

1 MR. ROTH: We have had conversations
2 with the Ace group about commuting their
3 obligations to the estate and we'd be happy to
4 continue to do that, but what the end result is
5 going to be that we have to have AFIA Cedents
6 file claims here in order to make the Ace group
7 liable on their obligations to us and if the
8 AFIA Cedents don't file claims here, then we
9 have got very little weight to bring to the
10 table in a commutation. The Ace group I'm sure
11 would love for us to have the claims bar date
12 come and go and then count the claims and decide
13 what's a fair commutation; and we're going to
14 see that without the deal in place, we're going
15 to have not very many claims because the AFIA
16 Cedents, who are class V, are not inclined --
17 and I think our documents establish that -- that
18 we've heard from the AFIA Cedents that they
19 don't want to file claims because it's not worth
20 it.

21 I mean, in response to Benjamin
22 Moore's pleading, I just would say that they
23 seem to have an information issue, they want to

1 know more, and I think that with our affidavits
2 that we filed last Friday, we've answered almost
3 all of their questions. To the extent they're
4 saying, we still don't get it, I don't know what
5 else we can tell them. It's all spelled out
6 there pretty clearly what it is that motivates
7 the liquidator to do what he's doing. We have
8 issues about the cut through threats, we have
9 the issue about the ring fencing threat and we
10 have the issues about the claims filing. Now we
11 can debate and we can try to prove as a matter
12 of fact whether it is possible to ring fence in
13 England or possible to cut through and whether
14 that's legal and lawful in England; but the fact
15 remains we acted upon the threats of those
16 things and rather than simply sit back and
17 realize those things and go through possibly
18 years of foreign litigation -- the BCCI cases
19 that were cited by ACE and in their papers were
20 I think instructional. You have a case that was
21 filed in 1990. The issue comes up immediately,
22 they have a decision over eight days of hearing
23 in 1992 or '93, then you get a decision and

1 appeals and everything and it lasted until,
2 like, 1997 to decide whether ring fencing was
3 appropriate. And we just can't -- it's not
4 worth it to the estate to go through that
5 effort. The value of the asset is lost if we
6 have to do that.

7 The other issue that Benjamin Moore
8 brings up is purely legal. They say it's not
9 lawful to do what we're doing and I think we've
10 fairly briefed that and it's fairly presented in
11 front of you.

12 But as coming back to the commutation,
13 we'd be happy to do a commutation if it's
14 advantageous to us and worthwhile, but if we
15 wait until the claims bar date to decide to do
16 that commutation, without the deal, we're in
17 trouble. If we --

18 THE COURT: You can't do such an
19 agreement unless AFIA files the claims here --

20 MR. ROTH: We cannot have a
21 commutation without claims being made.

22 THE COURT: Okay. And I guess your
23 position is you can't make AFIA file claims.

1 MR. ROTH: We cannot make the AFIA
2 Cedents file claims. What I would suggest is
3 it's really no skin off of ACE's neck if we do
4 this deal or we don't do this deal. If we do
5 the deal, we commute with ACE, we put the money
6 into the English agreement and the English
7 stream and it gets distributed the way we've
8 agreed with the AFIA Cedents. It doesn't affect
9 ACE in any way. It just has no impact on ACE at
10 all. All we're trying to do with this is make
11 sure that the agreements in place prior to the
12 liquidation with ACE, which included the
13 assumption agreement which has in it an
14 insolvency clause which says that if Home goes
15 insolvent, ACE continues to perform
16 notwithstanding the insolvency. We're trying to
17 make sure things work the same after the
18 insolvency as they did before the insolvency.
19 Ace's obligations to Home will not be any
20 different or any greater after the insolvency as
21 they were before and again, it goes to our sort
22 of mystery about -- it's no mystery they're
23 trying to protect themselves from having to pay

1 their debt to the estate.

2 MR. VAN TOL: Your Honor, just
3 briefly.

4 Mr. Roth's comments show exactly why
5 we need discovery. I'm assuming now that we go
6 past the initial briefing stage and Your Honor
7 finds there is some discretion by the
8 liquidator, Mr. Roth would have us accept
9 everything he says as true. That the AFIA
10 Cedents will not file the claims, that there is
11 a substantial threat of ring fencing, that there
12 is a substantial threat of side agreements that
13 would cut out the liquidator. Those are the
14 very facts that cannot be accepted simply on
15 self-interested affidavits. Those are the ones
16 that we would request an evidentiary hearing
17 on. And in order to make the evidentiary
18 hearing meaningful for the Court, short and
19 concise, we would also submit we should have a
20 chance to depose those people and make it an
21 efficient process.

22 THE COURT: I don't want to move to
23 that issue until we decide as a matter of law.

1 MR. VAN TOL: I understand, Your
2 Honor.

3 THE COURT: And I take it everybody
4 agrees that at least as to whether as a matter
5 of law the Court can approve such an agreement
6 or such an agreement's valid, that no further
7 discovery is necessary for that issue.

8 MR. VAN TOL: We would be willing to
9 submit further briefing and be heard by the
10 Court on that issue, yes, Your Honor.

11 THE COURT: Okay.

12 MR. VAN TOL: And quickly, the last
13 point Mr. Roth is talking about, what the world
14 should look like post liquidation. The statute
15 tells the Court exactly what the world is
16 supposed to look like. We are not trying to do
17 anything other than enforce the statute, Your
18 Honor.

19 THE COURT: All right. Why don't --
20 any further pleadings then be due next
21 Wednesday, the 14th. Can you make that date?

22 MR. VAN TOL: I'm afraid I can't. I'm
23 going to be out of town on other business. If

1 we could have more time, I would appreciate it.

2 THE COURT: How much?

3 MR. VAN TOL: Another week beyond
4 that.

5 MR. ROTH: Your Honor, they've got
6 five pro hac Lovells' lawyers, I don't know how
7 many Lovells has worldwide. We've got Mr.
8 Snow. I can't believe that they're giving us
9 this, we need more time because there aren't
10 enough of us.

11 MR. BOUFFARD: Your Honor, I'm not in
12 a multi-national law firm and --

13 THE COURT: Yeah. Well, this has got
14 to go on track soon.

15 MR. BOUFFARD: I understand, but I
16 just want to make sure --

17 THE COURT: If you want anymore
18 pleadings, they'll be due by the 16th, okay?
19 The hearing two weeks from today, Friday
20 morning, okay?

21 MR. SNOW: What's the date?

22 THE COURT: That's the 23rd.

23 MR. VAN TOL: Your Honor, I'm sorry, I

1 missed the time.

2 THE COURT: Well, how long will the
3 hearing take?

4 MR. ROTH: Two hours --

5 THE COURT: Two hours.

6 MR. ROTH: -- maximum.

7 THE COURT: Let's say 10 o'clock then,
8 okay?

9 MR. VAN TOL: Thank you, Your Honor.

10 THE COURT: I'll get an order out on
11 that.

12 Are there any other issues we should
13 take up today?

14 MR. ROTH: Your Honor --

15 THE COURT: Oh, you know what would be
16 helpful, what I would like -- it might not be
17 necessary for this, but I would like it by then,
18 it's unclear as to what actual amounts are
19 involved, how much would go into the class II
20 pot and so forth from all of this and how much
21 ACE is actually -- what the claims were and so
22 forth. Do you think that you could clarify that
23 before --

1 MR. ROTH: We'll do our best. I'm not
2 sure that it's easily quantifiable because it's
3 -- part of it is AFIA Cedents have to file
4 claims and we don't know how much those claims
5 will be exactly and once they file claims. Then
6 they have to prosecute them and defend them
7 against objections because this isn't just,
8 let's have AFIA Cedents file the biggest claim
9 that they can and we'll stick it to ACE, that's
10 not what this is about. ACE is going to be part
11 of the program to adjudicate all the claims and
12 determine what they're really worth in the
13 claims process we've set up here. So at this
14 point we don't know precisely what it's going to
15 be. We will endeavor to produce a statement of
16 what we think -- what our best guess is as to
17 their worth.

18 MR. BOUFFARD: Your Honor, in that
19 regard, one of the questions we raised in our
20 objection is whether or not and to what extent
21 AFIA Cedents have already filed claims. We
22 tried to get some of that information on our own
23 by just contacting the liquidator to get a

1 claims register, something along those lines,
2 and were told that the claims register was not a
3 public document, much to my surprise. So one
4 question that perhaps we could get answered
5 today is whether there have been claims filed
6 and how much.

7 MR. ROTH: There have been none. No
8 AFIA Cedent has filed a claim yet. They've been
9 very reluctant to do so because they don't want
10 to waive their rights to do the cut-throughs and
11 their ring fencing and whatever it is they've
12 been trying to do. If they file a claim --

13 THE COURT: Okay. So the answer is
14 no.

15 MR. ROTH: The answer is no.

16 MR. BOUFFARD: What about commutations
17 with AFIA Cedents? They're commuting AFIA
18 Cedents --

19 MR. ROTH: (Conferring off the
20 record). No.

21 MR. LEE: Your Honor, may I rise?

22 THE COURT: Yes.

23 MR. LEE: I just was checking the Home

1 docket not much more than a couple of weeks ago
2 and I saw that there was a commutation between
3 the Home and Harris Lloyd Syndicates (phonetic)
4 that represent or make up what is now known as
5 Equitas (phonetic). I understand that they may
6 have carved out explicitly for the purpose of
7 doing what they said they wouldn't do, which is
8 submit claims against ACE, the AFIA related
9 business. So we know of at least one
10 commutation involving an AFIA Cedent. It may
11 not have related to the AFIA business, but it
12 certainly has a bearing on this particular
13 hearing. We wouldn't know whether there are
14 other commutations in the works with other AFIA
15 Cedents. There are hundreds, many of whom are
16 in the United States, some of whom are in
17 Bermuda, very few in the United Kingdom.

18 MR. ROTH: What he said about the
19 various syndicates is correct and it did not
20 involve any AFIA business. That's why I
21 answered the question, no, because it was --
22 Equitas is an AFIA Cedent in the larger sense,
23 but we did not commute AFIA business with

1 Equitas.

2 THE COURT: So any further pleadings?

3 MR. VAN TOL: Your Honor, I'm sorry,
4 one point of clarification. The liquidator has
5 raised issue of our standing and our ability to
6 be heard. We would like to, if possible, limit
7 these next filings to just the pure issues of
8 law, which is thumbs up/thumbs down. Can the
9 liquidator do what he wants to do because it's
10 clear we have a pecuniary interest. Your Honor
11 has granted our motion to intervene and we're
12 here today being heard. So we would like to
13 keep the papers to that and we're willing to
14 stipulate to that.

15 THE COURT: Yeah.

16 MR. ROTH: I guess as far as a legal
17 standing issue, we have not really suggested
18 that as a legal constitutional issue they lack
19 standing, but we I think we have fairly raised
20 an equitable argument about what are they really
21 here about. They're here about protecting their
22 own interests and I think that's a fair argument
23 and we'll continue to raise it.

1 THE COURT: Well, that might go to if
2 there is -- if we get to the issue about
3 discretion with the Court, I guess, but as far
4 as the legal issue, I don't see how it would be
5 relevant.

6 MR. VAN TOL: Our motivation, Your
7 Honor, is beside the point of the statutory
8 question. That's why we wanted it limited in
9 that fashion.

10 THE COURT: That's what we're going to
11 deal with first.

12 MR. ROTH: Your Honor, in terms of the
13 briefing, since we've sort of fired the last
14 round and their turn comes the 16th, could we
15 have a few days to make a reply?

16 THE COURT: No. I think you can --
17 all the pleadings in by the 16th.

18 MR. ROTH: Okay.

19 THE COURT: You can raise whatever --
20 you can reply orally that day if you want, all
21 right? So the hearing is two weeks from today,
22 the 23rd, 10 o'clock, okay?

23 MR. VAN TOL: Thank you, Your Honor.

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(Conclusion of proceedings at this time)

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I, MICHELLE A. H. MCGIRR, Certified Shorthand Reporter
in and for the State of New Hampshire, New Hampshire
Superior Court, do hereby certify that the foregoing 28
pages are true and accurate to the best of my ability,
skill, knowledge and belief.

DATED: April 21, 2004 Michelle A. H. McGirr

MICHELLE A. H. MCGIRR

CSR/RPR

Official Court Reporter

New Hampshire Superior Court

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