in ordering arbitration. Application of the FAA does not impair the liquidator's substantive remedy under Montana law. Instead it simply requires the liquidator to seek relief through arbitration. The liquidator has presented no evidence that enforcing the arbitration clauses here will disrupt the orderly liquidation of the insolvent insurer.

968 F.2d at 972.

17. The *Hartford Casualty* court stated:

- For a federal court to adjudicate Hartford's claims, it would have to duplicate state court efforts at determining the existence and the amount of [the reinsurer's] liability to Hartford. . . . The amount, if any, of [the reinsurer's] debt to Hartford depends on interpretation of lengthy reinsurance treaties between these two parties. Therefore, to hear Hartford's case, a federal court would not only have to estimate the dividend that reinsurance creditors of [the reinsurer] will receive from the rehabilitation process but also would have to interpret the reinsurance treaties.

913 F.2d at 425-426.

18. Further stated the *Hartford Casualty* court:

- In effect, Hartford is attempting to jump ahead of [the reinsurer's] other creditors by filing a lawsuit outside the state rehabilitation proceedings. . . . Allowing suits similar to Hartford's action to proceed would lead to a system where the states would not control the ultimate distribution to creditors of insolvent insurers. Such a federal usurpation of state control over insolvent insurers would be inconsistent with the McCarran-Ferguson Act and general notions of comity.

Id. at 426.

19. 116 S.Ct. at 1720.

20. *Id*. at 1723.

21. 116 S.Ct. at 1727.

22. *Id*. at 1727.

23. *See* note 14, *supra*, and accompanying text.

24. 116 S.Ct. at 1727.

25. *Id*. at 1728.

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