

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 03-E-0106

In the Matter of the Liquidation of
The Home Insurance Company

AFFIDAVIT OF MICHAEL DURKIN

Michael Durkin, being duly sworn, deposes and states the following:

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NEW HAMPSHIRE SUPERIOR COURT
MERRIMACK

Introduction

1. I am a Director of ACE INA Services U.K. Limited ("ACE") with management responsibility for run-off operations in Europe and submit this affidavit in support of the Emergency Motion Of ACE Companies To Strike Liquidator's Offers Of Proof And For Sanctions And Related Relief (the "Motion"). Unless otherwise indicated herein, this affidavit is based upon my personal knowledge and a review of the records maintained by ACE INA Services U.K. Limited.

2. To put it at its mildest, I was more than a little surprised and taken aback to see the Offer of Proof and related affidavits and exhibits referenced in the Motion which were filed by the Liquidator of Home (the "Offer of Proof"). The Offer of Proof refers extensively to "without prejudice" meetings and discussions held by the Liquidator and/or the Joint Provisional Liquidators ("JPLs") of the Home's UK Branch with the ACE Companies. It is inconceivable that the Liquidator made these disclosures inadvertently, given that each and every communication referred to (and others, as discussed below) were preceded with the condition that the discussions were "without prejudice" and under a full reservation of rights. In fact, the Liquidator, in ¶32 of the Offer of Proof, admits that a September 30, 2003 meeting was "without prejudice" and still offers proof in respect of such meeting.

3. The Offer of Proof also contains inaccuracies and misrepresentations of events. However, because the evidence sought to be introduced is the result of "without prejudice" settlement discussions and should be stricken, I will not at this time address such inaccuracies.

The Disputes and Settlement Discussions with Home

4. Prior to the Home liquidation, ACE directly received claims from the AFIA Cedents or their brokers, and settled and paid such cedent claims on behalf of Home. Subsequent to the commencement of the Home liquidation proceedings, ACE sought and obtained authorization from the Liquidator (then Paula Rogers) to continue the servicing arrangement, but because of the liquidation proceedings no payments to cedents were authorized.

5. Well before Home's liquidation proceedings were commenced, and certainly at the time of the liquidation proceedings, there existed several disputes between ACE and Home regarding collection of reinsurance, the nature and extent of ACE's obligations to service and administer the AFIA book of business, ACE's obligations to Home and Home's obligations to ACE under the contracts of reinsurance between the parties, and ACE's obligations to the Liquidator and the Liquidator's duties to ACE. There were numerous discussions with Home's representatives about these and related disputes, including meetings which I attended with our in-house counsel and Jonathan Rosen on behalf of Home in the late 1990's. Many of the meetings held with respect to the disputes were attended by ACE in-house counsel and/or ACE outside counsel (Lovells in London and Stroock, Stroock and Lavan in New York), and my group consulted with counsel all along the way with respect to the disputes. In large part, these meetings took place in England.

6. Because it was always clear to me and other ACE representatives that the disputes might well lead to litigation, there was a systematic practice by me and others at ACE that any meetings or discussions held with Home or its Liquidator or the JPLs

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would be expressly "without prejudice." In fact, I believe that at one meeting in England attended by Mr. Rosen in the second half of 2003 he commented that it was no longer necessary for ACE to continue to use the "without prejudice" caveat, because that was understood. Despite such acknowledgement by Mr. Rosen, we at ACE continued our policy of noting that each meeting with Home and its representatives was "without prejudice." Furthermore, the JPLs confirmed in writing that the discussions regarding monies payable from ACE to the Home had all been without prejudice.

The Offending Information in the Offer of Proof

7. Because all of the discussions with Home and the Liquidators were conducted on a "without prejudice" basis the following paragraphs of the Offer of Proof and the related exhibits and portions of the affidavits submitted in support thereof must be stricken:

(i) ¶23. Barbara Nowak who worked under my direction and attended the referenced meeting at my request. Based on the exchanges with my staff and our legal advisors at the time and the verbal and written exchanges with Unionamerica/St Paul at that time there could have been no other intent than that these discussions were without prejudice.

(ii) ¶¶24-26. These paragraphs refer to meetings I attended, all of which I can confirm were "without prejudice." Also, as to paragraph 25, it is not my practice to hand over an attorney-client communication, and I was shocked to see the document sought to be admitted as Exhibit 13. I never provided the document sought to be admitted as Exhibit 13 to any representative of Home, the Liquidator or the JPLs. The document is a copy of an email from ACE in-house counsel on which I was openly copied, to ACE outside counsel at Stroock and it appears to have been printed by , Stroock and Lavan, which was assisting ACE on the US issues related to the disputes with Home. I have confirmed¹ that no one at ACE has voluntarily provided the document to the Liquidator.

Because the Liquidator has obtained inadvertent access to such attorney-client


¹ There is one colleague who is currently on vacation and not contactable, but based on his extensive legal knowledge I do not believe that he would have provided this document.



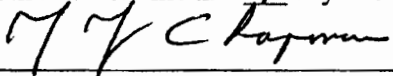
information, the document should be returned to ACE and be stricken from the Offer of Proof.

(iii) ¶32-34. The Liquidator admits in ¶32 that the September 30, 2003 meeting was "without prejudice." I have also confirmed with the ACE representatives at such meeting that it was indeed "without prejudice."

(iv) ¶¶21, 28. These paragraphs refer respectively to "concerns" and understandings of the Liquidator "in light of" the meetings held with ACE, which I have noted above were "without prejudice."


Michael Durkin

Sworn to before me this 9th day of May, 2005


Notary Public

*My faithful services for so long as
I shall practice*

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