



Neutral Citation Number: [2008] EWHC 2960 (Ch)

Case No: 10587 of 2008

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 3rd December 2008

Before :

THE HON MR JUSTICE FLOYD

**IN THE MATTER OF THE NAMES AT LLOYD'S FOR THE 1992 AND PRIOR
YEARS OF ACCOUNT, REPRESENTED BY EQUITAS LIMITED
AND IN THE MATTER OF SPEYFORD LIMITED
AND IN THE MATTER OF PART VII OF THE FINANCIAL SERVICES AND
MARKETS ACT 2000**

**Robert Hildyard QC & Barry Isaacs (instructed by Clifford Chance) for Equitas Limited
and Speyford Limited**

Hearing date: November 28th 2008

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

THE HON MR JUSTICE FLOYD

Mr Justice Floyd :

1. On 28th November 2008 I heard an application in this matter for a waiver of certain of the publicity requirements associated with transfers of insurance business under Part VII of the Financial Services and Markets Act 2000 ("the Act"). At the conclusion of the hearing I indicated that I was prepared in the circumstances to grant the waivers sought. At the hearing Mr Hildyard QC, who appeared for Equitas Limited and Speyford Limited ("the Applicants"), very correctly drew to my attention a point which potentially affected my jurisdiction to make such an order at the particular stage which the application had reached. I was persuaded that I did have the jurisdiction to make the order, and that I should do so in the exercise of my discretion. I indicated that I would put my reasons in writing
2. It is not necessary to delve very far into the details of the application. Equitas represents the interests of the Names at Lloyds in respect of 1992 and prior insurance business. It is seeking a transfer under Part VII of the Act ("the Scheme") by transferring the liabilities of the Names to a new company, where they will be protected by reinsurance. One of the objects is to give legal finality to the Names. An independent actuary is in the process of preparing a report on the Scheme. Neither his report nor full details of the Scheme, both of which are likely to be complex documents, are yet available. The Applicants will place copies of both those documents before the Court at a further directions hearing proposed for March 2009.
3. The requirements placed on Applicants seeking transfers under the Part VII of the Act are set out in the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001, 2001 S.I. No. 3625 ("the Regulations"). Those for insurance business are set out in regulation 3, which reads as follows, so far as material:
 - "3 (1) An applicant under Section 107 of the Act for an order sanctioning an insurance business transfer scheme ("the scheme") must comply with the following requirements
 - (2) A notice stating that the application has been made must be
 - (a) published - ...
 - (ii) in two national newspapers in the United Kingdom;
and ...
 - (b) sent to every policyholder of the parties.
 - (4) a copy of the report and a statement setting out the terms of the scheme and containing a summary of the report must be given free of charge to any person who requests them.
- 4 (1) Subject to paragraph (2), the court may not determine an application under section 107 for an order sanctioning an insurance business transfer scheme

- (a) where the applicant has failed to comply with the requirements in regulation 3 (2), (3) or (6);
- (2) The requirements in regulations 3(2) (a) (ii) and (iii) and (b) may be waived by the court in such circumstances and subject to such conditions as the court considers appropriate.”
4. The report referred to in regulation 3(4), which must be given free of charge to persons requesting it, means the scheme report referred to in section 109(1) of the Act. Section 109 of the Act provides inter alia:
- “(1) An application under section 107 in respect of an insurance business transfer scheme must be accompanied by a report on the terms of the scheme ("a scheme report").
- (2) A scheme report may be made only by a person
- (a) appearing to the Authority to have the skills necessary to enable him to make a proper report; and
- (b) nominated or approved for the purpose by the Authority.”
5. The Applicants seek a waiver under regulation 4(2) of the regulations in respect of their obligations under regulation 3 (2)(a)(ii) and (b) to publish a notice in two national newspapers and to send every policyholder a notice.
6. So far as the newspapers are concerned the Applicants wish to substitute a business paper (such as the Financial Times) for one of the national newspapers. This is likely to be both more effective and more economical. The waiver in respect of the obligation to serve every policyholder arises out of the nature of the insurance business concerned. The insurance business which is sought to be transferred by the Scheme is business which has been conducted and recorded in the Lloyd's market in a way which is in some cases unreliable, deficient or even non-existent. The period over which the policies are dated is some 300 years. The applicants recognise that, even with the very best efforts, strict compliance with the requirement in regulation 3(2)(b) will not be possible. The Applicants seek instead to do the best they can with the information they have, and in addition to give the Scheme the widest possible publicity. In paragraphs 8 to 11 of his witness statement of this application Mr Stephen Britt, who is the company secretary of Equitas, sets out all the steps which Equitas will take in order to give notice of the Scheme to policyholders. In each case the waiver which is sought is made subject to conditions. In the case of the newspapers it is subject to the condition that notice be placed in a suitable business paper; in the case of notice to policyholders it is subject to the condition that all the steps identified in paragraphs 8 to 11 of Mr Britt's witness statement will be undertaken
7. I was satisfied by that material that, provided that I have jurisdiction, this is an appropriate case in which to grant both the waivers sought. The unusual aspect of this case is that the application for the waiver is made before the Scheme report and indeed the Scheme itself are before the court. I have no doubt that the better practice is for matters such as these to be considered at the stage when these documents are

available. The documents may in some cases assist the court in determining what, if any waivers, are appropriate. But where the position is, as here, that the Applicants will do their utmost to notify and publicise the Scheme as far as possible, it would be a rare case where sensible waivers, subject to conditions, would be refused. The applicants seek the order now because very substantial further costs are going to be incurred between now and March 2009. If the court were to say at that stage that the Scheme could not proceed unless every policyholder can be served, very considerable sums of money will be wasted. Accordingly to seek the waivers at this stage in this particular case is procedurally sensible.

8. The waivers sought give to the applicants a measure of security such that they know that their application will not be non-suited by the existence of regulation 3(2)(b). Mr Hildyard nevertheless accepts that the Court retains an overall discretion as to whether to sanction the Scheme. The existence of the waivers will not prevent the Court taking into account in the exercise of its discretion, if it considers relevant to do so, the extent to which any particular constituency has been adequately notified.
9. The jurisdictional point arises in this way. Section 109(1) requires an application under section 107 to be “accompanied by” a scheme report. If that subsection means that at the moment at which it is issued the originating process must be accompanied by a scheme report, then that requirement has not been complied with here. It could then be argued that the court has no jurisdiction to make any orders on such a defective application
10. Whether or not that second limb of the argument is correct, I do not read section 109(1) as imposing a requirement that the originating process shall be accompanied by a scheme report at the time at which it is issued, for a number of reasons:
 - i) There is nothing to indicate that the word “application” in section 109(1) is directed to the originating process itself. “Application” is a broad term which is apt to refer to the originating process, but can also refer to the proceedings thereafter. For example section 108 refers to the parties who can be heard on “an application” under section 107. The word takes its meaning from its context and purpose.
 - ii) If “application” is read in a wider sense, then the requirement that it be “accompanied by” the scheme report does not need to relate back to the moment of issue of the originating process. So understood, the requirement is similar to the requirement in various provisions of the CPR that certain types of application must be “supported by evidence”: see e.g. CPR 13.4 (3); 21.6(4), although one can see that to use those precise words in respect of a scheme report might be to pre-judge its contents.
 - iii) The purpose of the scheme report is that it should be available to the court and policyholders well before the court sanctions the Scheme. But for that purpose it is not necessary that it be annexed to the claim form at the date of issue. It is sufficient if it is available when it is needed, and in any event well before the court sanctions the Scheme.
11. Accordingly I was satisfied that I had jurisdiction to make the order sought on the application, and that it was appropriate to exercise my discretion to grant the waivers.

12. I will hand down these reasons in court at 10.30 on Wednesday 3rd December 2008.
There is no need for the Applicants to attend.