

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NEIL D. LEVIN, as Superintendent of Insurance of the State of New York, and his successors in office as Superintendent of Insurance of the State of New York, as Liquidator of Nassau Insurance Company, in that capacity and in his capacity as receiver of certain rights and assets of judgment debtor Ardra Insurance Company, Ltd. : CIVIL ACTION

v. :

TIBER HOLDING CORPORATION : NO. 95-5284

MEMORANDUM AND ORDER

THOMAS J. RUETER
United States Magistrate Judge

February 17, 1999

Presently before the court is a discovery dispute brought to this court's attention by a letter from plaintiff's counsel dated February 2, 1999 ("Pl.'s Letter").¹ Plaintiff also requests an order pursuant to Fed. R. Civ. P. 37 precluding certain evidence from trial. Defendant responded by letter dated February 4, 1999 ("Def.'s Letter"). At issue is interrogatory number 15 of plaintiff's second set of interrogatories which states as follows:

For each further transfer, assignment, or assumption of the Ardra loss portfolio transfer subsequent to the original December 31, 1982 transfer, identify: (a) the name, country of domicile and date of organization of the entity assuming the obligation; (b) the date of the further transfer, assignment, or assumption; (c) the consideration given by the transferring entity; (d) the identity of the persons on each side of the transaction responsible for negotiating and executing such transfer, assignment, or assumption; (e) the reason for such transfer, assignment, or assumption; and (f) any document(s) memorializing such transfer, assignment,

¹ This matter has been referred to this court for disposition by the Honorable Jan E. DuBois. Judge DuBois so informed the parties by letter dated February 10, 1999.

or assumption, including without limitation any consent, novation, or similar document executed by or on behalf of Ardra.

(Pl.'s Letter at 3.) In its original response, defendant objected to this interrogatory and did not respond. (Pl.'s Letter Ex. A.) In its amended answer, defendant responded as follows:

Tiber objects to this interrogatory to the extent it seeks information for the period prior to December 1990 or after December 1995 because such information is neither relevant to claims set forth in the Third Amended Complaint nor likely to lead to the discovery of admissible information related to such claims. Subject to and without waiver of this objection, no transfer, assignment or assumption of the loss portfolio transfer occurred after the original transfer in December 1982. By way of further answer, based on the records available to it (all of which already have been produced), Tiber believes that the entity holding the obligations under the loss portfolio transfer went through two corporate changes: in 1984, Nara Insurance Company Limited (incorporated as Haven Insurance Company Limited in the Turks and Caicos Islands) assumed the assets and liabilities of Haven Insurance Company Limited (incorporated as Apocrypha Insurance Company Limited in the Commonwealth of the Bahamas); and in 1992, Nara Company Limited (incorporated in the Commonwealth of the Bahamas) assumed the assets and liabilities of Nara Insurance Company Limited.

(Pl.'s Letter Ex. B.)

Plaintiff complains that this answer did not fully respond to interrogatory number 15. This court finds that the information sought by the interrogatory is relevant pursuant to Fed. R. Civ. P. 26(b)(1). Furthermore, the court finds that defendant's answer responded only to subpart (a) of this interrogatory. Defendant's answer did not respond to subparts (b)² through (f) of this discovery request.

Defendant argues that "it has given all information available to it in its response and in documents which were produced years ago." (Def.'s Letter at 1.) Defendant further

² Subpart (b) of interrogatory number 15 requests "the date of the further transfer, assignment, or assumption". Defendant provided the years of the transfers or corporate changes, but not the full dates.

claims that it “has no detail regarding these transactions over and above that contained in documents which have long been available” to plaintiff. (Def.’s Letter at 2.) Defendant provided further information responsive to this interrogatory on pages 3 through 4 of its February 4, 1999 letter by identifying the documents upon which it based its answer and providing additional information. (Def.’s Letter at 3-4.)

Upon consideration of the foregoing, it is hereby

ORDERED

1. Defendant shall answer fully subparts (b) through (f) of interrogatory number 15 of plaintiff’s second set of interrogatories within ten (10) days from the date of this order. Defendant may not rely upon Fed. R. Civ. P. 33(d) to answer these subparts;

2. To the extent that defendant has already produced the documents requested in subpart (f) of the interrogatory to plaintiff, it need not produce them again; however, defendant must identify the documents in sufficient detail (by Bates stamp number or other specific identifying mark) so that plaintiff may readily locate them. If, after defendant identifies these documents, plaintiff is unable to locate them after reasonable efforts, defendant shall provide additional copies within ten (10) days of plaintiff’s written request for them (a copy of such request shall also be sent to this court). Plaintiff shall reimburse defendant for the reasonable costs in copying the documents;

3. Plaintiff’s request that evidence be precluded from trial is **DENIED** without prejudice to renew his request to the Honorable Jan E. DuBois should defendant not comply with this order; and

4. Any requests for changes to the Scheduling Order necessitated by this order, or requested in plaintiff's February 2, 1999 letter and defendant's February 4, 1999 letter addressed to Judge DuBois, shall be submitted to this court with a proposed revised Scheduling Order.

BY THE COURT:

THOMAS J. RUETER
United States Magistrate Judge