

STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of
The Home Insurance Company

Docket No.: 03-E-0106

ORDER

The Court held a hearing today on motions to compel discovery by the ACE Companies against the Liquidator, the Joint Provisional Liquidator, Equitas, Zurich, and Unionamerica. Also before the Court was Benjamin Moore's motion to compel discovery from the Liquidator.

After reviewing the discovery requests and objections, the Court presented counsel with a document entitled "Guidance re: Scope of Discovery" which provided:

The purpose of the July 25, 2005 hearing is to present relevant evidence regarding whether the proposed agreement and compromise dated April 2, 2004 between the Liquidator and AFIA Cedents is necessary, fair and reasonable. Accordingly, discovery is limited to evidence relevant to that issue. Discovery is further limited to information to which the Liquidator and Joint Provisional Liquidator were privy in reaching and/or approving the agreement.

ACE Companies are entitled to production of all nonprivileged documents and information relied upon in developing the affidavits filed by Gareth Howard Hughs, Rhydian Williams and Gernot Warmuth in support of the agreement. When considering what documents are privileged, the parties should bear in mind that the rationales of the JPL and Liquidator in reaching and/or approving the agreement are focuses of the July 25 hearing.

The Court then required counsel to attempt to resolve their discovery issues using the guidance provided. Counsel have resolved most discovery issues as follows:

1. The Liquidator will provide Appendices 2, 3 and 5 to the Referee, Attorney Paula Rogers, for review. Ace Companies and the Liquidator agree that Attorney Rogers' rulings as to attorney-client privilege as to the documents in these appendices shall be the final ruling in this court.
2. The Liquidator will review Appendix 4 documents to identify any that were relied upon in developing affidavits and, if such documents exist, they will be produced.
3. As to Benjamin Moore, the Liquidator will supplement answers to interrogatories as discussed.
4. As to interrogatory numbers 3, 4, 5, 7 and 8, the Liquidator will provide a list of inwards reinsurance proofs of claims to Benjamin Moore and produce proofs of claim where Home Insurance did not cede risk to the reinsurer.
5. Benjamin Moore agrees to drop interrogatory #6, which relates to legal fees.
6. The Joint Provisional Liquidator will confirm in writing that the scope of production made by the Joint Provisional Liquidator is congruent with the Liquidator's production and that privileged documents were not

withheld from that production to the Liquidator, which is, in fact, the case.

7. The Joint Provisional Liquidator will identify any documents relied upon in developing the Hughes affidavit and will supplement production appropriately.
8. The Liquidator will supplement answers to interrogatories as discussed.
9. Ace Companies' requests as to Unionamerica are withdrawn.

Equitas and Zurich contest the Court's jurisdiction to hear this case. Both Equitas and Zurich are AFIA cedents. Neither are parties and both have filed affidavits with the Court through representatives (Rhydian Williams and Germot Warmuth respectively) in support of the agreement. They had both related in their written objections that, although not parties to the case, they had nevertheless voluntarily given considerable discovery to the ACE Companies.

Equitas and Zurich agreed to voluntarily attempt to resolve their discovery issues with ACE so long as it was not viewed as submitting to the jurisdiction of the Court. In mid-afternoon, the Court was notified that Equitas and Zurich could not agree on one aspect of ACE's discovery request. In their affidavits, Mr. Williams and Mr. Warmuth represented that they had considered specific alternatives to the proposed agreement. The Court held a hearing on this issue and informed counsel that it was the Court's view, consistent with the guideline, that ACE was entitled to production of any documents relied upon by Mr. Williams and Mr. Warmuth in their affidavits. However, because the Court has

not decided the jurisdictional issues, it cannot make such an order as to Equitas and Zurich. If the parties cannot reach an agreement on this issue, the affidavits will be stricken.

Two further motions were before the Court today. First, ACE's Emergency Motion to Strike Liquidator's Offer of Proof is **HELD IN ABEYANCE** until the final hearing. The Court notes, however, that to the extent that the Joint Provisional Liquidator discussed settlement options with the ACE Companies, such evidence is relevant to whether the Liquidator acted reasonably in reaching the agreement at issue.

Second, the parties shall exchange witness lists and disclose experts by May 27, 2005.

SO ORDERED.

5/12/05
Date


Kathleen A. McGuire
Presiding Justice