

**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**

**LIQUIDATOR'S OPPOSITION TO ACE COMPANIES' MOTION TO STRIKE  
AFFIDAVIT AND VERIFICATION OF RHYDIAN WILLIAMS OR COMPEL  
PRODUCTION OF DOCUMENTS BY EQUITAS**

Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator of The Home Insurance Company, opposes the ACE Companies' renewed motion to strike the affidavit and verification of Rhydian Williams or, in the alternative, to compel production of documents from Equitas.

a. Equitas complied with the Court's June 1, 2005 Order ("June 1 Order") by producing the responsive documents, including privileged documents, before the Williams deposition. The ACE Companies fail to demonstrate the essential predicate for their motion: that Equitas has not provided the documents relied upon by Mr. Williams in developing his affidavit. While the ACE Companies cite to various portions of the Williams deposition in their motion, those sections do not show that there was any such failure to produce. The motion should accordingly be denied.

b. The ACE Companies appear more interested in preventing Mr. Williams from testifying than establishing facts. This is particularly the case now that Mr. Williams has testified and produced documents clearly establishing that ACE and Equitas actually discussed, after entry of the Liquidation Order, circumvention of Home through resolution of all relationships between them, including AFIA. See Transcript of Deposition of Rhydian Williams, June 3, 2005 ("Williams Dep.") at 98:16-20; 104:17-105:5; 174:24-177:22; Williams Exs. 21,

22. (The portions of the Williams deposition transcript and the deposition exhibits cited in this opposition are attached as Exhibit A.<sup>1</sup>) This is, of course, precisely what the Liquidator feared was going on and caused him to believe an agreement with the AFIA Cedents was necessary. The ACE Companies' motion to prevent this witness' testimony, which will involve these important facts, should be denied in its entirety.

**I. Equitas Complied With The June 1 Order.**

1. The ACE Companies filed an initial motion to strike the affidavit and verification of Rhydian Williams on May 26, 2005. In the Order dated June 1, 2005 ("June 1 Order"), the Court denied that motion but directed that Equitas should review its files and provide documents "relied upon by Rhydian Williams in developing" his affidavit. June 1 Order at 2. The Court noted that it had stricken "nonprivileged" from its guidance, thus implicitly directing that the production include any privileged documents relied upon in developing the affidavit. *Id.*

2. In response to the June 1 Order, counsel for Equitas produced an additional 40 pages of documents, including privileged documents, before Mr. Williams' deposition began. Williams Dep. 6:20-7:25. Mr. Williams testified that he had produced all the documents he relied upon in preparing his affidavit. Williams Dep. 184:2-4. The production included notes of calls with both UK and US counsel with respect to cut throughs and other topics in the affidavit (Williams Exhibits 13-15). Mr. Williams testified that these documents are the universe of written legal advice provided to Equitas concerning issues that are the subject of his affidavit. Williams Dep. 174:19-23.<sup>2</sup>

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<sup>1</sup> The transcript attached to the ACE motion to strike is the preliminary, uncertified version. The certified transcript has since become available. When referring to portions cited by ACE, the Liquidator will cite both the uncertified version and the certified transcript. The Liquidator otherwise cites to the certified version.

<sup>2</sup> These documents were produced even though Mr. Williams did not review any written legal advice between the time he was requested to provide an affidavit and the time he signed the affidavit. Williams Dep. 174:1-5. Indeed, he did not refer to any documents in the process of revising the affidavit. Williams Dep. 170:6-12.

3. At the deposition, counsel for the ACE Companies and BMC had the opportunity to ask Mr. Williams about the document production and the existence of documents to determine whether other documents existed and should have been produced. The ACE Companies and BMC thus had a full opportunity to try to establish the usual predicate for a motion to strike based on alleged nonproduction of documents: testimony that documents required to be produced in fact exist and were not produced.

4. Despite a full day of deposition questioning, the ACE Companies only offer suppositions to support their motion. The ACE Companies' impliedly assert that Mr. Williams' testimony established that documents in the various categories exist, were required to be produced under the June 1 Order, and were not in fact produced. See ACE Motion ¶¶ 9-10. The ACE Companies chose not to ask questions going to those issues, however, and the portions of the transcript cited by ACE do not establish these predicates. As shown below with respect to each of the categories raised in ACE's motion, the Williams deposition does not support an inference, let alone establish, that Equitas has not produced documents as directed in the June 1 Order.

5. In sum, in the June 1 Order, the Court directed the production of privileged and other documents relied on in developing the Williams affidavit. Equitas complied.

**II. The ACE Companies' Arguments Concerning Specific Categories Of Alleged Documents Are Not Supported By The Deposition Transcript.**

6. The Liquidator addresses below the bullet points in ACE Motion ¶ 10, each of which corresponds to an underscored heading.

7. Documents regarding meetings or discussions among AFIA Cedents have been produced. The ACE Companies first assert that the deposition established that notes of meetings or discussions among AFIA Cedents exist and contend that "not a single one has been

produced.” However, the cited portions of the deposition merely indicate that there were a “handful” of meetings among AFIA Cedents (Uncertified Tr. 38:25-43-4; Williams Dep. 43:3-47:8) and that some unspecified notes (although not formal notes) exist and were given by Mr. Williams to his attorney. Uncertified Tr. 73:22-74:10 (Williams Dep. at 78:3-16). Contrary to ACE’s assertion, notes were produced. Mr. Williams testified that he had produced all documents relied upon in preparing his affidavit. Williams Dep. 184:2-5. Documents concerning meetings among AFIA Cedents were included. While ACE barely asked about the produced documents (a strategy apparently designed to create confusion and leave open the possibility of ACE’s motion), counsel for BMC elicited the facts that (a) some of the handwritten notes previously produced by Mr. Williams were notes of just such a meeting, see Williams Dep. 146 (discussing Williams Ex. 12 at page A0850), and (b) Equitas had produced the slides it prepared for one of the meetings of AFIA Cedents, see Williams Dep. 147, 178 (discussing Williams Ex. 23). Nothing in the deposition transcript supports ACE’s assertions concerning unproduced documents.

8. Mr. Williams did not rely on drafts of the Williams affidavit. The testimony cited by ACE merely indicates that prior drafts of the affidavit exist. Uncertified Tr. 11:11-15 (Williams Dep. 15:12-16). While Mr. Williams also testified that he has copies of drafts of his affidavit (Williams Dep. 16:15-16), nothing indicates that he relied on those drafts. In fact, he testified that he changed wording in them (Williams Dep. 15:22-16:5), which clearly shows that he did not rely on them.

9. ACE does not show the existence of the alleged documents concerning internal Equitas communications regarding the negotiation of the Proposed Agreement. The portions of the transcript cited by ACE only indicate that Mr. Williams discussed costs and the proposed

agreement with his superior, Jeremy Heap. Uncertified Tr. 30:7-18; 83:21-84:3 (Williams Dep. 34:9-20; 87:25-88:7). Mr. Williams was not asked about documents regarding those conversations, nor did he suggest that any documents concerning them exist. Id. There is no basis for ACE's assertion that documents were withheld.

10. The deposition did not show that documents created by Karen Amos concerned the Agreement with AFIA Cedents or were not produced. ACE's discussion of the alleged documents created by Ms. Amos in connection with the Agreement with AFIA Cedents is confused. The testimony does not show that Ms. Amos created documents with respect to the Agreement with AFIA Cedents, or that Mr. Williams relied on documents created by Ms. Amos in developing his affidavit.

11. As an initial matter, much of the testimony cited by ACE concerns not the Agreement with AFIA Cedents but discussions between ACE and Equitas during 2003 over a cut through as part of a commutation between those two entities. Uncertified Tr. 17:6-10; 94:10-17 (Williams Dep. 21:6-15; 98:13-20). The potential for such a circumventing agreement was among the driving factors making an agreement with AFIA Cedents necessary. The testimony does not, however, refer to any documents or establish that any were withheld. In fact, Equitas produced documents concerning the ACE/Equitas discussions. Williams Dep. 174:24-177:22, discussing Williams Exs. 21 and 22.

12. Another part of the transcript cited by ACE concerns not the agreement with AFIA Cedents but an email from Ms. Amos to Jonathan Rosen during commutation discussions between Equitas and Home that refers to cut through as an option. This document was in fact produced by Equitas. Uncertified Tr. 82:16-24 (Williams Dep. 86:20-87:3, discussing Williams Ex. 10).

13. The remaining testimony cited by ACE also does not concern the Agreement with AFIA Cedents. It refers to discussions over setoff in connection with the Home/Equitas commutation agreement negotiated by Ms. Amos and Mr. Rosen. Uncertified Tr. 22:13-23:8 (Williams Dep. 26:15-27:19). As Equitas' counsel noted during the deposition, ACE agreed long ago that the Home/Equitas commutation was not within the scope of production, and it was not part of ACE's motion to compel directed to Equitas. Williams Dep. 28:15-20, 153:9-13, 154:9-12. ACE now asserts that documents concerning those commutation discussions are necessary to "resolve a contradiction in the record." However, the Liquidator noted that Jonathan Rosen would be produced to testify on the point, Williams Dep. 152:23-153:2, and the Liquidator has also produced the Home/Equitas commutation agreement unredacted to show what was actually agreed. To the best of the Liquidator's knowledge, Mr. Rosen's June 14, 2005 deposition and the commutation agreement itself have resolved any issue.

14. In sum, Ms. Amos has not been shown to have created any documents in connection with the Agreement with AFIA Cedents, let alone any that were relied on by Mr. Williams in developing his affidavit.

15. ACE makes no showing that Mr. Heap created any documents in connection with the Agreement with AFIA Cedents or preparation of Mr. Williams' affidavit. ACE's citations to the deposition transcript again fail to demonstrate that any relevant documents were not produced. Most of the cited testimony merely shows that Mr. Williams had discussions with Mr. Heap. Uncertified Tr. 13:21-14:9; 30:7-18; 72:1-12; 94:10-17 (Williams Dep. 17:21-18:19; 34:9-20; 76:7-18; 98:13-20). Mr. Williams was not asked whether documents were created in connection with those discussions, nor does his testimony suggest there were any such documents or that they were relied on. (Uncertified Tr. 16:17-17:5 only shows that unspecified

documents were provided to counsel. Williams Dep. 20:18-21:6.) Several of these citations do not concern discussions of the Agreement with AFIA Cedents but discussions concerning cut throughs with ACE. Uncertified Tr. 72:1-12; 94:10-17 (Williams Dep. 76:7-18; 98:13-20). See also Williams Dep. 21:12-19. Documents on that topic clearly were produced. See Williams Exs. 10, 13-15, 21-22.

16. The deposition does not show that Mr. Fleming created any documents concerning the Agreement with AFIA Cedents that were withheld. ACE cites to testimony indicating that Robert Fleming was involved with review and drafting Equitas' counterproposals, discussed the contents of the Williams affidavit, had unspecified emails, and provided unspecified documents to Equitas' counsel. Uncertified Tr. 13:21-14:21; 16:7-17:5 (Williams Dep. 17:21-18:21; 20:8-21:6). However, there is no indication of how many documents exist or were relied on, and it is clear that documents from Mr. Fleming were provided. See Williams Dep. 128:13-15, discussing Williams Ex. 13. Again, the transcript does not support ACE's claims.

17. The redactions do not relate to the alternatives considered by Mr. Williams. The ACE Companies lastly challenge redactions in four documents (Williams Exs. 5, 13-15). ACE neglects to cite the deposition testimony concerning these documents, which shows that the redactions did not concern anything on which Mr. Williams relied in preparing the affidavit. Mr. Williams testified specifically with respect to Exhibits 13-15 (which are notes of counsel's advice) that he had been involved in the redaction decisions and was satisfied that the nonredacted portions reflected all the legal advice received concerning the alternatives mentioned in his affidavit. Williams Dep. 183:9-19. Equitas' counsel confirmed this during the questioning with respect to Exhibits 13 and 14. Williams Dep. 129:13-130:6; 131:16-21;

132:20-133:4. The only specific testimony concerning the redactions in Exhibit 5 was that Mr. Williams did not recall what was redacted. Williams Dep. 53:5-10. The deposition simply does not establish that Mr. Williams relied on the redacted portions in connection with his affidavit.

18. As there is no basis to conclude that the documents about which the ACE Companies complain either have not been produced (to the extent they exist) or were relied on in preparing Mr. Williams' affidavit, there is no basis to strike the Williams affidavit or verification of paragraphs in the Liquidator's Offer of Proof. (Those paragraphs in the Offer of Proof in any event are also verified by other witnesses). Similarly, there is no reason to require Mr. Williams to appear for unspecified additional questioning in New York. The ACE Companies have had a full opportunity to question Mr. Williams and will be able to cross-examine him at the evidentiary hearing. Finally, there is no reason for the ACE Companies to be permitted to request more documents from Equitas concerning its claims against other reinsurers since such information is not colorably related to documents on which Mr. Williams relied in developing his affidavit. It is apparent that the ACE Companies will continue to raise new production requests and discovery arguments as long as they can in the hope of creating grounds to delay the hearing scheduled for July 25. The Court should say that enough is enough.



**CONCLUSION**

For the reasons stated above, the Court should deny the ACE Companies' motion.


Respectfully submitted,

ROGER A. SEVIGNY, INSURANCE  
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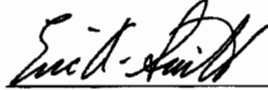
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June 17, 2005

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Opposition to ACE Companies' Motion to Strike or Compel Production by Equitas was sent, this 17th day of June, 2005, by first class mail, postage prepaid to all persons on the attached service list.



Eric A. Smith

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of  
The Home Insurance Company  
Docket No. 03-E-0106

In the Matter of the Liquidation of  
US International Reinsurance Company  
Docket No. 03-E-0112

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