

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

2005 JUN 22 A 9:31

Docket No. 03-E-0106

**In the Matter of the Liquidation of
The Home Insurance Company**

**EQUITAS' RESPONSE TO ACE COMPANIES' MOTION TO STRIKE AFFIDAVIT
AND VERIFICATION OF RHYDIAN WILLIAMS OR, IN THE ALTERNATIVE,
COMPEL PRODUCTION OF DOCUMENTS BY EQUITAS**

Equitas Limited hereby responds to the ACE Companies' motion to strike the affidavit and verification of Rhydian Williams or, in the alternative, compel production of documents by Equitas.

INTRODUCTION

1. ACE asserts that the Court's May 12 Guidelines and clarification authorized "broad" discovery, but ACE's characterization of the Guidelines is belied by the record. In fact, ACE's motion to strike is tantamount to a request for reconsideration of the discovery limitations set forth in the May 12 Guidelines.

2. The Court issued the Guidelines in response to ACE's March 3 motion to compel Equitas to produce all internal communications and communications between or among AFIA Cedents concerning the Proposed Agreement. Without reaching Equitas' jurisdiction objections, the Court said that voluntary production could be limited to: (a) information to which the Liquidator and Joint Provisional Liquidator were privy in reaching and/or approving the Proposed Agreement; and (b) documents relied upon in developing the affidavit filed by Mr. Rhydian Williams.

3. ACE now asserts once again that Equitas should be required to produce all internal communications and communications with other AFIA Cedents concerning the Proposed Agreement. The Court properly denied ACE's request for such discovery previously, because the documents sought are irrelevant. As ACE previously acknowledged, the function of the court is to review "*the receiver's evaluation*" of the relevant factors. The Court needs to be provided "with the information on which the receiver's decision to settle was based."¹ The Liquidator and Joint Provisional Liquidator did not have access to such documents and ACE is not entitled to such documents either unless, under the Guidelines, Mr. Williams relied upon the documents in preparing his affidavit.

4. All internal communications and communications with other AFIA Cedents within the scope of the Guideline have been produced, including previously withheld privileged documents. The production included all documents relied upon by Mr. Williams in preparing his affidavit. Deposition of Rhydian Williams, June 3, 2005, Transcript ("Williams Tr.") 184:2-4. ACE does not and cannot establish that discoverable documents have been withheld.

5. ACE also seek other categories of documents that are beyond the scope of the Guidelines, including documents concerning commutation and set-off negotiations between Home and Equitas to which Mr. Williams was not a party. Mr. Williams testified that he was unaware of any such documents. Obviously, he could not have relied upon them in preparing his affidavit. Moreover, ACE expressly agreed as a condition to Equitas' initial voluntary production that documents concerning the commutation agreement and set-off need not be produced. Nor were such documents included within the scope of its motion to compel. It is too

¹ ACE Companies' Status Report and Proposed Schedule for Discovery and Evidentiary Hearing, filed March 3, 2005, citing *In re Liquidation of American Mut. Liab. Ins. Co.*, 632 N.E.2d 1209, 1216-17 (Mass. 1994) (emphasis added).

late in the day for ACE to argue that such documents are within the scope of the May 12 Guidelines, or that it is otherwise entitled to the production of such documents.

DISCUSSION

I. Equitas Has Produced All Documents Required Under The Guidelines.

A. Documents Reflecting Communications with AFIA Cedents.

6. ACE asserts that Equitas has not produced “documents regarding certain meetings and/or discussions among AFIA Cedents.” ACE’s assertion is false as Equitas has produced all meeting notes and documents and other communications reflecting consideration among the AFIA Cedents of the matters discussed in Mr. Williams’ affidavit. To the extent ACE is seeking *all* notes of AFIA Cedent meetings, its request is beyond the scope of the Guidelines.

B. Drafts of the Williams’ Affidavit.

7. Although ACE has corresponded extensively with Equitas regarding the scope of Equitas’ production, and ACE filed two prior motions, ACE has never before raised a question about the absence of draft affidavits from Equitas’ production. Presumably, ACE recognizes that such drafts generally constitute non-discoverable work-product and never considered such drafts as falling within the scope of the Guidelines. Nor does it assert now that they do. Rather, ACE asserts that drafts of the Williams affidavit are “relevant” and should now be produced.

8. Insofar as such drafts were not within the scope of ACE’s original motion to compel, they likewise were not within the scope of the Guidelines. Mr. Williams has already testified concerning the preparation of his affidavit and no further production is necessary or warranted in order for the Court to evaluate the reasonableness of the Proposed Agreement.

C. Internal Communications Regarding the Proposed Agreement.

9. ACE asserts that Equitas has not produced “internal Equitas communications regarding the negotiation of the Proposed Agreement.” As discussed above, however, ACE’s

broad request for internal communications regarding the Proposed Agreement is beyond the scope of the Guidelines, which implicitly denied ACE's prior request for the very same documents. The Court properly limited production to documents and information to which the Liquidator or Joint Provisional Liquidator were privy. By definition, they were not privy to Equitas' internal communications. To the extent internal communications were relied upon by Mr. Williams in developing his affidavit, they have been produced.

10. ACE points to testimony indicating that Mr. Williams had *discussions* with other Equitas employees concerning consideration of alternatives to the Proposed Agreement and the cost of filing and prosecuting a claim in the Home estate. ACE cites no testimony indicating that documents reflecting such discussions either exist or that they have been withheld. Equitas has produced internal documents reflecting consideration of the alternatives discussed in Mr. Williams' affidavit. Documents reflecting discussions of the cost of filing and prosecuting a claim have been produced to the extent they exist.

C. Documents Created By Karen Amos.

11. ACE also seeks documents "created by a colleague of Mr. Williams, Karen Amos, in connection with the Proposed Agreement." Ms. Amos did not create any documents in connection with the Proposed Agreement. If she had, such internal Equitas documents would be beyond the scope of the Guidelines unless they were relied upon by Mr. Williams in preparing his affidavit.

12. ACE argues that Equitas should be required to produce Ms. Amos' documents regarding the calculation of Equitas' set-off position because Mr. Williams asserts in his affidavit that Equitas would not likely file a claim in the Home estate "beyond that which may be required to realize any applicable set-off." Ms. Amos was involved in commutation negotiations with the Home that dealt with, among other things, Equitas' set-off position.

13. Williams was thoroughly examined during his deposition regarding his knowledge of the set-off and commutation. See, e.g., Williams Tr. at 25:6-34:2, 42:5-7, 47:3-13, 51:15-17, 84:4-24, 151:2-152:6. He was not involved in the negotiations with Home and has not seen any documents reflecting those negotiations. Williams Tr. at 27:15-28:6, 31:16-23. Accordingly, he could not have relied (in any sense) upon such documents when he prepared his affidavit. Nor are documents concerning negotiation of the set-off even relevant to Mr. Williams' affidavit because his assertion that Equitas would not likely file a claim beyond that required to realize "any applicable set-off" is wholly unqualified as to the amount of the set-off. Mr. Williams did not even know what Equitas' set-off position was at the time Equitas executed the Proposed Agreement. Williams Tr. at 84:21-24. Negotiations over the amount of the set-off, of which Mr. Williams had only peripheral knowledge, are irrelevant.

14. In all events, ACE is not entitled to documents concerning the commutation and set-off because the parties agreed, in early correspondence, that such documents would not be produced. On December 28, 2004, Equitas responded to ACE's document requests by proposing a voluntary production of certain documents. (See Exhibit A attached hereto.) In paragraph 4 of the letter, Equitas expressly advised ACE that it would not produce documents concerning the commutation agreement or the set-off. On January 7, 2005, ACE expressly agreed to the limitations set forth in paragraph 4 of the December 28 letter. (See Exhibit B attached hereto.) ACE is now estopped. Such documents are not even within the scope of ACE's March 3 motion to compel. Insofar as the Guidelines were issued in response to that motion, ACE's contention that Equitas was required to produce documents concerning the set-off makes absolutely no sense.

15. ACE also seeks documents reflecting discussions with ACE regarding a potential cut-through arrangement. Mr. Williams testified regarding his knowledge of those discussions, to which he was not party. Williams Tr. at 98:16-101:15. Mr. Williams became aware of documents reflecting those discussions only recently. Williams Tr. at 181:21-182:5. Such documents were produced to ACE and Mr. Williams was questioned regarding their contents. Id. at 175:11-178:3. Insofar as Mr. Williams did not rely upon documents reflecting discussions with ACE when he executed his affidavit, such documents are beyond the scope of the Guideline.

D. Documents Created By Mr. Heap.

16. ACE likewise seeks documents “created by Mr. Heap in connection with the negotiation of the Proposed Agreement and preparation of Mr. Williams’ affidavit.” As discussed above, documents that may have been created by Mr. Heap in connection with the negotiation of the Proposed Agreement, like other internal Equitas documents concerning the Proposed Agreement, generally fall outside the Guidelines. ACE is not entitled to such documents.

17. ACE asserts that Mr. Williams and Mr. Heap discussed the cost and difficulty of filing and prosecuting a claim, that Mr. Heap was involved in discussions with ACE regarding a potential cut-through arrangement, and that Mr. Williams discussed the contents of his affidavit with Mr. Heap before signing it. ACE cites no testimony from Mr. Williams indicating that any such discussions were documented or withheld.

18. If there are any documents that reflect discussions between Mr. Heap and Mr. Williams about the cost and difficulty of filing and prosecuting a claim, they have been produced. Likewise, all documents reflecting Mr. Heap’s communications with ACE regarding cut-through arrangements have been produced. Internal work-product relating to the preparation

of Mr. Williams' affidavit -- prepared after the Liquidator filed the Proposed Agreement with the Court and ACE filed its objections thereto -- are beyond the scope of the Guidelines and not otherwise discoverable.

E. Documents Created By Mr. Fleming.

19. ACE seeks documents "created by in-house counsel for Equitas, Robert Fleming, in connection with negotiation of the Proposed Agreement." According to ACE, Mr. Fleming was involved in drafting and reviewing counterproposals set forth by Equitas in its negotiations with Home over the Proposed Agreement. Internal documents concerning counterproposals over the Proposed Agreement are irrelevant to an evaluation of the reasonableness of the Proposed Agreement.

20. Likewise, such documents are beyond the scope of the Guideline. Mr. Williams' affidavit does not discuss the drafting of counterproposals. Mr. Williams' affidavit also makes no mention whatsoever of Mr. Fleming. In preparing his affidavit, Mr. Williams did not rely upon any documents prepared by Mr. Fleming in connection with negotiation of the Proposed Agreement. To the extent Mr. Fleming has documents that were even arguably relied upon by Mr. Williams in preparing his affidavit (*i.e.*, a memo reflecting a discussion with outside counsel), they have been produced.

F. Equitas Has Not Made Any Unwarranted Redactions.

21. ACE's assertion that Equitas made unwarranted redactions in four documents is baseless. Redactions to the document titled "Draft Counter Proposal" do not contain information relief upon by Mr. Williams in preparing his affidavit. The relevant portion of the document, reflecting consideration of the alternatives discussed in Mr. Williams' affidavit, were produced without redaction. The redacted portion of the memo does not reflect consideration of those alternatives or any other matter discussed in Mr. Williams' affidavit. Internal documents

concerning the negotiation of the Proposed Agreement with Home, including the redacted portions of the “Draft Counter Proposal,” are irrelevant and beyond the scope of the Guidelines.

22. ACE also complains that notes of privileged communications were redacted. These redactions also were appropriate. Mr. Williams has testified that all responsive portions of these documents have been produced. Williams Tr. at 174:6-23, 183:9-184:4. Moreover, Equitas submits that there was no basis for requiring Equitas to produce privileged documents in the first instance. Mr. Williams did not review these documents in connection with the preparation of his affidavit. Williams Tr. at 174:1-5. Nothing in his affidavit discusses legal advice, or even asserts that legal advice was obtained. There certainly is no basis for further intrusion into Equitas' privileged communications, whether by way of in camera review or otherwise.

CONCLUSION

23. ACE's motion appears to be a desperate attempt to keep Rhydian Williams from testifying. Whatever ACE's motive, it is not driven by an inability to cross-examine Mr. Williams or a need for additional documents. Equitas has produced all documents called for by the Guidelines. ACE has had a full and fair opportunity to examine Mr. Williams concerning such documents and all other matters set forth in his affidavit. ACE's motion should be denied in its entirety.²

² To the extent ACE seeks an order “compelling” the production of documents, Equitas renews its prior objections that it has never been and cannot be properly served with a subpoena.

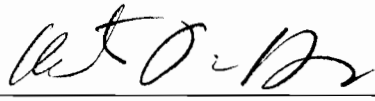
Respectfully submitted,

EQUITAS LIMITED

By its attorneys,

SULLOWAY & HOLLIS


Dated: June 22, 2005

By  _____

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CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2005, a copy of this Response was delivered by hand (if noted on the service list) or sent by first-class mail, postage prepaid, to those on the attached service list.

 _____

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THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

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

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1 point 9, that you've written the word "no" in answer to the
2 question:
3 "Is there any set-off counterclaim or other
4 defense which should be deducted by the Home from your
5 claim?"
6 What did you mean by that?
7 A. I meant that in terms of that particular
8 question, no was an appropriate answer. There is additional
9 information in point 8 that has been redacted.
10 Q. Okay. And who redacted the information in
11 point 8?
12 A. My counsel?
13 MR. GORDON: Do you know who did it?
14 A. No.
15 Q. Okay, well can you tell me, do you recall what
16 was in point 8, if you didn't redact it and your counsel
17 didn't redact it?
18 A. There's a reference to the set-off arrangement
19 that had been created through a commutation contract.
20 Q. Can you explain what that arrangement was?
21 A. (Discussion with counsel) The Equitas had
22 been in negotiation with the Home prior to Home's
23 liquidation. That negotiation continued after the Home's
24 liquidation carried out by the counterparty managers, and as
25 part of that negotiation, an amount of set-off allowed

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1 within the estate was determined, and that formed part of
2 the commutation contract, and is subject to the presentation
3 of various claims and conditions.
4 Q. What was the amount of the set-off that was
5 agreed?
6 A. 20 million.
7 Q. Is that in relation to AFIA liabilities or
8 non AFIA?
9 A. AFIA liabilities principally. Actually,
10 20 million is AFIA liabilities.
11 Q. Just so that I'm clear, you and Home have
12 established that the amount of Home's claim against Equitas
13 is \$20 million?
14 A. Home's claim against --
15 Q. Sorry, Equitas's claim against Home is
16 \$20 million for set-off purposes?
17 A. For set-off purposes.
18 Q. Who negotiated that agreement?
19 A. That would be Karen Amos.
20 Q. Other than in relation to set-off, is there
21 any other aspect of the commutation contract that deals with
22 AFIA related liabilities?
23 A. Not to my knowledge.
24 Q. Have you provided a copy of that commutation
25 contract to your counsel?

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1 A. I can't recall.
2 Q. And how did you fix the claim at \$20 million
3 for set-off purposes?
4 A. I didn't fix it.
5 Q. Okay, do you know how it was fixed?
6 A. Through negotiation.
7 Q. Okay. Do you know whether there are any
8 documents that reflected that negotiation?
9 A. I haven't seen any.
10 Q. And if there were, who would have had them?
11 A. It would be Karen Amos.
12 Q. Okay. Did you ask Miss Amos to provide those
13 documents to Mr. Gordon?
14 A. I can't recall.
15 MR. GORDON: Note for the record that counsel for
16 Lovells agreed that we would not be producing documents
17 relating to the commutation or the set-off.
18 MR. LEE: I think we'll have to agree to disagree
19 on that one again.
20 MR. GORDON: Counsel for ACE, I meant.
21 Q. When was that commutation entered into?
22 A. The commutation contract was signed
23 January 04.
24 MR. BOUFFARD: I'm sorry, what was the answer
25 again?

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1 A. I think the commutation contract was signed
2 January 04.
3 Q. Is that before you executed the agreement
4 that's referred to in your affidavit?
5 A. I'd have to be reminded of the date of --
6 before I executed the agreement? I can't recall when the
7 agreement was signed.
8 Q. Do you know whether Equitas sought to set off
9 larger than \$20 million from Home?
10 A. Yes, it did.
11 Q. Do you recall what you were initially seeking
12 by way of set-off?
13 A. I believe 40 million plus.
14 Q. Is there a document that would reflect what
15 you were originally seeking?
16 A. Probably.
17 Q. Is the \$20 million a crystalized number, in
18 other words is it a hard number?
19 A. Yes, it is.
20 Q. Does Home have any claims against Equitas?
21 A. No.
22 Q. Just to be clear, Home is not a creditor in
23 any way of any Equitas syndicate?
24 A. No, it isn't, because we've commuted our
25 liabilities.

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1 Q. How large was Home's claim against Equitas?
 2 A. I can't recall.
 3 Q. Do you have a general idea of how large it
 4 was?
 5 A. Over 100 million.
 6 Q. Do you know what number was agreed for the
 7 purpose of the commutation?
 8 A. I can't recall.
 9 Q. Was it over \$100 million?
 10 A. I believe so.
 11 Q. Now is the \$20 million in set-off split
 12 between various syndicates?
 13 A. Yes, it would be.
 14 Q. Is the set-off syndicate by syndicate?
 15 A. I believe so.
 16 Q. Was it Miss Amos who calculated Equitas's
 17 set-off position?
 18 A. I don't know.
 19 Q. Would that have been one of her
 20 responsibilities?
 21 A. She would have been involved in that, yes.
 22 Q. When did you first become aware that Equitas
 23 was seeking in excess of \$40 million by way of set-off?
 24 A. I can't recall.
 25 Q. Okay. Was that in 2003?

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1 A. It may have been.
 2 Q. Would that have been prior to Home filing for
 3 liquidation?
 4 A. No, I don't think it was.
 5 Q. Why do you say that?
 6 A. There was some confusion over the
 7 responsibility of AFIA. We were under the impression that
 8 AFIA was the responsibility of ACE, they had managed the
 9 relationship and we were aware that there was a business
 10 transfer of a significant chunk of the business in the
 11 1980s. Because they were managing the relationship and had
 12 assumed responsibility for the bulk of the relationship, we
 13 were under the impression that the AFIA business was ACE
 14 business, and that was reinforced, I believe, by the Home in
 15 early commutation discussions.
 16 Q. But your general recollection is that it was
 17 some time in 2003 that you first became aware that Equitas
 18 had a set-off claim in excess of \$40 million?
 19 A. Yes.
 20 Q. And how did you -- sorry, how was the
 21 syndicate split for set-off established?
 22 A. I'd have to speculate. I wasn't involved in
 23 that particular aspect.
 24 Q. Is it correct then that until the -- sorry, at
 25 what point in time did you find out that the Equitas claim

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1 against Home for set-off purposes would be \$20 million?
 2 A. That would be late 2003.
 3 Q. So between some time in 2003 and late 2003,
 4 you were of the opinion that Equitas's set-off was in excess
 5 of \$40 million?
 6 MR. GORDON: Objection.
 7 A. I was under the impression that the set-off
 8 was significant, yes.
 9 Q. And when you say significant, do you mean in
 10 excess of \$40 million?
 11 A. That was my understanding.
 12 Q. Am I right that it was Miss Amos's
 13 responsibility to communicate Equitas's set-off position to
 14 the Home?
 15 A. In what context?
 16 Q. In the context of the commutation discussion.
 17 A. Yes, she would be dealing with it.
 18 Q. Have you had any conversations with anybody
 19 regarding Equitas's set-off position in the Home
 20 liquidation?
 21 A. Any conversation? That's rather broad, but
 22 yes.
 23 Q. Okay, with whom?
 24 A. We would have -- I would have discussed that
 25 with Gareth Hughes.

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1 (11.00 am)
 2 Q. Anybody else outside of Equitas?
 3 A. Not that I recall.
 4 Q. Do you recall what you discussed with
 5 Gareth Hughes?
 6 A. Only that there were -- I can't remember
 7 precisely, but there would be commutation discussions
 8 underway, undertaken by a separate team within Equitas.
 9 Q. Did you discuss Equitas's set-off position
 10 with Gareth Hughes prior to the commencement of the
 11 commutation discussions?
 12 A. I don't know. I can't recall.
 13 Q. When did the commutation discussions begin?
 14 A. I don't know that, I'm not sure.
 15 Q. Who would know?
 16 A. Karen Amos.
 17 Q. Did you communicate to Gareth Hughes what
 18 Equitas's set-off number was at any stage prior to the
 19 commutation discussions?
 20 A. I can't recall that.
 21 Q. Did you communicate that number to anybody at
 22 Ernst & Young?
 23 A. I can't recall that.
 24 Q. Did you communicate that to Mr. Bengelsdorf?
 25 A. I can't recall that.

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1 Q. Did you communicate it to Mr. Rosen?
 2 A. No, I can't recall that.
 3 Q. Did you calculate how much it would cost
 4 Equitas to prosecute its claims in the Home liquidation?
 5 A. No, I didn't.
 6 Q. Okay. Did you discuss with anybody how much
 7 that exercise would cost?
 8 A. Not precisely, no.
 9 Q. Okay. Generally, did you have that discussion
 10 with anybody?
 11 A. Yes.
 12 Q. With whom?
 13 A. Jeremy Heap.
 14 Q. Do you recall when you had that discussion?
 15 A. When?
 16 Q. Yes.
 17 A. Late 2003.
 18 Q. Do you recall generally what you discussed?
 19 A. We talked about the value of presenting claims
 20 over and above our offset position in the estate.
 21 Q. And at the time you had that conversation with
 22 Mr. Heap, did you know what your offset claim was?
 23 A. We had an idea, or he did.
 24 Q. And what was the idea at that point in time?
 25 A. Up to 40 million.

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1 Q. And was that 40 million a hard number?
 2 A. It was based on work that Karen Amos and her
 3 team would have carried out.
 4 Q. But was that \$40 million to be the sum total
 5 of your unpaid paids plus some liquidated value for
 6 outstandings and IBNR?
 7 A. Yes.
 8 Q. Did you get any advice on the effect of filing
 9 a proof of claim in the Home estate from anybody?
 10 A. Yes.
 11 Q. From whom did you get that advice?
 12 A. From -- that would be from UK counsel and
 13 US counsel as referred to earlier.
 14 Q. And who was the UK counsel, is that the QC?
 15 A. William Trower.
 16 Q. And the US counsel was whom?
 17 A. Sorry, his name escapes me.
 18 Q. Do you recall which firm he was with?
 19 A. Baach Robinson.
 20 Q. Did you provide that advice to Mr. Gordon?
 21 A. Yes.
 22 Q. Were you aware of what Equitas's set-off
 23 number was in May 2003?
 24 A. In May 2003?
 25 Q. Yes.

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1 A. No.
 2 Q. Do you recall when you first became aware that
 3 you were seeking a set-off in excess of \$40 million?
 4 A. As I said earlier, the view was that the
 5 negotiation with the Home excluded AFIA, because AFIA was
 6 managed and ostensibly owned and run by ACE, it was only
 7 after the liquidation that it became apparent that the
 8 strict legal position was that the Home were responsible for
 9 the AFIA book, so it would have been some time after the
 10 liquidation that I became aware that the offset was far more
 11 significant than previously thought.
 12 MR. GORDON: Just for clarification, you said in
 13 excess of 40 million, I think the witness has previously
 14 said up to 40 million. The record is what it is.
 15 MR. LEE: The record is what it is, right.
 16 Q. I'd like to mark Williams 3 for identification
 17 purposes.
 18 (Exhibit Williams 3 marked for identification)
 19 Q. Did you draft this e-mail?
 20 A. Yes, I did.
 21 Q. Looking at the first bullet point, do you
 22 recall what Mr. Rosen's comments were in relation to offset?
 23 A. Not precisely, no.
 24 Q. Generally, do you recall?
 25 A. That Equitas would be denied offset in the US.

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1 Q. Do you recall what bases he mentioned for
 2 that?
 3 A. I can't recall.
 4 Q. Did you discuss that conversation with anybody
 5 at Equitas?
 6 A. I don't understand the question.
 7 Q. I'll strike it.
 8 Did you obtain legal advice regarding Equitas's
 9 offset rights in the US?
 10 A. Not that I recall.
 11 Q. Did you investigate whether Mr. Rosen's
 12 comments were true regarding whether Equitas would be denied
 13 offset in the US?
 14 A. No.
 15 Q. Did you explore this first bullet point with
 16 anybody?
 17 A. I don't understand the question.
 18 Q. Well, did you accept Mr. Rosen's comments
 19 about Equitas being denied offset in the US and do nothing
 20 more?
 21 A. I accepted that was his view.
 22 Q. I'm turning to the -- I think it's the fifth
 23 bullet point down. Did you calculate that Equitas had
 24 upwards of \$100 million of the AFIA piece yourself?
 25 A. No.

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1 Q. Who calculated that number?
2 A. That would have been provided to me as
3 a product of the systems.
4 Q. And did you provide the information that
5 Mr. Hughes asked for in this bullet point?
6 A. I can't recall precisely, I may have given him
7 an indicative number, but not necessarily precisely.
8 Q. Turning to the penultimate bullet point, it
9 states here that you referred to the Folksam branch
10 situation; what did you mean by that?
11 A. That there was a UK insolvency for the Folksam
12 insurance company, and we were concerned that the UK branch
13 would be -- all the assets would be repatriated to Sweden
14 for liquidation proceedings in Sweden, and we were exploring
15 the possibility of having a UK proceeding for the UK branch.
16 Q. Who were you exploring that with?
17 A. With the provisional liquidators.
18 Q. Did they provide you with any advice on
19 whether or not one could have a separate liquidation for the
20 UK branch?
21 A. Yes, they did.
22 Q. Do you recall what that advice was?
23 A. I believe it became impractical.
24 Q. Do you know why it was impractical?
25 A. I can't recall.

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1 Q. Was that advice in writing?
2 A. I'm tempted to say it must be, but I can't
3 recall the document.
4 Q. Did you take separate advice on that point
5 yourself?
6 A. I can't recall.
7 Q. Turning to the last bullet point, what did you
8 mean by the first sentence?
9 A. The last bullet point?
10 Q. Yes.
11 A. "I said that UK creditors were more likely to
12 achieve most through the offset rather than through any
13 dividend."
14 Because my understanding was that the dividend
15 prospects were low for creditors, the most they could
16 realize is through the process of offset.
17 Q. And at the time that you wrote this e-mail,
18 did you know what Equitas's offset was?
19 A. Only the ballpark figures that I've advised to
20 you already.
21 Q. In the fourth bullet point from the bottom,
22 I guess I'll just read it, you're referring to what
23 Gareth Hughes said, that:
24 "... he had not heard that suggestion before, but
25 from his understanding, ACE were reinsurers."

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1 Do you know what he meant by that?
2 A. You'd have to ask him.
3 Q. Did you understand what he meant by that?
4 A. "He said that he had not heard that suggestion
5 before, but from his understanding, ACE were reinsurers."
6 This related to the transfer of business in the
7 80s, and it was my understanding that the business had
8 transferred absolutely to ACE, and he was asserting that
9 actually it wasn't a novation, that there was another
10 agreement in place, and he speculated it was a reinsurance
11 agreement.
12 (11.15 am)
13 Q. Okay. There's a portion of the document
14 redacted; do you know who redacted this document?
15 A. I think that was my counsel.
16 Q. Do you know whether or not a document without
17 the redaction has been produced to ACE by your counsel?
18 A. To ACE?
19 Q. To ACE's counsel.
20 A. I don't know.
21 MR. LEE: Jack, is that part of the package that
22 you provided to us?
23 MR. GORDON: No.
24 MR. LEE: Are you going to provide us the
25 nonredacted e-mail?

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1 MR. GORDON: I'd have to go back and look at what
2 the redaction was, why it was redacted.
3 MR. LEE: Can I inquire of the witness what was
4 redacted?
5 MR. GORDON: I think you did. I think he doesn't
6 know.
7 A. I can't recall.
8 Q. In relation to the claims that you filed in
9 the Home liquidation, is Home Equitas's sole reinsurer for
10 those claims?
11 A. I don't know.
12 Q. Am I right now that after the commutation,
13 Equitas doesn't have any other claims against the Home
14 beyond those that were submitted in the proof of claim?
15 A. That's my understanding.
16 Q. And that other than those claims that were
17 commuted, Home has no further claims against Equitas?
18 A. That's my understanding too, yes.
19 Q. And as a result of the commutation, Equitas is
20 paying an amount to the Home?
21 A. Or has paid.
22 Q. Or has paid, okay. And that amount is -- do
23 you know what that amount is?
24 A. No.
25 Q. Is it in excess of \$100 million?

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1 A. I believe so.

2 Q. Am I right that Equitas did not file a proof
3 of claim for its non AFIA related claims?

4 A. Yes, that's correct.

5 Q. Has anybody at Equitas discussed its set-off
6 position with any AFIA cedent?

7 A. Not to my knowledge.

8 Q. Have you discussed filing a proof of claim in
9 the Home liquidation with any AFIA cedent?

10 A. Yes.

11 Q. Okay, with whom?

12 A. With other AFIA cedents. Sorry, the precise
13 number and names I can't recall, all of them, but it would
14 have included the XS, Unionamerica and English & American.

15 Q. Do you have any notes that reflect those
16 conversations?

17 A. Yes.

18 Q. Have those been provided to your counsel?

19 A. Yes.

20 Q. Who were your discussions with at XS?

21 A. Who with at XS?

22 Q. Yes.

23 A. I can't recall the precise names, names are
24 not my strong point. I'd need to look at attendance lists.

25 Q. Okay. Were those discussions in

Page 43

1 meetings or --

2 A. Yes.

3 Q. Did the AFIA cedents meet independently of
4 meetings with Ernst & Young?

5 A. Yes.

6 Q. Okay. And were there attendance notes made of
7 those meetings?

8 A. There would be notes made, what they would --
9 I can't recall formal notes or minutes being published, no.

10 Q. Do you recall how many such meetings there
11 were?

12 A. Not precisely, no.

13 Q. More than five?

14 A. I would have said a handful of meetings.

15 Q. And beyond Unionamerica, XS and English &
16 American, who else would have been present at those
17 meetings?

18 A. If we can go through -- have you got some
19 lists there? It's part of the pack that --

20 Q. Was Zurich present?

21 A. Oh yes, sorry, Agrippina and Wurtembergische
22 were represented by Gemot Warmuth; G-e-r-n-o-t
23 W-a-r-m-u-t-h, I think.

24 Q. And all of your attendance notes of those
25 meetings were provided to Mr. Gordon?

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1 A. Yes.

2 Q. And any meeting notes that were prepared for
3 the group were provided to Mr. Gordon?

4 A. Yes.

5 Q. Do you recall when the first such meeting took
6 place?

7 A. Precisely no, it would have been early
8 October 03.

9 Q. So prior to early October 03, there were not
10 any meetings of the AFIA cedents that you were aware of?

11 A. I can't recall there being formal meetings

12 Q. Did you have telephone conversations with any
13 of the AFIA cedents prior to that date?

14 A. I can't recall.

15 Q. In relation to proofs of claim, what did you
16 discuss with them at the first such meeting, if you can
17 recall?

18 A. Whether we should embark upon presenting any
19 proofs of claim.

20 Q. And who raised that suggestion?

21 A. I can't recall.

22 Q. Was there a consensus at that first meeting?

23 A. A consensus on what?

24 Q. On whether or not to file proofs of claim.

25 A. I think there was, there was a feeling that if

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1 the estate wasn't going to produce a dividend for class V
2 creditors, that few people could see any benefit, if any at
3 all, to present claims beyond offset.

4 Q. What was Equitas's offset in October of 2003?

5 MR. GORDON: Asked and answered.

6 A. As I've said before, my understanding was
7 upwards of 40 million.

8 Q. Did you have any discussions with anybody at
9 KPMG regarding whether or not English & American were going
10 to file a proof of claim in the Home liquidation?

11 A. I might have, yes.

12 Q. Do you recall with whom?

13 A. Probably Sarah Ellis.

14 Q. Do you recall what was discussed?

15 A. I was under the impression that English &
16 American's claim was of the order of 20 million, quite
17 significant, but then I also learned that there was
18 a counterclaim of 20 million back to them, so it would have
19 been discussed in that context, that they were likely to
20 present a proof of claim because they would want to realize
21 their maximum offset.

22 Q. Okay. Do you recall having a discussion with
23 Andrew Brannon in relation to whether or not Mentor would
24 file a proof of claim?

25 A. No, I can't recall that.

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1 **Q. Do you recall having a discussion with anybody**
 2 **at Riverstone regarding whether they would file a proof of**
 3 **claim?**
 4 A. I can't recall precise discussions, but
 5 Riverstone and XS and others who participated in meetings of
 6 the AFIA creditors were quite vociferous in terms of the
 7 amount of detail they wanted to hand over to the Home, and
 8 what they would or would not do as far as presenting a proof
 9 of claim was concerned.
 10 **Q. Was there any discussion of the length of time**
 11 **it would take to file a proof of claim in any of those**
 12 **meetings?**
 13 A. In the pure AFIA meetings?
 14 **Q. Yes.**
 15 A. I think there was a lot of comment that this
 16 was not going to be an easy process, no one liked having to
 17 present claims, especially with the detail, and difficulty
 18 faced with presenting claims to ACE in the past.
 19 **Q. Did any AFIA cedent tell you they wouldn't**
 20 **file a proof of claim?**
 21 A. I can't recall them saying that they wouldn't,
 22 I think the positions were reserved.
 23 **Q. Did any AFIA cedent tell you that they would**
 24 **file a proof of claim?**
 25 A. The comments in respect of filing proofs of

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1 claim were very much up to the level of offset, everyone was
 2 very guarded as to what would happen beyond that.
 3 **Q. Did any AFIA cedent communicate to you their**
 4 **set-off position?**
 5 A. I'd learned that English & American had
 6 a significant offset position.
 7 **Q. When did you learn that?**
 8 A. One of the meetings.
 9 **Q. In relation to Equitas's offset position, do**
 10 **you recall what -- whether there was a breakdown in the**
 11 **\$40 million number between unpaid paid, outstandings and**
 12 **IBNR?**
 13 A. I wasn't party to the detail, so no.
 14 MR. LESLIE: Gary, if this is convenient, can we
 15 take a quick break?
 16 MR. LEE: Sure.
 17 (11.31 am)
 18 (A short break)
 19 (11.45 am)
 20 **Q. So did you discuss whether Equitas would file**
 21 **a proof of claim with anybody at Ernst & Young?**
 22 A. Yes, although I can't recall the precise
 23 details.
 24 **Q. With whom did you discuss that?**
 25 A. With Sarah Ellis and Gareth Hughes.

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1 **Q. Do you recall the first time you had that**
 2 **discussion?**
 3 A. No.
 4 **Q. Do you recall what you said to Sarah Ellis**
 5 **generally?**
 6 A. Generally, we were concerned about what
 7 presenting a proof of claim would mean to ourselves; whether
 8 it would be retractable, what our options were, whether it
 9 limited us in some way.
 10 **Q. Did you have the same kind of conversations**
 11 **with Gareth Hughes?**
 12 A. Yes.
 13 **Q. Do you recall when those discussions took**
 14 **place generally?**
 15 A. Back end of 2003.
 16 **Q. Did you discuss whether Equitas would file**
 17 **a proof of claim with anybody at Home -- at the Home?**
 18 A. Sorry, can you repeat the question?
 19 **Q. Did you discuss whether Equitas would file**
 20 **a proof of claim with anybody at the Home?**
 21 A. I can't recall.
 22 **Q. Did you discuss it with Pete Bengelsdorf?**
 23 A. I honestly can't recall.
 24 **Q. Did you discuss it with Jonathan Rosen?**
 25 A. I can't recall.

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1 **Q. I'd like to mark as Williams 4 for**
 2 **identification five letters from Gareth Hughes care of you,**
 3 **care of Rhyddian Williams, I think they're Bates numbered**
 4 **A521 through 525.**
 5 (Exhibit Williams 4 marked for identification)
 6 **Q. Do you recall receiving these letters?**
 7 A. Yes.
 8 **Q. Just turning to point 2, Mr. Hughes asks for**
 9 **your advice as to whether or not you intend to file a proof**
 10 **of claim in the Home estate.**
 11 A. Mm.
 12 **Q. Did you respond to Mr. Hughes?**
 13 A. I can't recall responding in writing.
 14 **Q. Did you respond orally?**
 15 A. We would have had a discussion about it.
 16 **Q. Do you recall how soon after July 31st 2003**
 17 **you had that discussion?**
 18 A. No, I can't.
 19 **Q. What did you tell him?**
 20 A. That we would probably file a proof of claim
 21 up to the amount of offset.
 22 **Q. Was that conversation, do you know, in August**
 23 **of 2003?**
 24 A. I can't remember.
 25 **Q. Okay. Would you have recorded that**

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1 conversation in writing?
2 A. Not necessarily.
3 Q. Do you know why you received five different
4 letters?
5 A. We probably received more, it would be one
6 letter for each syndicate, maybe one letter for each
7 syndicate managing agency.
8 Q. And how many managing agents -- how many
9 syndicates are involved in the Equitas's claim against the
10 Home?
11 A. I don't know.
12 Q. Who would know that?
13 A. Karen Amos.
14 Q. Did you provide him the information broken
15 down by syndicate that's referred to in point 1 of his
16 letter?
17 A. Not at the time, no.
18 Q. When did you provide that information?
19 A. The first time we would have provided that
20 sort of information would have been in the proof of claim
21 submitted in 2004.
22 Q. Was that done on a by syndicate basis?
23 A. Yes.
24 Q. Do you know whether the numbers that comprised
25 the proof of claim had changed over time?

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1 A. I don't understand the question.
2 Q. Well, from the date of this letter -- when you
3 received this letter, did you calculate the numbers that are
4 referred to in point 1 here?
5 A. No.
6 Q. Sorry, just to be clear, do you recall having
7 any discussion with Mr. Bengelsdorf regarding filing a proof
8 of claim in the Home liquidation?
9 A. Generally?
10 Q. Yes.
11 A. And to him alone, or in the context of
12 creditor meetings?
13 Q. No, to him alone.
14 A. I can't recall.
15 Q. Did you communicate Equitas's set-off position
16 to Mr. Bengelsdorf at any time?
17 A. Not to my knowledge.
18 Q. Can I mark as Williams 5 for identification
19 a one page document Bates numbered A845?
20 (Exhibit Williams 5 marked for identification)
21 Q. And I'm going to attach what's Bates numbered
22 900, which I think Mr. Gordon represented was the covering
23 e-mail that went with this document.
24 Did you prepare the draft counterproposal to the
25 liquidators of the Home Insurance Company yourself?

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1 A. That document, yes.
2 Q. Do you recall when you prepared this document?
3 A. Without reference to the e-mail, I would have
4 had a guess that it would have been round about November or
5 December 2003.
6 MR. LESLIE: Gary, excuse me, is the cover memo
7 part of Williams 5?
8 MR. LEE: I believe so.
9 MR. LESLIE: Okay, thank you.
10 Q. Were there any prior drafts of this e-mail
11 before it was communicated to the recipients of the
12 December 4th e-mail?
13 A. Yes, there were.
14 Q. Did you maintain copies of those prior drafts?
15 A. Yes.
16 Q. Did you provide them to Mr. Gordon?
17 A. Yes.
18 Q. Did you prepare any other notes outlining the
19 principles for preparing a counteroffer to the Home, or was
20 this the only one?
21 A. I think this is the only one.
22 Q. Do you know who redacted the e-mail A485?
23 A. I think it would be counsel.
24 MR. GORDON: If you know, he's asking.
25 Q. Do you know what was redacted?

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1 A. I can't recall.
2 Q. But you provided this e-mail in unredacted
3 form to each of the recipients of the e-mail?
4 A. Yes.
5 Q. Just so I'm clear, you don't recall what was
6 redacted?
7 A. I can't recall.
8 Q. Do you have a general idea of what was
9 redacted?
10 A. I haven't got a clue, sorry.
11 Q. Was this e-mail shared with anybody at the
12 Home?
13 A. I don't recall. I don't know, I honestly
14 don't know.
15 Q. Was this e-mail shared with anybody at
16 Ernst & Young?
17 A. I can't recall.
18 Q. Were the contents of this e-mail shared with
19 anybody at Home?
20 A. Were the contents shared? I can't recall
21 circulating this generally, but I might be mistaken, I can't
22 recall.
23 Q. Is the same true as regards Ernst & Young?
24 A. Yes.
25 Q. Okay. How did you determine that reinsureds

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1 A. Yes.

2 Q. Do you recall when you first saw it?

3 A. No.

4 Q. Did you receive it some time in November 2003?

5 A. The date at the top is 28th November, so it's

6 likely it would have been presented at a meeting with the

7 creditors.

8 Q. Just turn to page 539. There's a column here

9 that says:

10 "Less individual cedent set-offs."

11 It says \$120 million. Do you know where that

12 figure came from?

13 A. No.

14 Q. Did you discuss the fact that Ernst & Young

15 estimated the individual cedent set-offs to be \$120 million

16 with anybody?

17 A. No.

18 Q. Did anybody at Ernst & Young explain where

19 that number came from?

20 A. I can't recall.

21 Q. Has anybody else explained to you where that

22 number came from?

23 A. Not to my recollection.

24 (12.45 pm)

25 Q. Do you have any understanding as to whether or

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1 not individual cedent set-offs amount to \$120 million?

2 A. Sorry, say that again?

3 Q. Do you have any understanding as to whether or

4 not individual cedent set-offs amount to \$120 million?

5 A. I've got no idea.

6 Q. Let's mark as Williams 9 for identification

7 a document with Bates numbers A653 to 654.

8 (Exhibit Williams 9 marked for identification)

9 Q. Do you recall receiving this e-mail from

10 Sarah Ellis?

11 A. Yes.

12 Q. Okay, do you know what difficulties

13 Unionamerica had with the proposal?

14 A. I can't recall the precise details, no.

15 Q. Did you discuss it with Unionamerica?

16 A. Unionamerica spent a lot of time -- they were

17 worried about a number of issues, which included the process

18 of getting claims agreed and so on. I can't recall whether

19 that's precisely the issue that's being referred to here,

20 but it was always interesting trying to get Unionamerica to

21 agree to a common set of words.

22 Q. Did you ever discuss with Unionamerica what

23 their claim was in the Home liquidation?

24 A. They were very coy about the precise nature of

25 the claim.

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1 Q. Do you know whether or not at some point

2 Unionamerica withdrew their claim?

3 A. I was unaware of that.

4 Q. Did you ever discuss set-off with

5 Unionamerica?

6 A. Not precisely with Unionamerica, but in the

7 context of AFIA cedents generally, yes.

8 Q. And what did you discuss?

9 A. What -- just --

10 Q. Generally.

11 A. Just whether it was -- affirming whether the

12 cedents were actually going to present claims up to the

13 level of offset, trying to elicit whether there was any

14 appetite for presenting claims beyond that, and so on.

15 Q. Did any AFIA cedent communicate to you prior

16 to executing this agreement that they knew what their

17 set-off was?

18 A. That they knew what their set-off was?

19 I can't recall someone saying that they know precisely what

20 their set-off is.

21 Q. Did you know what your set-off was before you

22 executed the agreement?

23 A. Precisely, the exact figure, I can't say

24 I did.

25 Q. Can I mark as Williams 10 for identification

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1 a two page document Bates numbers 870 and 871?

2 (Exhibit Williams 10 marked for identification)

3 Q. Do you know who prepared the second page of

4 this document?

5 A. I believe it was Karen Amos.

6 Q. Okay. Do you know whether this is the only

7 version of this document?

8 A. I believe it is.

9 Q. Were there any drafts?

10 A. I'm unaware. I don't know.

11 Q. Pardon me?

12 A. I don't know.

13 Q. Did you comment on a draft before it was sent

14 to Jonathan Rosen?

15 A. I can't recall commenting.

16 Q. Was this document sent out with your approval?

17 A. I can't recall being asked for my approval.

18 Q. Do you know why Miss Amos sent this document

19 to Jonathan Rosen?

20 A. You'd have to ask her.

21 Q. Well, were you in discussions with the Home at

22 that point in time?

23 A. "You" meaning Rhyddian Williams?

24 Q. "You" meaning Rhyddian Williams, yes.

25 A. Was I in discussion with Home at the time?

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1 agreement is governed by New York law?
2 A. No.
3 Q. Did you discuss the assumption agreement with
4 anybody?
5 A. Yes, I think we had counsel look at the
6 assumption agreement.
7 Q. And what did he tell you?
8 A. I can't recall.
9 Q. Did you discuss the assumption agreement with
10 Ernst & Young, other than in August of 2003?
11 A. I can't recall specific discussions about the
12 assumption agreement.
13 Q. Prior to executing the agreement, did you
14 approach ACE to discuss a cut-through?
15 A. I didn't, no.
16 Q. Do you know whether anybody at Equitas
17 approached ACE to discuss a cut-through?
18 A. It's my understanding that Karen Amos and
19 Jeremy Heap referred to it in commutation discussions with
20 ACE, yes.
21 Q. Do you know what they were told by ACE?
22 A. No.
23 Q. Did anyone from ACE approach you to discuss
24 a cut-through?
25 A. Not me, no.

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1 Q. Did you advise anybody at Ernst & Young that
2 Miss Amos and Mr. Heap were discussing a cut-through --
3 sorry, had discussed a cut-through with ACE?
4 A. I can't recall saying that Miss Amos and
5 Mr. Heap were discussing cut-throughs, but I would have
6 alluded to the fact that we were, we as Equitas.
7 Q. And who did you tell that to?
8 A. I can't recall specifically. Jonathan Rosen
9 would have been made aware, I'm sure.
10 Q. Do you recall what you told him?
11 A. No.
12 Q. Generally, do you recall what you told him?
13 A. That we were looking at all options.
14 Q. Did you tell anybody at Ernst & Young?
15 A. Again, specifically, I can't recall saying
16 specifically, "We are actively negotiating with ACE", but
17 I would have alluded to the fact that we were.
18 Q. Did you tell Jonathan that Equitas was in
19 negotiations with ACE regarding a cut-through?
20 A. I might not have used those precise words, but
21 he would have got a message of that sort, yes.
22 Q. And beyond the discussions between Mr. Heap,
23 Miss Amos and -- sorry, who did you say it was with at ACE?
24 A. Bill O'Farrell.
25 Q. Are you aware of any discussions involving

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1 anybody else at ACE regarding cut-throughs?
2 A. No.
3 Q. Has Equitas negotiated a cut-through with a US
4 reinsured in any liquidation case that you have been
5 involved in?
6 A. Not to my knowledge.
7 Q. Do you know why not?
8 A. I don't think the opportunity has arisen
9 before, where you've got such a direct relationship with
10 a major reinsurer of such significance.
11 Q. Did you discuss negotiating a cut-through with
12 any other AFIA cedent?
13 A. Sorry?
14 Q. Sorry, did you discuss your negotiations, that
15 you might be having negotiations with ACE regarding
16 a cut-through?
17 A. I might have mentioned it.
18 Q. Do you recall with whom?
19 A. No.
20 Q. Did Mr. Heap tell you what he had discussed
21 with ACE regarding cut-throughs?
22 A. When?
23 Q. Prior to executing the agreement.
24 A. No.
25 Q. Did Miss Amos tell you what she had discussed

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1 with ACE regarding cut-throughs prior to executing the
2 agreement?
3 A. She said that it had been part of the
4 discussions.
5 Q. When did she --
6 A. But not the detail.
7 Q. When did she tell you that?
8 A. At around about December time.
9 Q. Did Mr. Heap tell you what he discussed with
10 ACE regarding cut-throughs after executing the agreement?
11 A. I became aware after executing the agreement
12 that there were meeting notes.
13 Q. Did you review those meeting notes as part of
14 your preparation of your affidavit?
15 A. Not as preparation for the affidavit, no.
16 Q. Did you receive any written communication from
17 anybody at Equitas regarding whether Equitas could negotiate
18 a cut-through with ACE?
19 A. I don't understand.
20 Q. Well, did you receive any legal advice as to
21 whether you could negotiate a cut-through with ACE?
22 A. Did I receive any legal advice that Equitas
23 could negotiate? No.
24 Q. Did you receive legal advice that in fact
25 Equitas could not negotiate a cut-through with ACE?

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1 transpired that any benefit arising out of that ringfencing
2 would have to be shared with creditors worldwide anyway.
3 **Q. Well, are there any -- I'll use this term**
4 **because you used this term: are there any UK creditors other**
5 **than AFIA cedents that you're aware of?**
6 A. Not to my knowledge.
7 **Q. So the committee in this case that was formed**
8 **in the UK joint provisional liquidation was formed for the**
9 **purpose of protecting the interests of the AFIA cedents?**
10 A. Its initial thrust was, yes.
11 **Q. Did that ever change?**
12 A. When the ringfence idea -- from the ringfence
13 idea, where it seemed as though that was not viable and
14 there would be a remission of the assets to the US, and
15 a sole single liquidation, then the opportunity to look --
16 to be more introverted, to look for the benefits of purely
17 the AFIA cedents, I think that changed at that stage.
18 **Q. What was the force that brought about the**
19 **change, or what were the forces that brought about the**
20 **change, or the developments that brought about the change?**
21 A. Well, if we weren't going to deal with the UK
22 branch as a separate liquidation, then even though we would
23 still want some contribution from our efforts to protect
24 claims over and above offset, then clearly we would be
25 sharing that benefit with US and worldwide creditors.

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1 (Exhibit Williams 16 marked for identification)
2 **Q. Mr. Williams, do you recognize exhibit 16?**
3 A. No, I do not.
4 **Q. Take a look at the last page, if you would,**
5 **page 16.**
6 A. Yes.
7 **Q. Does the document bear the signature of**
8 **Jeremy Heap?**
9 A. Yes, it does.
10 **Q. Is this the reinsurance commutation agreement**
11 **between the Home and Equitas that you referred to earlier in**
12 **your testimony today?**
13 A. I've never seen the document before, insofar
14 as it appears to be -- and signed by Jeremy Heap, then yes,
15 it is.
16 **Q. Well, I want you to take the time that you**
17 **need to to just confirm that.**
18 MR. GORDON: I'm going to object, the witness said
19 he's never seen the document before, how can he confirm it?
20 **Q. Well, you work under Mr. Heap in reinsurance**
21 **recovery at Equitas, is that correct?**
22 A. That's correct, yes.
23 **Q. Did you work on the reinsurance commutation**
24 **agreement between --**
25 A. (Shakes head).

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1 **Q. You did not?**
2 MR. GORDON: You need to say no.
3 A. Sorry, no.
4 **Q. That was Miss Amos that did that, is that your**
5 **understanding?**
6 A. That's correct.
7 **Q. So if I had questions about aspects of this**
8 **that were redacted, such as paragraph 6 and paragraph 10,**
9 **I believe, Miss Amos would be the person to ask about that?**
10 MR. GORDON: Or the liquidator.
11 **Q. Well, on Equitas's side.**
12 A. I believe Karen Amos would be familiar with
13 this document.
14 **Q. Is there anyone else at the company besides**
15 **Miss Amos and Mr. Heap that would be familiar with the**
16 **document and could testify about that?**
17 A. Robert Fleming probably.
18 MR. GORDON: I'm going to object to the form of
19 the question when you say "could testify about that".
20 **Q. Would have knowledge about the contents of the**
21 **document, how about that?**
22 A. Yes.
23 MR. LESLIE: Mr. Bouffard, I can represent on
24 behalf of the liquidator that Mr. Rosen will be prepared to
25 testify when you depose him as to the set-off provisions

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1 that are contained in this agreement.
2 MR. BOUFFARD: Fair enough.
3 MR. LEE: But for the sake of the record,
4 Equitas's understanding of the set-off provisions up to the
5 time that it executed this reinsurance agreement are highly
6 relevant to our questioning of Mr. Williams, and his
7 assertions relating to offset and prosecuting the claim up
8 to offset.
9 MR. GORDON: For the sake of the record, you said
10 earlier there was an agreement as to the scope of discovery
11 which excluded commutation and set-off, and to the extent
12 it's relevant to Mr. Williams' affidavit, you've asked him
13 everything.
14 MR. BOUFFARD: Let me just say, I'm not party to
15 any agreement about scope of discovery. You may have had
16 some sort of an agreement with counsel for ACE, but I'm here
17 deposing this witness and I haven't agreed to any limitation
18 on examination concerning commutation.
19 MR. GORDON: And I haven't stopped you from asking
20 any question yet, but if you go too far afield -- because
21 the commutation agreement is not relevant to this
22 proceeding -- I will object.
23 In any event, Mr. Williams was questioned
24 extensively this morning about his knowledge of the
25 commutation and the set-off, and what he knew and what he

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

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

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1 liabilities in the scope of liabilities being considered in
2 this commutation?
3 MR. LEE: Object to the form.
4 MR. BOUFFARD: Object to the form.
5 A. Yes, it does.
6 Q. Do you know Bill O'Farrell?
7 A. No, I do not.
8 Q. Do you know of him?
9 A. I believe he's a senior member of the ACE
10 organization.
11 MR. GORDON: Just for the record, the redactions
12 on page 2 are wholly unrelated to AFIA.
13 Q. Please mark this document as Williams 22.
14 (Exhibit Williams 22 marked for identification)
15 MR. GORDON: For the record, there are redactions
16 on pages 919 and 920 of Williams exhibit 22, again
17 unrelated.
18 Q. You've seen this document before,
19 Mr. Williams?
20 A. Yes, I have.
21 Q. What is it?
22 A. It is a communication from Karen Amos to
23 Bill O'Farrell of the ACE Group.
24 Q. I refer you to the pages with Bates stamps 917
25 and 918, as distinct from the last three pages of this

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

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1 A. This appears to be a meeting note recording
 2 a meeting between Bill O'Farrell, Jeremy Heap and
 3 Karen Amos.
 4 Q. Thank you. This will be Williams 23.
 5 (Exhibit Williams 23 marked for identification)
 6 Q. Mr. Bouffard asked you a number of questions
 7 concerning these documents; I don't know whether it was
 8 through inadvertence or otherwise, but no exhibit was
 9 introduced, so I simply want to assure that we have
 10 an exhibit that reflects this document. So, Mr. Williams,
 11 you do recall that examination about these documents, I take
 12 it?
 13 A. Yes, I do.
 14 Q. Mr. Williams, are you aware of who at the ACE
 15 companies was involved in the commutation discussions that
 16 occurred during the period reflected in the notes that we've
 17 just discussed?
 18 MR. LEE: Object to the form of the question.
 19 A. I'm only aware of Bill O'Farrell being
 20 involved.
 21 Q. Did Michael Durkin ever refer to the
 22 commutation discussions in any conversation with you?
 23 A. No.
 24 Q. Thomas Wamser never referred to the
 25 commutation in discussions with you?

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1 A. I don't know who he is, so no.
 2 Q. You weren't involved in the commutation -- or
 3 were you involved in the commutation discussions?
 4 A. With ACE?
 5 Q. Yes.
 6 A. No, I wasn't.
 7 Q. Do you know who at ACE was aware of the
 8 commutation discussions?
 9 MR. LEE: I'll object to the form of the question.
 10 A. Apart from Bill O'Farrell, I'm not sure who
 11 else would have known.
 12 MR. LESLIE: Thank you.
 13 MR. LEE: I've got some re-direct, follow-up.
 14 RE-DIRECT EXAMINATION BY MR. LEE:
 15 Q. You testified earlier that you had a telephone
 16 conversation with Mr. Trower after the initial conference,
 17 is that correct?
 18 A. Yes.
 19 Q. Okay, and you testified that you had made a --
 20 you had recorded in note form the contents of that second
 21 conversation, is that correct?
 22 A. Yes.
 23 Q. Okay. And did that conversation relate to
 24 Equitas's AFIA related claims?
 25 A. Not to my knowledge.

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1 Q. Did it relate to Equitas's claims in the Home
 2 liquidation?
 3 A. Not to my knowledge.
 4 Q. It was unrelated to Equitas's claim in the
 5 Home altogether?
 6 A. I can't recall the precise detail, but not to
 7 my knowledge, no.
 8 Q. It wasn't a follow-up on the initial
 9 conference that you had with him?
 10 A. I believe not, no.
 11 Q. Related to another case?
 12 A. I can't recall.
 13 Q. But if you were to review your meeting note,
 14 you would know whether or not it related to another case
 15 altogether?
 16 A. If I reviewed the notes, I'm sure I would,
 17 yes.
 18 Q. Had you engaged Mr. Trower on an unrelated
 19 case?
 20 A. Mr. Trower advises us on a number of
 21 insolvency issues.
 22 Q. And that second conversation was not related
 23 to insolvency issues as regards the Home?
 24 A. I can't recall.
 25 Q. If that document did relate to the Home

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1 liquidation, then do you agree that it would have been
 2 a follow-up from the first call that you had with him?
 3 MR. GORDON: Objection.
 4 A. I wouldn't necessarily link the two in that
 5 way, no.
 6 Q. Turning to what's been marked as Williams 21,
 7 it refers to:
 8 "KA to provide list of Equitas policies to Bill
 9 next week."
 10 Did you produce those documents to Mr. Gordon?
 11 A. What, the list of policies?
 12 Q. Yes.
 13 A. I can't recall doing that, no.
 14 Q. You don't recall whether you did?
 15 A. Correct.
 16 Q. Okay. Do you know whether or not a net number
 17 was exchanged between Equitas and ACE?
 18 A. No, I do not.
 19 Q. But if one was, Miss Amos would have had that?
 20 A. Possibly.
 21 Q. When did you first see what's been marked as
 22 Williams exhibit 21?
 23 A. I believe in the last few weeks.
 24 Q. That was after you executed the agreement?
 25 A. Yes, it was.

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1 Q. Okay. When did you first see what's been
 2 marked as Williams exhibit 22?
 3 A. Similarly in the last few weeks.
 4 Q. That was after you executed the agreement?
 5 A. Yes, it was.
 6 Q. Did you produce all the documents referred to
 7 in Williams 22, those portions of it that have not been
 8 redacted, to Mr. Gordon?
 9 A. Sorry, can you say that again?
 10 Q. Did you provide to Mr. Gordon all of the
 11 documents that are referred to in Williams exhibit 22?
 12 MR. GORDON: Objection.
 13 A. Not to my knowledge, no.
 14 Q. But you did provide this document to
 15 Mr. Gordon?
 16 A. Yes, I did.
 17 Q. Did you produce to -- sorry, did you provide
 18 to Mr. Gordon any meeting notes that you made of any
 19 discussions you had with Miss Amos?
 20 A. I produced all my documents.
 21 Q. And did you produce to Mr. Gordon any meeting
 22 notes that Miss Amos would have prepared with you?
 23 A. Yes.
 24 Q. And did you produce to Mr. Gordon any meeting
 25 notes that Miss Amos took of a meeting with Mr. O'Farrell?

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1 A. Handwritten notes?
 2 Q. Yes.
 3 A. I can't recall any.
 4 Q. Did you ask her?
 5 A. I asked her for all relevant information.
 6 Q. Thank you.
 7 MR. GORDON: I just have a few questions.
 8 CROSS-EXAMINATION BY MR. GORDON:
 9 Q. Mr. Williams, referring you back to
 10 exhibits 13, 14 and 15, did you participate in redacting
 11 these documents?
 12 A. Yes, I did.
 13 Q. And did you review the redacted portions at
 14 that time?
 15 A. Yes, I did.
 16 Q. And were you satisfied at that time that the
 17 nonredacted portions reflect all of the legal advice you
 18 received concerning the alternatives in your affidavit?
 19 A. Yes.
 20 Q. Did you also review your notes of the second
 21 conversation you had with Mr. Trower?
 22 A. Yes.
 23 Q. Were you satisfied at that time that the notes
 24 did not contain legal advice concerning any of the matters
 25 discussed in your affidavit?

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1 A. Yes.
 2 Q. Did you produce all documents you relied upon
 3 in preparing your affidavit?
 4 A. To my knowledge, yes.
 5 Q. Thank you.
 6 MR. LEE: Subject to the reservation we made
 7 earlier, I think we're done.
 8 (5.35 pm)
 9 (Deposition concluded)

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1
 2 CERTIFICATE OF DEPONENT
 3
 4 I, RHYDIAN WILLIAMS, hereby certify that I have read the
 5 foregoing pages, numbered 1 through 187, of my deposition
 6 testimony taken in these proceedings on Friday, June 3,
 7 2005, and, with the exception of the changes listed on the
 8 next page and/or corrections, if any, find them to be a true
 9 and accurate transcription thereof.
 10
 11 Signed:
 12 Name: RHYDIAN WILLIAMS
 13 Date:
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