

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:09-cv-00182-GCM

CONCORD WEST OF THE ASHLEY)
HOMEOWNERS' ASSOCIATION ET AL,)
)
Appellant,)
)
v.)
)
J.A. JONES, INC., AND ZURICH)
AMERICAN INSURANCE COMPANY,)
)
Appellees.)
_____)

ORDER

THIS MATTER is before the Court on Defendant Zurich American Insurance Company's Motion for Rehearing. This motion is **DENIED**.

Zurich raises two issues. First, Zurich asks the Court to clarify whether its Order invalidates the drop down provision of Zurich's settlement with the Debtor. Second, Zurich argues that "the Court erred by ruling that Concord West was not bound by the settlement of the drop down issue between Debtors and Zurich thereby finding that Concord West has enforceable derivative interests in the Debtors' insurance policies." (Doc. 9 at 1.)

First, the Order did not address the validity of the drop down provision, and the Court still has no reason to do so.

Second, the Court ruled that "Concord's state court claim [is not] barred, stayed, or otherwise limited by the Plan." (Doc. 8 at 4.) The Court did not, and need not, address whether Debtor's waiver of the drop down provision only functions as a facet of the Plan, or whether the provision applies to non-§ 101(5)(a) claimants. If or when Concord West wins a judgment against Zurich, this issue can be decided.

The motion is hereby **DENIED. SO ORDERED.**

Signed: May 19, 2010

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

