

**MAINE  
CUMBERLAND, ss**

**BUSINESS AND CONSUMER COURT**

Location: Portland

Docket No.: BCD-CV-09-35

IRVING OIL LIMITED and )  
HIGHLANDS FUEL DELIVERY, LLC )

Plaintiffs, )

v. )

ACE INA INSURANCE, )

Defendant. )

**ORDER ON DEFENDANT’S MOTION  
FOR ISSUANCE OF LETTERS  
ROGATORY**

**I. INTRODUCTION**

Before the Court is Defendant ACE INA Insurance’s (“ACE”) Motion for Issuance of Letters Rogatory. In said Motion, ACE requests this Court to ask the Ontario Superior Court of Justice to order certain discovery from Royal & Sun Alliance Insurance Company of Canada (“Royal”), its employee, Gillian Moorcroft, and Marsh Canada Limited (“Marsh”), the Irving Plaintiffs’ insurance broker. Specifically, ACE’s Letters Rogatory seek the assistance of the Canadian Courts in obtaining deposition testimony and documents that ACE needs to defend against the Irving Plaintiffs’ claims. ACE contends that the requested discovery is relevant to: which underlying primary policies and coverage must be exhausted in order to trigger ACE’s excess coverage; the scope, types, and limits of primary liability coverage; and whether the Irving Plaintiffs have established the necessary exhaustion to trigger ACE’s excess coverage. For the reasons discussed below the Court denies the Defendant’s motion as to Royal and Ms. Moorcroft and denies the motion without prejudice as to Marsh.

## II. DISCUSSION

### A. Royal

On June 25, 2015, this Court granted a Second Stipulated Order Amending Case Management Conference Scheduling Order No. 4.<sup>1</sup> Pursuant to the joint request of the Parties, ACE agreed that the deadline for completion of all fact and merit discovery would be August 28, 2015. At the time ACE agreed to the August 28, 2015 deadline, ACE was surely aware of the breadth of documents it requested from Royal its motion was filed with the Court on May 20, 2015. Because ACE's request will entail a process that cannot be expected to be completed within the latest facts/merits discovery deadline in this case, the Court denies ACE's motion as it relates to Royal Canada.

### B. Gillian Moorcroft

ACE's request for documents and the deposition of Royal Canada employee, Gillian Moorcroft, is also untimely as the August 28, 2015 discovery deadline is fast approaching. ACE knew of Ms. Moorecroft's proffered testimony as of October 2014 when she submitted her first affidavit, and counsel for Ace admitted that it was aware of her testimony by December of 2014. However, Ace's counsel argues that it was not until it received the voluminous February 2015 discovery submitted by the Plaintiffs how significant her role would be. However, ACE failed to timely act and waited until May

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<sup>1</sup> On June 24, 2014 the Court entered Case Management Order No. 4. This followed a conference of June 12, 2014 which had been set after the Supreme Judicial Court dismissed Plaintiff's appeal and Defendant's cross appeal. The June 24, 2014 order made it clear that any party initiating discovery had to do so sufficiently in advance of the pertinent discovery deadline to enable any party responding to the request to respond within that deadline. The order also set March 7, 2015 as the facts/merits discovery deadline. That order was amended by agreement on March 4, 2015 and the facts/merits discovery deadline was extended to June 26, 2015. The most recent amendment, as noted, extended that deadline to August 28, 2015.

20, 2015 to file this motion, and did so approximately a month before the (now-prior) discovery deadline expired.

As the Court stated at the hearing on this motion, based on the pendency of this case, absent unforeseen circumstances, the Court is unwilling to further extend the discovery deadline to accommodate this late request. The Court therefore denies ACE's motion in regard to documents and depositions requested from Gillian Moorecroft.

C. Marsh

ACE has also requested a large number of documents as well as a deposition from Marsh. It is the Court's understanding that the Plaintiffs are still in the process of proffering a significant number of Marsh-related documents to ACE. Because ACE will receive those documents this week, the Court finds that ACE should, in fairness, have an appropriate period of time for adequate review. Thus, ACE shall complete its document review by close of business on July 17, 2015. On July 20, 2015 at 10:00 AM the Court will convene a telephonic conference with counsel for Marsh and counsel for the parties to this action. In said conference, Ace is expected to convey to the Court whether the documents provided by Irving were responsive to its requests and whether there is a substantial, good faith basis to request more discovery from Marsh directly through the letters rogatory process. ACE's motion as it pertains to Marsh is therefore denied without prejudice.

**III. CONCLUSION**

Based on the foregoing the entry shall be:

ACE's Motion for the Issuance of Letters Rogatory as to Royal and Ms. Moorcroft. ACE shall complete its document review in relation to Marsh

on or before close of business July 17, 2015. The Court will convene a telephonic conference with Marsh and counsel for the parties on July 20, 2015 at 10 AM.

Pursuant to M.R. Civ. P. 79(a), the Clerk is hereby directed to incorporate the Order by reference in the docket.

**Dated: July 8, 2015**

**/s**  
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**M. Michaela Murphy, Justice  
Business and Consumer Court**