

THE STATE OF NEW
HAMPSHIRE

MERRIMACK,SS.

Docket No. 03-E-0106

In the Matter of the Liquidation of
The Home Insurance Company

2005 MAY 23
SUPERIOR COURT
MERRIMACK COUNTY
10:43

**EQUITAS LIMITED'S RESPONSE TO THE ACE COMPANIES' MOTION
TO STRIKE AFFIDAVIT AND VERIFICATION OF RHYDIAN WILLIAMS**

NOW COMES Equitas Limited ("Equitas"), appearing specially, for the limited purpose of responding to the ACE Companies' motion to strike affidavit and verification of Rhydian Williams. Because Equitas has agreed to produce voluntarily all of the documents within the scope of the Court's May 12, 2005 "Guidance re: Scope of Discovery" (the "Guidance"), ACE's motion is baseless.

1. On or about March 3, 2005, ACE moved to compel the production of broad categories of documents irrelevant to an evaluation of the Liquidator's Proposed Agreement and Compromise with the AFIA Cedents (the "Agreement"). ACE's motion was filed the day after Equitas voluntarily produced all communications with the Liquidator concerning the Agreement.

2. Equitas objected to the ACE's motion on jurisdictional grounds, while reserving the right to challenge the requested discovery on grounds of (i) relevancy, (ii) privilege, (iii) oppression, and (iv) estoppel.

3. On May 12, 2005, the Court presented counsel with the Guidance. The Guidance states in relevant part that: (i) discovery is "limited to information to which the Liquidator and Joint Provisional Liquidator were privy in reaching and/or approving the agreement"; and (ii) ACE is entitled to the production of "all nonprivileged documents and information relied upon in developing the affidavits filed by . . . Rhydian Williams." (Emphasis added.)

4. The Court subsequently issued an Order setting forth its view "consistent with the guideline, that ACE was entitled to production of any documents relied upon by Mr. Williams . .

. in [his] affidavit[.]” The Court further stated that the affidavit would be stricken if the parties did not reach agreement on this issue.

5. On May 13, 2005, counsel for ACE sent a letter requesting that Equitas produce the documents within the scope of the Order no later than May 20, 2005. Exhibit A.

6. On May 19, 2005, counsel for Equitas forwarded the additional documents to ACE, advising that all responsive document within the scope of the Guidance have been produced. Exhibit B.¹

7. On May 26, 2005, at 9:01 am, ACE’s counsel, Mr. Lee, advised by e-mail that ACE “intend[s] to file a motion to strike the Equitas affidavit today.” Exhibit C. In response, Equitas’ counsel asked Mr. Lee to state why ACE would move to strike. *Id.* Mr. Lee responded only by stating: “We will provide you a copy of the motion today setting forth the reasons.” *Id.*

8. In its subsequently filed motion, ACE complains (inaccurately) that “[t]here are no internal Equitas documents; there is no correspondence between Equitas and other AFIA Cedents; and there are no external documents reflecting legal or other advice received regarding the viability of the alternative means of recovery allegedly considered by Equitas and the other AFIA Cedents.”

9. Internal Equitas documents and correspondence between Equitas and other AFIA Cedents regarding the consideration of alternative means of recovery have been produced.

10. External documents reflecting legal advice received regarding the viability of alternative means of recovery are not required to be produced under the Guideline. Nor is ACE otherwise entitled to such documents. Such documents, by definition, are privileged. The Guideline expressly, and properly, only requires the production of nonprivileged documents.

11. Moreover, such documents were not reviewed by Mr. Williams either to refresh his recollection or otherwise when he prepared his affidavit. They are thus not subject to N.H. R.

¹ A further responsive document was subsequently identified and produced to ACE on May 26, 2005.

Evid. 612 (permitting the discovery of writings used to refresh recollection for the purpose of testifying).²

12. Nor were the documents or advice shared with the Liquidator or Joint Provisional Liquidator, or mentioned or discussed in the affidavit.³ Indeed, the affidavit does not even discuss the viability of alternative means of recovery. It merely recites that alternatives were being considered.

13. All documents relied upon by Mr. Williams in asserting that the AFIA Cedents “would have little reason to file and prosecute claims if neither set off nor actual distribution were likely” also have been produced. Moreover, such documents are beyond the scope of ACE’s original motion to compel.

WHEREFORE, Equitas respectfully submits that ACE’s motion to strike is without any factual or legal foundation.

² Ignoring the terms of the Guidance, ACE instead relies upon a portion of the hearing transcript in which the Court suggested, in response to a hypothetical, that “legal advice” would have to be turned over. Transcript at 20. The hypothetical is irrelevant because it was premised upon the advice having been relied upon “in procuring the affidavit.” *Id.*

³ As ACE recognizes in its latest (May 27, 2005) motion to compel documents withheld by the Liquidator and Joint Provisional Liquidator, at 6, “one of the main questions in this case . . . is whether the Liquidator reasonably believed that ‘cut throughs’ or ‘ring fencing’ were realistic threats to the Home estate. (Emphasis added).”

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2005, a copy of this Response was delivered by hand (if noted on the service list) or sent by first-class mail, postage prepaid, to those on the attached service list.



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