

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

KEY WEST DIVISION

CASE NO. 08-10084-CIV-BROWN

PETER HALMOS, et al.,

Plaintiffs,

vs.

INSURANCE COMPANY OF NORTH
AMERICA, et al.,

Defendants.

WITNESS AND DOCUMENTS CATEGORY LIST FOR EVIDENTIARY
HEARING ON OCTOBER 4, 2010 PER ORDER SETTING EVIDENTIARY HEARING
[D.E. 979]

During mediation, the Parties agreed that there were outstanding charges of repayment and reimbursements that had not been paid by INA. The Parties agreed that these repayment/reimbursements were reimbursable under three categories (1) Salvage, (2) Protection against Loss or (3) NOAA/Liability. On May 18, 2010 the parties submitted to the Court a Joint Motion For Abatement outlining a procedure in which these submissions could be resolved by the Court. Many of the claims were settled during negotiations, the remainder were to be determined by the Court. As a result, the Court set an evidentiary hearing for October 4, 2010 to determine whether Plaintiffs' chosen submissions for repayment and reimbursement contained adequate backup for payment by INA.

On August 12, 2010, the Court held a status conference so it could determine how to proceed at the upcoming evidentiary hearing. The Court required the parties to submit by September 3, 2010, a "witness list with a short synopsis of the anticipated testimony, and a

document list.” Further, the document lists may be submitted by category so long as it is a specific category. As a result, the following is Plaintiffs’ witness list and document list by category.

I. Witness List and Anticipated Testimony

- a. **Peter Halmos** – Mr. Halmos is the President of International Yachting Charters Inc., (“IYC”). Mr. Halmos will testify as to each repayment and reimbursement sought by Plaintiffs, the necessity, and the payment of each by the Plaintiffs. Mr. Halmos will also testify as to the procedures agreed upon by Mr. Halmos and ACE/INA for submission of the repayment/reimbursements and the representations made by ACE/INA which form the basis of Plaintiffs’ submittal for repayment/reimbursements to ACE/INA.
- b. **Gail Meyers** – Mrs. Meyers is IYC accountant and principal of Meyers & Associates CPA, PA. Mrs. Meyers will testify as to the compilation, preparation and submittal of the Spreadsheet containing the repayments and reimbursements submitted to INA and the back-up documentation relating to it.
- c. **Thomas Campbell/Pillsbury Winthrop Shaw Pittman (“Pillsbury”)** – Mr. Campbell is a partner at the law firm of Pillsbury Winthrop Shaw Pittman. Mr. Campbell will testify as to the necessity of the services rendered by Pillsbury, the invoices generated by Pillsbury and the backup produced as a result of Pillsbury’s services.
- d. **Richard Sharpstein/Jorden Burt LLP** – Mr. Sharpstein is a partner at the law firm of Jorden Burt LLP. Mr. Sharpstein will testify as to the necessity of the services rendered by Jorden Burt, the invoices generated by Jorden Burt and the backup produced as a result of Jorden Burt’s services.
- e. **John D. Kimball/Blank Rome LLP** – Mr. Kimball is a partner at the law firm of Blank Rome LLP. Mr. Kimball will testify as to the necessity of the services rendered by Blank Rome LLP and Healy & Baille LLP, the invoices generated by each firm and the backup produced as a result of their services.
- f. **Bruce McCallister/Alley, Maas, Rogers & Lindsay, P.A. (“Alley Maas”)** – Mr. McCallister is a partner at the law firm of Alley, Maas, Rogers & Lindsay, P.A. Mr. McCallister will testify as to the necessity of the services rendered by Alley Maas, the invoices generated by the firm and the backup produced as a result of their services.

II. Potential Rebuttal Witnesses

- a. The deposition of Joseph Edward Smith as taken on July 9, 2010, Corporate Representative of INA and ACE, and the exhibits contained therein.
- b. The deposition of Mike Pennekamp and the exhibits contained therein.
- c. The deposition of Ron Milardo and the exhibits contained therein.
- d. The deposition of Pamela Harting Forkey and the exhibits contained therein.
- e. Any other rebuttal witnesses as needed.
- f. Any deposition/witness listed by ACE/INA in its submission to the Court.

III. Document List By Category

- a. The Legacy Insurance Policy (2005-2006) and related endorsements/YWR YO6973504.
- b. Spreadsheet categorizing Plaintiffs' out-of-pocket repayment and reimbursements previously submitted to ACE/INA but not paid by ACE/INA. The Spreadsheet is a subset of the March 15, 2010 submission and backup to ACE/INA by Plaintiffs. The Spreadsheet will include itemization out of pocket expenses paid by Plaintiffs as well as a detail list of legal invoices from October 23, 2005 to October 27, 2008¹. The entries in the Spreadsheet fall under (1) Salvage, (2) Protection against loss, and (3) NOAA/Liability.
- c. Backup documents previously produced to INA for the entries to the Spreadsheet. This will include, invoices, copies of checks, receipts and wire transfers evidencing payments made by Plaintiffs of which they seek repayment/reimbursement which were submitted to ACE/INA for payment and have not been paid. The entries in the Spreadsheet fall under (1) Salvage, (2) Protection against loss, and (3) NOAA/Liability.
- d. Documents evidencing legal services rendered and work done by Pillsbury, Jordan Burt LLP, Blank Rome LLP, Alley Maas and Healy Baille as produced by each of these firms and Gail Meyers & Associates on January 19, 2010, in

¹ The relevant time period of documents being submitted for determination by this Court is from October 23, 2005 to October 27, 2008. INA has filed a declaratory counter claim in which it claims it no longer has to pay for repayment/reimbursements after October 27, 2008 since that is the date ACE/INA claims it made full policy limit payment under Part A, Damage to the Hull. Since the Parties do not agree on coverage for submissions as of that date, Plaintiffs are not seeking determination by this Court of the adequacy of the documentation or explanation for repayments and reimbursements after that date. That issue will be left for the jury.

response to ACE/INA's third party subpoenas. These repayment/reimbursements fall under (1) Protection against loss, and (2) NOAA/Liability.

IV. Rebuttal Documents If Necessary

Without waiving their right to use these categories of documents in their case in chief, Plaintiffs believe that the following categories of documents may only be needed in rebuttal should the situation arise.

- a. Documents evidencing communications between Peter Halmos and ACE/INA and its agents, in which an ACE/INA employee or agent interpret the insurance Policy. Examples of this packet of documents would be the following: October 24, 2005 fax from Janet Thomas to Peter Halmos c/o Nick Halmos (Exhibit 16 to Mr. Pennekamp Deposition), HL 002122, PH-IYC-HPC 028827, INA 000006780, PH-IYC-HPC 076052, PH-IYC-HPC 075887.
- b. State of Florida Citations (i.e. INA 000130883), and subsequent proceedings related thereto.
- c. Documents evidencing INA's representation as to the procedure for repayment and reimbursement. Examples of this packet of documents would be the following: PH-IYC-HPC 032198, INA 000043060, INA 000003491, and INA 000014824.
- d. Documents evidencing Mr. Halmos willingness to step aside regarding salvage, protection against loss and remediation of the Legacy grounding should ACE/INA take over, and requesting whether anything Mr. Halmos is doing should be done differently. Examples of this packet of documents would be the following: PH-IYC-HPC 030738, INA 000015320, PH-IYC-HPC 029944, PH-IYC-HPC 029694, PH-IYC-HPC 31941, PH-IYC-HPC 069194, INA 000020546, PH-IYC-HPC 030234.
- e. Discovery Responses/Pleadings by ACE/INA.
- f. Any exhibit listed by ACE/INA.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2010, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: s/Juan Carlos Antorcha

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