

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

COPY

IN THE MATTER OF)
)
THE LIQUIDATION OF THE)MERRIMACK SS
HOME INSURANCE COMPANY)DOCKET NO. 03-E-0106
)
)

DEPOSITION OF RHYDIAN WILLIAMS

Friday, June 3, 2005

AT: 10.00 am

Taken at:
Lovells
Atlantic House
50 Holborn Viaduct
London EC1A 2FG
United Kingdom

	Page 174
1 just a few questions for you. Did you review any written	05:21:44
2 legal advice between the time you were first asked to	05:21:47
3 develop the affidavit that became the April 1, 2004	05:21:52
4 affidavit and the time you then signed that affidavit?	05:21:56
5 A. No, I didn't.	05:21:59
6 Q. I refer you to Williams exhibits 13, 14 and	05:22:10
7 15, which constitute the written legal advice that Equitas	05:22:15
8 has produced in response to ACE's production requests. Is	05:22:31
9 this written legal advice advice which you collected or	05:22:39
10 someone at your behest collected at Equitas in response to	05:22:45
11 the ACE production request?	05:22:50
12 A. In response to the ACE production request?	05:22:52
13 Q. Yes, sir.	05:22:56
14 A. Did I produce this in response to the ACE	05:23:00
15 production request?	05:23:02
16 Q. Did you cause it to be collected in	05:23:03
17 response --	05:23:05
18 A. Yes, I did.	05:23:06
19 Q. And does it, to the best of your knowledge,	05:23:07
20 constitute the universe of written legal advice provided to	05:23:10
21 Equitas concerning the issues that are the subject of your	05:23:16
22 April 1 affidavit?	05:23:20
23 A. Yes, it is.	05:23:22
24 Q. Are you aware of any discussions between	05:23:32
25 Equitas and the ACE Group of Companies concerning	05:23:37

	Page 175
1 a commutation or a general resolution of obligations,	05:23:41
2 including AFIA obligations?	05:23:47
3 MR. LEE: Objection to the form.	05:23:50
4 A. Yes, I'm aware.	05:23:53
5 Q. What was the nature of those discussions?	05:23:56
6 MR. LEE: Object to the form of the question.	05:23:59
7 A. As I understand it, Equitas was in discussions	05:24:00
8 at a high level with ACE representatives, and that the AFIA	05:24:07
9 portion was discussed as being wrapped up in an overall	05:24:16
10 commutation between Equitas and ACE.	05:24:22
11 Q. I'd like to have this marked as Williams	05:24:24
12 exhibit 21.	05:24:48
13 (Exhibit Williams 21 marked for identification)	05:25:02
14 Q. Mr. Williams, based on your experience at	05:25:28
15 Equitas, what does this document appear to you to be?	05:25:31
16 A. The document appears to be a meeting note	05:25:35
17 prepared to record a meeting between Equitas and ACE/Cigna.	05:25:40
18 Q. You've seen this document before?	05:25:48
19 A. Yes, I have.	05:25:49
20 Q. Drawing your attention to the second page of	05:25:50
21 Williams exhibit 21, do you see the bullet point "AFIA non	05:26:00
22 novated" at the top of the page?	05:26:08
23 A. Yes, I do.	05:26:11
24 Q. Does this -- strike that.	05:26:13
25 Does this reflect the inclusion of AFIA	05:26:15

Page 176

1 liabilities in the scope of liabilities being considered in 05:26:23

2 this commutation? 05:26:28

3 MR. LEE: Object to the form. 05:26:29

4 MR. BOUFFARD: Object to the form. 05:26:30

5 A. Yes, it does. 05:26:33

6 Q. Do you know Bill O'Farrell? 05:26:36

7 A. No, I do not. 05:26:49

8 Q. Do you know of him? 05:26:50

9 A. I believe he's a senior member of the ACE 05:26:52

10 organization. 05:26:58

11 MR. GORDON: Just for the record, the redactions 05:27:03

12 on page 2 are wholly unrelated to AFIA. 05:27:06

13 Q. Please mark this document as Williams 22. 05:27:30

14 (Exhibit Williams 22 marked for identification) 05:27:33

15 MR. GORDON: For the record, there are redactions 05:27:46

16 on pages 919 and 920 of Williams exhibit 22, again 05:27:48

17 unrelated. 05:27:58

18 Q. You've seen this document before, 05:28:02

19 Mr. Williams? 05:28:05

20 A. Yes, I have. 05:28:06

21 Q. What is it? 05:28:07

22 A. It is a communication from Karen Amos to 05:28:08

23 Bill O'Farrell of the ACE Group. 05:28:20

24 Q. I refer you to the pages with Bates stamps 917 05:28:26

25 and 918, as distinct from the last three pages of this 05:28:30

		Page 177
1	exhibit, Bates stamps 919, 929 and 921.	05:28:43
2	As to pages 917 and 918, is it your opinion that	05:28:47
3	this e-mail from Karen Amos refers to a commutation	05:29:00
4	discussion between the ACE companies and Equitas that	05:29:06
5	includes a commutation of the AFIA related liabilities?	05:29:12
6	MR. LEE: Object to the form.	05:29:16
7	MR. BOUFFARD: Object to the form.	05:29:17
8	A. It outlines the scope of the discussions which	05:29:18
9	would include the nontransferred AFIA piece.	05:29:21
10	Q. Mr. Williams, what do you mean by the	05:29:36
11	nontransferred AFIA liabilities?	05:29:42
12	A. As I mentioned earlier, we were under the	05:29:43
13	impression prior to the insolvency of the Home that all the	05:29:50
14	AFIA business had been transferred to ACE/Cigna and its	05:29:57
15	predecessors, and these policies, that had been not	05:30:02
16	transferred by novation but had been treated as if they had	05:30:20
17	been transferred by arrangement with ACE, were originally	05:30:25
18	included in the conversation with -- sorry, excluded from	05:30:32
19	the conversation with Home and thought to be of ACE	05:30:39
20	responsibility; they were then brought back into the	05:30:43
21	conversation between Karen Amos and ACE as if it were the	05:30:45
22	responsibility of ACE.	05:30:53
23	Q. Thank you. I refer you to pages 919 and 920	05:30:56
24	and 921. What is this document?	05:31:04
25	MR. LEE: Object to the form of the question.	05:31:08

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

DOCKET # 03-E0106

-----X

IN THE MATTER OF THE LIQUIDATION OF
THE HOME INSURANCE COMPANY,

COPY

-----X

10:00 a.m.

June 7, 2005

Deposition of RICHARD HACKER
taken by Liquidator of the Home
Insurance Company, held at the offices
of Clifford Chance, 31 W. 52nd Street,
New York, New York pursuant to Notice,
before Georgette K. Betts, a Certified
Shorthand Reporter and a Notary Public
for the State of New York.



Legalink Manhattan
420 Lexington Avenue, Suite 2108
New York, NY 10170

tel (212) 557-7400
tel (800) 325-3376
fax (212) 692-9171

www.legalink.com

1 Hacker

2 A. Well, I'm not sure I can identify
3 exactly what the distinction is but there
4 necessarily must be a distinction because
5 something is, may be payable in one place but
6 paid in another. The two are not necessarily
7 synonymous.

8 Again, I would say without getting
9 back to the authorities I'm not sure I can
10 identify specifically how one would distinguish
11 between the two.

12 Q. But in your view the practice of
13 past payments under the contract would not be a
14 relevant consideration?

15 A. It may be a relevant
16 consideration, but it may be a relevant, I
17 emphasize the word "may" be a relevant
18 consideration, but it certainly wouldn't be a
19 determinative consideration.

20 Q. Are you aware that the liquidator
21 of Home and the joint provisional liquidators of
22 Home informed the New Hampshire court in their
23 original motion for approval of the agreement
24 with AFIA cedents of their view that
25 ring-fencing had no legal merit?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Hacker

A. Yes, I've read the motion, I'm aware of that.

Q. You referred to that in paragraph 8 of your affidavit?

A. Yes. I refer to that in I think various -- it's not -- let me just read it again.

(Witness reviewing document.)

A. Yes, yes, I refer to it, yes.

Q. And turning to Exhibit 2, the Note of Advice.

A. Yes.

Q. Do you agree with the conclusion in paragraph 15?

A. Yes. Unreservedly.

MR. SMITH: I think this would be a good place to take a short break if you'd like.

THE WITNESS: Yes.

(Recess.)

BY MR. SMITH

Q. Mr. Hacker, in paragraph 58 of your affidavit you refer to cut-throughs, what do you mean by cut-throughs?