

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

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In Re: : ORDER GRANTING THE MOTION OF THE  
WESTERN INSURANCE COMPANY, : SPECIAL DEPUTY LIQUIDATOR TO  
: DISALLOW CLAIMS THAT HAVE BEEN  
: OR MAY BE FILED BY CUSTOMERS OF  
: NORTH AMERICAN DEALER CO-OP  
: Case No. 110917050  
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The Special Deputy Liquidator appointed by the Court in this case filed a Motion on or about December 14, 2011, to disallow claims filed by customers or purchasers of Vehicle Service Contract Reimbursement Guarantees ("VSCG") that either have been filed or may be filed in the future directly with the Liquidator. It is Liquidator's position that all losses that may be covered by the bond in question here must be submitted by North American Dealer Co-op ("NADC") as set forth in Article VIII, Paragraph A of the bond. The position of NADC, on the other hand, is that the bond protects those purchasers of the VSCG's, and therefore those purchasers may file claims directly with the Liquidator.

This Motion will be decided without oral argument as permitted by Rule 7(e), Utah Rules of Civil Procedure.

The bond referred to above, which governs the relationship of the company, Western Insurance Company, and the named principal, NADC, became effective on or about April 1, 2004. In Article I, the bond provides for reimbursement by Western Insurance Company to NADC for losses sustained as a result of the non-use of valid Vehicle Service Contracts ("VSC") by

purchasers, so long as all terms and conditions of the policy have been fulfilled. The Court notes that it is not the customer, him or herself, who was to be reimbursed for loss, it was NADC.

In Article VI, the bond requires, within 45 days from the end of every month, that NADC or NADS provide sales information to Western Insurance Company giving information for each Guarantee that became effective that month. Again, it was NADC or NADS who were required to provide this pertinent information to Western Insurance Company.

Article VIII of the bond establishes that when a loss occurs, it is NADS who is to provide Western Insurance Company with the Proof of Loss. If everything is in order, Western Insurance Company would reimburse either NADC, or the dealers who sold VSC's.

There is nothing in the framework of the bond which would suggest that the purchasers of these VSC's may file claims directly with Western Insurance Company, nor is there any provision which would require Western Insurance Company to reimburse those purchasers. The purchasers were to have only indirect contact with Western Insurance Company through NADC, or the program administrator, NADS.

The position taken by the Liquidator in his Motion is also supported by the language in those Guarantees sold by dealers to their various customers. There is apparently nothing in the language of those Guarantees that would allow the purchaser to file a claim directly with Western Insurance Company. In fact, those Guarantees emphasize that

disputes regarding reimbursement claims are to be resolved directly with the dealer, not NADC or NADS, and certainly not with Western Insurance Company.

The Court also concludes that the purchasers of the VSC's are not third party beneficiaries. As argued by the Liquidator, and discussed above, the bond does not confer this special status on the purchasers.

For all of these reasons, it is the Court's conclusion that the purchasers of these VSC's are not the direct insureds or obligees under this bond as is argued by Western Insurance Company. Claims for reimbursement by Western Insurance Company must therefore be filed by NADC.

Dated this 19 day of January, 2012.

  
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ROBIN W. REESE  
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Order, to the following, this 20 day of January, 2012:

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