

Neutral Citation Number: [2024] EWHC 3410 (Comm)

Case No: CL-2022-000603 CL-2023-000795

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 29 November 2024

Before :

Peter MacDonald Eggers KC
(Sitting as a Deputy Judge of the High Court)

Between :

Novitas Loans Limited	<u>Claimant</u>
- and -	
AmTrust Europe Limited	<u>Defendant</u>

Saul Lemer and James Fox (instructed by **Slaughter and May**) for the **Claimant**
Jonathan Hough KC and Dr Benjamin Archer (instructed by **Clyde & Co LLP**) for the
Defendant
Ben Elkington KC, George McDonald and Ed Grigg (instructed by **DWF Law LLP**) for the
Defendant

Hearing dates: 29th November 2024

RULING 2

Peter MacDonald Eggers KC
(11:38am)

Friday, 29 November 2024

Ruling by **PETER MACDONALD EGGERS KC**

1. I now come on to the next issue for disclosure which is being advanced by AmTrust. They are Issues 5A and 5B and, essentially, they read as follows:
2. "What discussions or communications at a managerial level (if any) took place within CLE/AmTrust and within Pure/HSS, and between CLE/AmTrust and Pure/HSS, in relation to (i) any risk assessments to be carried out by the scheme solicitor, and (ii) the eligibility criteria set out in Appendix 1 of the TOBAs?"
3. As I understand it, the reason this is advanced as a relevant issue for disclosure purposes is that there is an allegation by AmTrust that the scheme solicitors would carry out a full and detailed risk assessment and would provide CLE/AmTrust with a professional and reasonable assessment of the prospect of success of each claim, which the scheme solicitor proposed for the ATE cover being placed with AmTrust and, in addition, that the risk assessments would be carried out by the scheme solicitor against the eligibility criteria as set out in Appendix 1 of the TOBAs. The basis of these duties is said to arise in contract and, in addition, pursuant to a duty of care in tort, and that duty of care is alleged to arise either co-extensively with the contractual duty or independently.
4. In these circumstances, I have no hesitation in concluding that the Disclosure Issues 5A and 5B are relevant and ought to be included. I am reinforced in that conclusion by the following considerations. The first is that the parties have agreed already Disclosure Issue 3A and 3B, which reads essentially as follows:
5. "What discussions or communications at a managerial level (if any) took place within CLE/AmTrust and within the scheme solicitor, and between AmTrust and the scheme solicitor from July 2017 to early 2019 in relation to (i) the validity of the scheme solicitor TOBA and (ii) the obligations of the scheme solicitor under the TOBA?"

6. As far as that disclosure issue is concerned, as I say, the parties have agreed that it ought to be included. There is clearly an overlap between the Disclosure Issues. Indeed Mr Hough KC, on behalf of Sompo, takes the point, "Well, that should be adequate for the purposes of this dispute, and therefore no additional disclosure issue is required." But given the fact that Disclosure Issue 5 concentrates on both risk assessments and eligibility criteria, it seems to me that that clearly is a matter which is in issue between the parties arising on the pleadings and, therefore, should be dealt with by way of disclosure.
7. I am also reinforced in my conclusion by the consideration that the custodians identified for both Disclosure Issues 3 and 5 by Sompo are the same individuals, the date range for the disclosure exercise is the same, and the search terms are the same, albeit additional search terms are being put forward in relation to Disclosure Issue 5, which are not included in Disclosure Issue 3. Now, I say nothing about the search terms for the time being but, putting that aside, it seems to me, in those circumstances, Disclosure Issue 5 should be included and therefore disclosure should be provided on that basis.