

-----Original Message-----

From: Leslie, J. David [<mailto:JDL@Rackemann.com>]  
Sent: Wednesday, July 13, 2005 9:23 AM  
To: Lee, Gary  
Subject: RE: Trial

Gary,

This is in response to your e-mail of July 8, 2005 in which you raise two issues. The first asserts that we had agreed to limit discovery to the period prior to February 11, 2004 and asks that the Liquidator stipulate that testimony at the hearing will be limited to the period prior to February 11, 2004. The second addresses language included in Eric Smith's May 27, 2005 e-mail regarding testimony by the Liquidator's witnesses which might be considered expert testimony.

In light of the extensive examination at deposition by ACE and Benjamin Moore of the Liquidator's witnesses concerning proofs of claim filed in the Home liquidation proceeding on or about June, 2004, I am puzzled by your assertion that we had agreed to limit discovery to pre-February 11, 2004 events. As the Court stated in its June 28, 2005 Order on Discovery, "the focus at the upcoming hearing is upon whether the agreement with AFIA Cedents is necessary, fair and reasonable and upon the rationales of the Liquidator and the JPL in negotiating and reaching the agreement." The direct testimony of the Liquidator's witnesses will accordingly be "focused" on the rationale's for negotiating the Agreement and demonstrating why it is fair and reasonable. As the hearing progresses, we will look to the Court to determine the relevance of any testimony in that regard.

As noted in Eric Smith's e-mail, the testimony of the Liquidator's witnesses may encompass the matters set forth in the Offer of Proof or the witnesses' affidavits. However, in our view, none of such matters constitute expert testimony.

J. David Leslie  
Rackemann, Sawyer & Brewster  
One Financial Center  
Boston, MA 02111  
(617) 951-1131  
(617) 542-7437 (FAX)  
[jdl@rackemann.com](mailto:jdl@rackemann.com)

-----Original Message-----

From: Lee, Gary [<mailto:Gary.Lee@lovells.com>]  
Sent: Wednesday, July 13, 2005 9:13 AM  
To: Lee, Gary; Leslie, J. David  
Cc: Smith, Eric A. EAS  
Subject: RE: Trial

Confidential  
-----

David, we will have to file a motion if we cannot get the matters referred to below agreed with you. Can I have your response today please.

On a related note I understand that the local practice is to agree the order in which witnesses are to be presented. Please advise whether you are willing to exchange this information on Monday.

Gary S. Lee  
Lovells  
900 Third Avenue  
New York, N.Y. 10022  
Tel. (212) 909-0604  
Fax. (212) 909-0666  
E.mail: gary.lee@lovells.com

-----Original Message-----

From: Lee, Gary  
Sent: Friday, July 08, 2005 4:11 PM  
To: 'Leslie, J. David'  
Subject: Trial

That's all fine David.

As part of the exercise of making the trial more efficient and going through the Request for Admissions, I wanted to raise with you the issue of the relevant time frame. As you will recall, the parties agreed (after some debate) to limit their discovery to the period prior to February 11, 2004 and proceeded with depositions on that basis. We assume that testimony at the trial would be similarly limited to the period prior to February 11, 2004 and suggest that the parties stipulate to that effect. Please advise whether the Liquidator is willing to so stipulate.

Another issue we would like to address is the statement in Eric Smith's May 27 email that to the extent matters set forth in the Liquidator's Offer of Proof or the affidavits of the individuals might be considered expert testimony, the Liquidator reserves the right to present such testimony through these witnesses. As you never provided us with the expert disclosures required by Superior Court Rule 35, we will be obliged to resist any attempt by you to offer experts at trial. If you nevertheless intend to offer expert testimony, I would appreciate you advising me now so that we can address this issue in advance rather than bog down the hearing with argument.

Gary S. Lee  
Lovells  
900 Third Avenue  
New York, N.Y. 10022  
Tel. (212) 909-0604

Fax. (212) 909-0666  
E.mail: gary.lee@lovells.com

-----  
Lovells is an international law firm.

**CONFIDENTIALITY.** This email and any attachments are confidential and may also be privileged. If you are not the named recipient, please do not disclose the contents to another person, use this email for any purpose or store or copy the information in any medium. Instead, please notify the sender by return email and delete this email (including any attachments) from your system.