

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

**ACE COMPANIES' MOTION TO STRIKE AFFIDAVIT AND VERIFICATION  
OF RHYDIAN WILLIAMS**

Respondents Century Indemnity Company, ACE Property and Casualty Insurance Company, Pacific Employers Insurance Company and ACE American Reinsurance Company (collectively, the "ACE Companies"), by their attorneys, Orr & Reno P.A., move, pursuant to this Court's Order of May 12, 2005, to strike the Affidavit of Rhydian Williams, whose deposition is presently scheduled for June 3, 2005 in London, and his Verification of the Liquidator's Offer of Proof. In support of this Motion, the ACE Companies state as follows:

1. On or about April 1, 2004, Rhydian Williams submitted a sworn affidavit on behalf of Equitas Limited, a substantial creditor of the Home Insurance Company and a member of the Informal Creditors Committee ("ICC") established in the English provisional liquidation proceeding in support of the Liquidator's Proposed Agreement and Compromise with the AFIA Cedents. Rhydian Williams has also submitted a notarized Verification of the facts and information set forth in paragraphs 36-40, 42-43, 50-52 and 55 of the Liquidator's Offer of Proof, which was filed with this Court on May 1, 2005.

2. On or about March 3, 2005, the ACE Companies moved to compel the production of documents from Equitas.

3. Equitas submitted a limited objection to the ACE Companies' Motion to Compel. In its Limited Objection to Motion to Compel, Equitas acknowledged that "[t]he documents

sought by ACE reflect thoughts and strategies of the AFIA Cedents regarding the negotiation, alternative means of recovery, and the validity of claims.” Limited Objection at n. 5.

4. This Court ruled in its Order of May 12, 2005 that the ACE Companies were entitled to production of any documents upon which Mr. Williams relied in his affidavit, which would include documents regarding Equitas’ intent to file proofs of claim and its consideration of alternatives to the proposed Agreement.

5. In its colloquy with Equitas’ counsel on May 12, 2005, this Court made it explicit that Equitas was required to produce any documents relied on to support the statement in Mr. Williams’ affidavit that he considered alternatives, even if those documents reflected “legal advice on one of [the] alternatives” (Tr. 20), and even if the documents reflected Equitas’ “evaluation of [the] alternatives which is not reflected in the documents” (Tr. 22-23). The Court squarely rejected Equitas’ argument that only the Liquidator’s evaluation of alternatives was relevant:

MR. GORDON: . . . What’s relevant is the Liquidator’s evaluation of those alternatives and whether the Liquidator thought they were credible threats, because that’s the way negotiations work.

THE COURT: Well, you know what? There was an affidavit filed with the Court that made certain representations.

MR. GORDON: Certainly, that we considered alternatives.

THE COURT: Now, the affiant is going to be questioned about what -- going to be questioned about the statement in there, and he’s going to have to provide the documents that he relied on in making those statements, if any, and at deposition, he will be asked, if there are no documents, well, what are you talking about here, and I think that it is relevant. It’s certainly relevant to his credibility, and I think it’s relevant to the ultimate issues in the case. So, that’s going to be the Court’s ruling. I’ll make up an order, if you want.

Tr. 30-31.

6. On May 19, 2005, counsel for Equitas purportedly provided “all responsive documents within the scope of the Court’s May 12, 2005 ‘Guidance re: Scope of discovery and Order.’” The documents produced consisted of a single document, partially redacted, captioned “Draft Counter Proposal to the Liquidators of the Home Insurance Company,” and several pages – again partially redacted – of handwritten notes which are largely undecipherable, and which appear to have been written by the same individual. Most of the notes appear to simply reflect attendance by Equitas at meetings of the ICC.

7. There 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.

8. By e-mail on May 20, 2005, Gary S. Lee gave Equitas’ counsel an opportunity to confirm that the documents produced in fact complied with this Court’s Order of May 12, 2005, but no response has been received from Equitas prior to the filing of this Motion. *See* Exhibit 1.

9. This Court explicitly relied upon paragraphs 7-10 and paragraphs 12 and 13 of Mr. Williams’ Affidavit in reaching its conclusion in the Order on Remand that “AFIA Cedents would have little reason to file and prosecute claims if neither set off nor actual distribution were likely.” The ACE companies are entitled to *complete* discovery from Equitas on this issue and on the issue of Equitas’ consideration of alternative means of recovery, or Mr. Williams’ Affidavit should be stricken in its entirety from the record and not considered by this Court. Similarly, Mr. Williams’ “Verification” of the enumerated paragraphs in the Offer of Proof should also be stricken.

10. As ACE previously argued in its Response to Liquidator's Memorandum Concerning Motions to Compel and Consolidated Reply on Motions to Compel Production of Documents by the Joint Provisional Liquidator, Zurich and UnionAmerica, Mr. Williams filed his Affidavit with the Court in order to support the Liquidator's motion for approval of the Proposed Agreement, and he made *specific* allegations regarding Equitas' intent to file a proof of claim and its consideration of various alternative means of recovery, which the Liquidator has cited in several submissions to the Court as justification for the proposed Agreement. In order to conduct a meaningful deposition of Mr. Williams regarding these allegations, the ACE Companies must have access to *all* documents relating to those allegations by Mr. Williams that are within the possession, custody or control of Equitas.

11. Because the deposition of Mr. Williams is scheduled for June 3, 2005 in London, the ACE Companies respectfully request that this Motion be scheduled for hearing on or before June 1, 2005 as ACE will be substantially prejudiced if it is required to proceed with the scheduled deposition without the requested documents.

12. Due to the nature of this Motion, the concurrence of Equitas' counsel was not sought prior to the filing of this Motion.

13. No memorandum of law is filed with this Motion as the grant or denial of this Motion is within the discretion of this Court.

WHEREFORE, the ACE Companies respectfully request this Court:

A. To require Equitas to provide access to all documents within its possession, custody or control relating to its intent to file proofs of claims and its consideration of alternative means of recovery;

B. In the alternative, strike Mr. Williams' Affidavit in support of the Proposed Agreement and his verification of allegations in the Liquidator's Offer of Proof in their entirety; and

C. To grant such other and further relief as this Court deems just and proper.

Date: May 26, 2005

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ronald L. Snow", written over a horizontal line.

Ronald L. Snow  
ORR & RENO, P.A.  
One Eagle Square  
P.O. Box 3550  
Concord, NH 03302-3550  
Telephone (603) 224-2381  
Facsimile (603) 224-2318

Attorneys for Respondents Century  
Indemnity Company, ACE Property and  
Casualty Insurance Company, Pacific  
Employers Insurance Company, and ACE  
American Reinsurance Company

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing pleading has been served on Roger A. Sevigny, Commissioner of Insurance, Peter Bengelsdorf, Special Deputy, and the following counsel via First Class mail on May 26, 2005:

Paula T. Rogers, Esq.  
Case Administrator  
Office of the Liquidation Clerk  
The Home Insurance Company  
286 Commercial Street  
Manchester, NH 03101

Suzanne M. Gorman, Esq.  
Senior Assistant Attorney General  
Environmental Protection Bureau  
New Hampshire Department of Justice  
Attorney General's Office  
33 Capitol Street  
Concord, NH 03301-6397

J. David Leslie, Esq.  
Eric. A. Smith, Esq.  
Rackemann, Sawyer & Brewster  
One Financial Center  
Boston, MA 02111

Andre Bouffard, Esq.  
Downs, Rachlin, Martin, PLLC  
199 Main Street  
Box 190  
Burlington, VT 05402

Eric D. Jones, Esq.  
Downs, Rachlin, Martin PLLC  
199 Main Street  
Box 190  
Burlington, VT 05402

Peter G. Callaghan, Esq.  
Preti, Flaherty, Beliveau, Pachios & Haley, PLLP  
57 North Main Street  
PO Box 1318  
Concord, NH 03302-1318

Martin P. Honigberg, Esq.  
Sulloway & Hollis, PLLC  
9 Capitol Street  
P.O. Box 1256  
Concord, NH 03302-1256

George T. Campbell, Esq.  
Robert Stein & Associates, PLLC  
One Barberry Lane  
P.O. Box 2159  
Concord, NH 03302-2159

David Steinberg, Esq.  
Clifford Chance LLP  
10 Upper Bank Street  
Canary Wharf  
London E14 5JJ  
United Kingdom

A handwritten signature in black ink, appearing to read "Ronald L. Snow", written over a horizontal line.

Ronald L. Snow