

~~PROPOSED~~ ORDER

1
2 Plaintiff Terra Insurance Company (“Plaintiff”) filed a letter on November 24, 2009
3 seeking further responses to certain discovery requests. Defendant New York Life Investment
4 Management LLC (“Defendant”) filed a response on November 30, 2009. That same date, third
5 party New York Life Insurance Company submitted an objection to Plaintiff’s proposed discovery.

6 The Court ordered Plaintiff and Defendant to participate in a further meet and confer in
7 the Court’s jury room on December 1, 2009. The parties met and conferred and resolved all
8 disputes raised in Plaintiff’s November 24 letter with the exception of Defendant’s response to
9 Request for Production No. 5 in Plaintiff’s second set of document requests. A hearing was
10 conducted and appearances were noted on the record.

11 Having read the written submissions and considered the oral arguments of counsel, the
12 Court denies Plaintiff’s request to seek further responses to Document Request No. 5. The primary
13 issue in dispute is the Quality Tilt program. Defendant has represented that it has produced all
14 documents it could locate pertaining to the Quality Tilt, with the exception of implementation
15 documents with respect to which the parties have reached an agreement. Defendant has also
16 represented that it does not routinely provide advice to New York Life Insurance Company
17 regarding the allocation of its investments, the economy or market forecasting. The Court finds that
18 Plaintiff has been promised or received the evidence that is directly related to the issues raised in the
19 Complaint. This order is without prejudice of Plaintiff’s right to seek further production in response
20 to Request for Production No. 5 if deposition testimony of Defendant or New York Life Insurance
21 Company witnesses establishes otherwise.

22 IT IS SO ORDERED.

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24 Dated: December 4, 2009.

