

030605 williams draft.txt

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LIQUIDATION OF THE HOME INSURANCE COMPANY

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Friday, June 3, 2005

(10.00 am)

RHYDIAN WILLIAMS,
having been duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. LEE:

Q. Can you please state your name for the record?

A. Rhydian Williams.

Q. Just before I continue, do you want to agree to the same stipulations that we had at the Bengelsdorf deposition?

MR. GORDON: what are those?

MR. LEE: That all objections save as to form are reserved for trial.

MR. SMITH: And motions to strike are also reserved.

MR. GORDON: We reserve the right to read and sign. We're not waiving signature.

MR. LEE: Understood.

MR. GORDON: Before you get started, I have additional documents, some of which are the privileged documents we've been talking about. I'm willing to give those to you if everybody agrees that in doing so, we're not

5 identification the affidavit of Rhydian Williams in support
6 of the liquidators' reply.

7 MR. SMITH: Just for clarification, I thought we
8 were going to be numbering exhibits through. I'm happy to
9 do it this way --

10 MR. LEE: Nobody told me.

11 MR. SMITH: That's what we did in the last
12 deposition A.

13 MR. LEE: I thought we did Bengelsdorf 1 through X
14 and I was going to do Williams 1 through X. It's up to you.
15 She's already done the stickers, it saves her time.

16 (Exhibit Williams 1 marked for identification)

17 Q. Can you turn to the last page of this
18 document? Is your signature on page 4?

19 MR. GORDON: The last page or page 4?

20 Q. I'm sorry, the penultimate page in the version
21 you've got.

22 A. Yes, it is.

23 Q. So this is your affidavit?

24 A. Yes, it is.

25 Q. Did you draft the contents of this affidavit

11
□ yourself?

1 A. No, I didn't.

2 Q. Okay, who drafted the affidavit?

3 A. I understand it's Clifford Chance.

4 Q. Who are Clifford Chance?

5 A. Clifford Chance is a law firm.

6 Q. Do you know who at Clifford Chance?

7 A. Oh, who at Clifford Chance? No, I don't.

8 Q. Are Clifford Chance your counsel?

9 A. No, they're not.

10 Q. Is the version of the affidavit that you
11 signed the version that Clifford Chance presented to you?

12 A. No, it's not.

13 Q. Were there prior drafts?

14 A. There were.

15 Q. Do you know who provided the draft to you?

16 A. David Steinberg.

17 Q. In addition to providing the affidavit to you,
18 did he provide you with any other documents?

19 A. Not that I recall.

20 Q. Did you draft any part of this affidavit
21 yourself?

22 A. Some parts, I recall, yes.

23 Q. Okay, can you go through it and tell me which
24 parts you drafted?

25
□ 12
1 A. I can't remember precisely. Note 7, part of
2 paragraph 7, when it related to applicable offset, I would
3 have reworded that (check), but I can't recall any other
4 major amendments.

5 Q. Okay. Do you recall what change you made in
6 relation to paragraph 7?

7 A. Just that I preferred the words that finally
8 appeared on the affidavit.

9 Q. Do you know what words originally appeared?

10 A. I can't recall.

11 (10.30 am)

12 Q. Okay. Did you maintain the prior draft to the
13 affidavit yourself?

14 A. Did I maintain?

15 Q. Do you have copies of the prior drafts?

16 A. Yes, I do.
17 Q. Did you provide those to your lawyer?
18 A. My lawyer being?
19 Q. Mr. Gordon.
20 A. I can't recall.
21 Q. Has Mr. Steinberg provided you any other
22 documents beyond the affidavit during the life of the
23 liquidation?
24 A. Do you mean from him personally to me, or just
25 generally from Clifford Chance?
0 13
1 Q. Either.
2 A. Yes.
3 Q. Have you provided all of those documents to
4 your counsel, Mr. Gordon?
5 A. Yes.
6 Q. Did you meet with Mr. Steinberg to discuss
7 this affidavit?
8 A. Not that I recall.
9 Q. Did you discuss the affidavit with him?
10 A. Yes, I did.
11 Q. Was that by telephone?
12 A. Yes, it was.
13 Q. Do you recall what you discussed?
14 A. Only the changes that I would like to make,
15 I wanted to make.
16 Q. Did you keep any written record of the changes
17 that you wanted to make?
18 A. Yes.
19 Q. Okay, did you provide that to your counsel?
20 A. Yes.
21 Q. Aside from Mr. Steinberg, have you discussed
22 the contents of the affidavit prior to its execution with
23 anybody else?
24 A. Yes.
25 Q. With who?
0 14
1 A. With Jeremy Heap.
2 Q. And?
3 A. With our inhouse counsel, Robert Fleming.
4 Q. During the course of the Home liquidation,
5 have you provided any documents to Mr. Heap?
6 A. Yes, I have.
7 Q. And do you know whether Mr. Heap provided
8 those documents to Mr. Gordon?
9 A. Yes, he has.
10 Q. And during the course of the Home liquidation,
11 have you provided any documents to Mr. Fleming?
12 A. Yes, I have.
13 Q. Do you know whether he has provided those to
14 Mr. Gordon?
15 A. To my knowledge, yes.
16 Q. Has Mr. Fleming provided you with any
17 documents during the course of the Home liquidation that he
18 drafted, or somebody at his direction?
19 A. Yes, he has.
20 Q. And you provided those to Mr. Gordon?
21 A. Yes, I have.
22 Q. What documents did Mr. Fleming provide to you?
23 MR. GORDON: I want to consult with (check).
24 MR. LEE: I just want the record to note that
25 Mr. Gordon has asked whether ^ pending question, and my
0 15

1 answer is that's entirely inappropriate.

2 MR. GORDON: Then I'm going to instruct him not to
3 answer, because I think the question calls for privileged
4 information.

5 Q. On your counsel's instruction, are you
6 declining to answer the question? I'm asking the witness
7 whether he's declining to answer the question.

8 A. If that's my advice.

9 MR. GORDON: I'm suggesting that -- I'm offering
10 to consult with the client to see if he can provide you
11 an answer that would not infringe privilege, but if you
12 don't want me to do that, I won't.

13 MR. LEE: I think that the court has already ruled
14 that if there is a privilege, it's overcome, and we've taken
15 the position that by production of documents, it's not
16 waived. So reserve that position --

17 MR. GORDON: You can take whatever position you
18 want, but your question is: did he give you any documents
19 during the course of the Home liquidation? That's a very
20 broad question, and I don't think the court's even ever
21 considered that an issue.

22 MR. LEE: Do you want to consult with your client
23 now? Go ahead.

24 MR. GORDON: Do you want me to?

25 MR. LEE: Sure.

16

MR. GORDON: Okay.

(10.36 am)

(A short break)

(10.37 am)

MR. GORDON: Mr. Williams can answer the question
now.

A. Could you repeat the question, please?

MR. GORDON: He asked what documents -- what
documents did Mr. Fleming provide to you.

A. There would have been various communications
through e-mail, and he would have been involved in the
review and drafting of counterproposals that we made to the
estate.

Q. And did you provide copies of those e-mails to
Mr. Gordon?

A. Yes, I did.

Q. And did Mr. Heap provide you any documents
that relate to any matter in your affidavit?

A. I don't understand the question.

Q. Has Mr. Heap provided you any documents that
relate to the Home liquidation?

A. Yes, he has.

Q. And you provided those to Mr. Gordon?

A. Yes, I have.

Q. Okay. And those are documents authored by

17

Mr. Heap?

A. I would have to check on that, I'm not sure.

Q. Do you know whether he sent you any e-mails
relating to the Home liquidation?

A. I think he sent some, yes.

Q. And has Miss Amos sent you any documents that
relate to the Home liquidation.

A. Yes.

Q. Have those been provided to Mr. Gordon?

A. Yes.

Q. Do you recall what documents Miss Amos sent

12 you?

13 A. She sent me documents relating to -- meeting
14 notes that she took in respect of her discussions with ACE.

15 Q. And do you recall generally what documents or
16 e-mails Mr. Heap sent you?

17 A. He would have sent me similar types of
18 documents.

19 Q. And Mr. Amos, what sort of -- sorry,
20 Mr. Fleming.

21 A. As I said, he would have sent me e-mails
22 and -- regarding the Home estate and the work on the
23 counterproposals that we made (check).

24 Q. Did you receive any legal advice from
25 Clifford Chance regarding the content of your affidavit?

18

1 A. Not to my knowledge.

2 Q. Okay. Did you receive any legal advice from
3 Mr. Fleming regarding the content of your affidavit?

4 MR. GORDON: You can answer that yes or no.

5 A. Not that I recall.

6 Q. Okay. If you had received such legal advice,
7 that would have been part of the documents that you provided
8 to Mr. Gordon?

9 A. If I had, yes.

10 Q. Did you receive any legal advice from anybody
11 other than -- sorry, outside of Equitas, regarding the
12 content of your affidavit?

13 MR. GORDON: I'm going to object, it's kind of
14 ambiguous, when you say the content of the affidavit, do you
15 mean --

16 MR. LEE: The matters referred to in his
17 affidavit.

18 MR. GORDON: Do you mean the preparation of the
19 affidavit?

20 MR. LEE: The content.

21 MR. GORDON: Any of the content referred to in it.

22 MR. LEE: Yes.

23 A. Yes, I did.

24 Q. And who did you receive that from?

25 A. (Discussion with counsel). We received advice

19

1 from William Trower, I'm not sure he's a QC, but counsel
2 William Trower.

3 Q. Did you receive legal advice from anybody
4 else?

5 A. Not that I recall -- sorry, yes, we did, from
6 a US lawyer.

7 Q. And who was that?

8 A. I can't recall, it's on the documents that
9 were submitted.

10 Q. Did Equitas file a proof of claim in the Home
11 liquidation?

12 A. Yes, it did.

13 Q. And do you recall what the amount was?

14 A. Not precisely, no.

15 Q. Generally, do you recall?

16 A. Approximately 123 million.

17 Q. And who prepared the proof of claim form?

18 A. I prepared the proof of claim form.

19 (Exhibit Williams 2 marked for identification)

20 Q. I'm going to mark Williams 2 for
21 identification, a two page document which is the proof of
22 claim. Can you turn to the second page and tell me whose

23 signature is on that document?
24 A. That's the signature of Jeremy Heap.
25 Q. So did you prepare the proof of claim for his
□ 20
1 signature?
2 A. Yes, I did.
3 Q. Do you recall how long it took you to prepare
4 the proof of claim form?
5 A. No.
6 Q. Was it more than five minutes?
7 A. For me to write this out, it would have been
8 about five or ten minutes, yes.
9 Q. Why did Equitas file the proof of claim?
10 A. To register an interest in the estate.
11 Q. And do you know how much of the claim
12 represents unpaid paid?
13 A. Not precisely, no.
14 Q. Generally, do you recall?
15 A. Approximately 20 million.
16 Q. And do you know how much of the claim
17 represents outstandings?
18 A. I can't recall precisely.
19 Q. Generally?
20 A. 40 million.
21 Q. And is the rest IBNR?
22 A. Yes.
23 Q. Who calculated the unpaid paid number?
24 A. That number would have been drawn from our
25 systems, the term "calculated the unpaid" I don't
□ 21
1 understand. It would have been an amalgamation of our
2 unpaid paid in our systems.
3 Q. And who drew that number together?
4 A. I can't recall precisely.
5 Q. And if you could turn to paragraph 7 of your
6 affidavit, which is the first exhibit? At the end of the
7 paragraph, you refer to "any applicable set-off". What did
8 you mean by that?
9 A. I meant any set-off that had been agreed
10 between the Home and ourselves, and Equitas, that would need
11 to be taken into account before additional claims that may
12 be subject to dividend.
13 Q. And what do you mean by agreed?
14 A. Agreed as in agreed between the liquidators
15 and Equitas.
16 Q. Is it your understanding that all that's
17 required to establish a set-off is agreement between Home
18 and Equitas?
19 A. Yes, it's my understanding.
20 Q. Are you familiar with the claims determination
21 process in the New Hampshire proceeding?
22 A. Vaguely.
23 Q. If you take a look at the proof of claim,
24 you'll see in the portion relating to set-off, which is
25 point 9, that you've written the word "no" in answer to the
□ 22
1 question, "Is there any set-off counterclaim or other
2 defense which should be deducted by the Home from your
3 claim?"
4 what did you mean by that?
5 A. I meant that -- in terms of that particular
6 question, no was an appropriate answer. There is additional
7 information in point 8 that has been redacted.

8 Q. Okay. And who redacted the information in
9 point 8?

10 A. My counsel -- no?

11 MR. GORDON: Do you know who did it?

12 A. No.

13 Q. Okay, well can you tell me, do you recall what
14 was in point 8, if you didn't redact it and your counsel
15 didn't redact it?

16 A. There's a reference to the set-off arrangement
17 that had been created through a commutation contract.

18 Q. Can you explain what that arrangement was?

19 A. (discussion with counsel). The Equitas had
20 been in negotiation with the Home prior to Home's
21 liquidation. That negotiation continued after the Home's
22 liquidation carried out by the counterparty managers, and as
23 part of that negotiation, an amount of set-off allowed
24 within the estate was determined, and that formed part of
25 the commutation contract, and is subject to the presentation
23

0 of various claims and conditions.

1 Q. What was the amount of the set-off that was
2 agreed?

3 A. 20 million.

4 Q. Is that in relation to AFIA liabilities or
5 non AFIA?

6 A. AFIA liabilities principally. Actually,
7 20 million is AFIA liabilities.

8 Q. Just so that I'm clear, you and Home have
9 established that the amount of Home's claim against Equitas
10 is \$20 million?

11 A. Home's claim against --

12 Q. Sorry, Equitas's claim against Home is
13 \$20 million for set-off purposes?

14 A. For set-off purposes.

15 Q. Who negotiated that agreement?

16 A. That would be Karen Amos.

17 Q. Other than in relation to set-off, is there
18 any other aspect of the commutation contract that deals with
19 AFIA related liabilities?

20 A. Not to my knowledge.

21 Q. Have you provided a copy of that commutation
22 contract to your counsel?

23 A. I can't recall.

24 Q. And how did you fix the claim at \$20 million
0 for set-off purposes?

1 A. I didn't fix it.

2 Q. Okay, do you know how it was fixed?

3 A. Through negotiation.

4 Q. Okay. Do you know whether there are any
5 documents that reflected that negotiation?

6 A. I haven't seen any.

7 Q. And if there were, who would have had them?

8 A. It would be Karen Amos.

9 Q. Okay. Did you ask Miss Amos to provide those
10 documents to Mr. Gordon?

11 A. I can't recall.

12 MR. GORDON: Note for the record that counsel for
13 Lovells agreed that we would not be producing documents
14 relating to the commutation or the set-off.

15 MR. LEE: I think we'll have to agree to disagree
16 on that one again.

17 MR. GORDON: Counsel for ACE, I meant.

19 Q. When was that commutation entered into?
20 A. The commutation contract was signed
21 January 04.
22 MR. BOUFFARD: I'm sorry, what was the answer
23 again?
24 A. I think the commutation contract was signed
25 January 04.
0 25
1 Q. Is that before you executed the agreement
2 that's referred to in your affidavit?
3 A. I'd have to be reminded of the date of --
4 before I executed the agreement? I can't recall when the
5 agreement was signed.
6 Q. Do you know whether Equitas sought to set off
7 larger than \$20 million from Home?
8 A. Yes, it did.
9 Q. Do you recall what you were initially seeking
10 by way of set-off?
11 A. I believe 40 million plus.
12 Q. Is there a document that would reflect what
13 you were originally seeking?
14 A. Probably.
15 Q. Is the \$20 million a crystalized number, in
16 other words is it a hard number?
17 A. Yes, it is.
18 Q. Does Home have any claims against Equitas?
19 A. No.
20 Q. Just to be clear, Home is not a creditor in
21 any way of any Equitas syndicate?
22 A. No, it isn't, because we've commuted our
23 liabilities.
24 Q. How large was Home's claim against Equitas?
25 A. I can't recall.
0 26
1 Q. Do you have a general idea of how large it
2 was?
3 A. Over 100 million.
4 Q. Do you know what number was agreed for the
5 purpose of the commutation?
6 A. I can't recall.
7 Q. Was it over \$100 million?
8 A. I believe so.
9 Q. Now is the \$20 million in set-off split
10 between various syndicates?
11 A. Yes, it would be.
12 Q. Is the set-off syndicate by syndicate?
13 A. I believe so.
14 Q. Was it Miss Amos who calculated Equitas's
15 set-off position?
16 A. I don't know.
17 Q. Would that have been one of her
18 responsibilities?
19 A. She would have been involved in that, yes.
20 Q. When did you first become aware that Equitas
21 was seeking in excess of \$40 million by way of set-off?
22 A. I can't recall.
23 Q. Okay. Was that in 2003?
24 A. It may have been.
25 Q. Would that have been prior to Home filing for
0 27
1 liquidation?
2 A. No, I don't think it was.
3 Q. Why do you say that?

15 Q. Did you communicate to Gareth Hughes what
16 Equitas's set-off number was at any stage prior to the
17 commutation discussions?

18 A. I can't recall that.

19 Q. Did you communicate that number to anybody at
20 Ernst & Young?

21 A. I can't recall that.

22 Q. Did you communicate that to Mr. Bengelsdorf?

23 A. I can't recall that.

24 Q. Did you communicate it to Mr. Rosen?

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

□ 30

1 Q. Did you calculate how much it would cost
2 Equitas to prosecute its claims in the Home liquidation?

3 A. No, I didn't.

4 Q. Okay. Did you discuss with anybody how much
5 that exercise would cost?

6 A. Not precisely, no.

7 Q. Okay. Generally, did you have that discussion
8 with anybody?

9 A. Yes.

10 Q. With whom?

11 A. Jeremy Heap.

12 Q. Do you recall when you had that discussion?

13 A. When?

14 Q. Yes.

15 A. Late 2003.

16 Q. Do you recall generally what you discussed?

17 A. We talked about the value of presenting claims
18 over and above our offset position in the estate.

19 Q. And at the time you had that conversation with
20 Mr. Heap, did you know what your offset claim was?

21 A. We had an idea, or he did.

22 Q. And what was the idea at that point in time?

23 A. Up to 40 million.

24 Q. And was that 40 million a hard number?

25 A. It was based on work that Karen Amos and her

□ 31

1 team would have carried out.

2 Q. But was that \$40 million to be the sum total
3 of your unpaid paid plus some liquidated value for
4 outstandings and IBNR?

5 A. Yes.

6 Q. Did you get any advice on the effect of filing
7 a proof of claim in the Home estate from anybody?

8 A. Yes.

9 Q. From whom did you get that advice?

10 A. From -- that would be from UK counsel and US
11 counsel as referred to earlier.

12 Q. And who was the UK counsel, is that the QC?

13 A. William Trower.

14 Q. And the US counsel was whom?

15 A. Sorry, his name escapes me.

16 Q. Do you recall which firm he was with?

17 A. Baach Robinson.

18 Q. Did you provide that advice to Mr. Gordon?

19 A. Yes.

20 Q. Were you aware of what Equitas's set-off
21 number was in May 2003?

22 A. In May 2003?

23 Q. Yes.

24 A. No.

25 Q. Do you recall when you first became aware that

22 MR. GORDON: I'd have to go back and look at what
23 the redaction was, why it was redacted.

24 MR. LEE: Can I inquire of the witness what was
25 redacted?
37

1 MR. GORDON: I think you did. I think he doesn't
2 know.

3 A. I can't recall.

4 Q. In relation to the claims that you filed in
5 the Home liquidation, is Home Equitas's sole reinsurer for
6 those claims?

7 A. I don't know.

8 Q. Am I right now that after the commutation,
9 Equitas doesn't have any other claims against the Home
10 beyond those that were submitted in the proof of claim?

11 A. That's my understanding.

12 Q. And that other than those claims that were
13 commuted, Home has no further claims against Equitas?

14 A. That's my understanding too, yes.

15 Q. And as a result of the commutation, Equitas is
16 paying an amount to the Home?

17 A. Or has paid.

18 Q. Or has paid, okay. And that amount is -- do
19 you know what that amount is?

20 A. No.

21 Q. Is it in excess of \$100 million?

22 A. I believe so.

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

25 A. Yes, that's correct.

38

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

3 A. Not to my knowledge.

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

6 A. Yes.

7 Q. Okay, with whom?

8 A. With other AFIA cedents. Sorry, the precise
9 number and names I can't recall all of them, but it would
10 have included the XS, Unionamerica and English & American
11 (check)

12 Q. Do you have any notes that reflect those
13 conversations?

14 A. Yes.

15 Q. Have those been provided to your counsel?

16 A. Yes.

17 Q. Who were your discussions with at XS?

18 A. Who with at XS?

19 Q. Yes.

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

22 Q. Okay. Were those discussions in meetings
23 or --

24 A. Yes.

25 Q. Did the AFIA cedents meet independently of
39

1 meetings with Ernst & Young?

2 A. Yes.

3 Q. Okay. And were there attendance notes made of
4 those meetings?

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

7
8 were?
9 A. Not precisely, no.
10 Q. More than five?
11 A. I would have said a handful of meetings.
12 Q. And beyond Unionamerica, XS and English &
13 American, who else would have been present at those
14 meetings?
15 A. If we can go through -- have you got some
16 lists there ^ it's part of the pack that --
17 Q. Was Zurich present?
18 A. Oh yes, sorry, Agrippina and Wurttembergische
19 were represented by Gernot war not, GERNOT WARMUTH, I think.
20 Q. And all of your attendance notes of those
21 meetings were provided to Mr. Gordon?
22 A. Yes.
23 Q. And any meeting notes that were prepared for
24 the group were provided to Mr. Gordon?
25 A. Yes.
0 40
1 Q. Do you recall when the first such meeting took
2 place?
3 A. Precisely no, it would have been early
4 October 03.
5 Q. So prior to early October 03, there were not
6 any meetings of the AFIA cedents that you were aware of?
7 A. I can't recall there being formal meetings
8 Q. Did you have telephone conversations with any
9 of the AFIA cedents prior to that date?
10 A. I can't recall.
11 Q. In relation to proofs of claim, what did you
12 discuss with them at the first such meeting, if you can
13 recall?
14 A. Whether we should embark upon presenting any
15 proofs of claim.
16 Q. And who raised that suggestion?
17 A. I can't recall.
18 Q. Was there a consensus at that first meeting?
19 A. A consensus on what?
20 Q. On whether or not to file proofs of claim.
21 A. I think there was, there was a feeling that if
22 the estate wasn't going to produce a dividend for a class 5
23 creditors, that few people could see any benefit, if any at
24 all, to present claims beyond offset (check).
25 Q. What was Equitas's offset in October of 2003?
0 41
1 MR. GORDON: Asked and answered.
2 A. As I've said before, my understanding was
3 upwards of 40 million.
4 Q. Did you have any discussions with anybody at
5 KPMG regarding whether or not English & American were going
6 to file a proof of claim in the Home liquidation?
7 A. I might have, yes.
8 Q. Do you recall with whom?
9 A. Probably Sarah Ellis.
10 Q. Do you recall what was discussed?
11 A. I was under the impression that English &
12 American's claim was of the order of 20 million, quite
13 significant, but then I also learned that there was
14 a counterclaim of 20 million back to them, so it would have
15 been discussed in that context, that they were likely to
16 present a proof of claim because they would want to realize
17 their maximum offset.

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

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

22 Q. Do you recall having a discussion with anybody
23 at Riverstone regarding whether they would file a proof of
24 claim?

25 A. I can't recall precise discussions, but

42
1 Riverstone and XS and others who participated in meetings of
2 the AFIA creditors were quite vociferous in terms of the
3 amount of detail they wanted to hand over to the Home, and
4 what they would or would not do as far as presenting a proof
5 of claim was concerned.

6 Q. Was there any discussion of the length of time
7 it would take to file a proof of claim in any of those
8 meetings?

9 A. In the pure AFIA meetings?

10 Q. Yes.

11 A. I think there was a lot of comment that this
12 was not going to be an easy process, no one liked having to
13 present claims, especially of the detail and difficulty
14 faced with presenting claims to ACE in the past (check).

15 Q. Did any AFIA cedent tell you they wouldn't
16 file a proof of claim?

17 A. I can't recall them saying that they wouldn't,
18 I think the positions were reserved.

19 Q. Did any AFIA cedent tell you that they would
20 file a proof of claim?

21 A. The comments in respect of filing proofs of
22 claim were very much up to the level of offset, everyone was
23 very guarded as to what would happen beyond that.

24 Q. Did any AFIA cedent communicate to you their
25 set-off position?

43
1 A. I'd learned that English & American had a
2 significant offset position.

3 Q. When did you learn that?

4 A. One of the meetings.

5 Q. In relation to Equitas's offset position, do
6 you recall what -- whether there was a breakdown in the
7 \$40 million number between unpaid paids, outstandings and
8 IBNR?

9 A. I wasn't party to the detail, so no.

10 MR. LESLIE: Gary, if this is convenient, can we
11 take a quick break?

12 MR. LEE: Sure.

13 (11.31 am)

14 (A short break)

15 (11.45 am)

16 Q. So did you discuss whether Equitas would file
17 a proof of claim with anybody at Ernst & Young?

18 A. Yes, although I can't recall the precise
19 details.

20 Q. With whom did you discuss that?

21 A. With Sarah Ellis and Gareth Hughes.

22 Q. Do you recall the first time you had that
23 discussion?

24 A. No.

25 Q. Do you recall what you said to Sarah Ellis

44
1 generally?

2 A. Generally, we were concerned about what

20 A. Precisely, I can't recall.
21 October/November 03.
22 Q. Okay. Did you notify anyone at ACE that you
23 were negotiating the agreement?
24 A. I didn't, no.
25 Q. Do you know whether anybody at Equitas
0 71
1 notified ACE?
2 A. I don't know whether they were notified
3 precisely, but there were representatives of Equitas in
4 negotiations with ACE at the time, and AFIA was part of the
5 discussions.
6 Q. Okay, but did anybody at Equitas notify ACE
7 that they were negotiating an agreement with the joint
8 provisional liquidators?
9 A. I don't know.
10 Q. Okay. Who might know?
11 A. Karen Amos, Jeremy Heap.
12 Q. But to the best of your knowledge, you did not
13 notify ACE?
14 A. I did not notify ACE, that's correct.
15 Q. And you don't know one way or the other
16 whether anybody else did?
17 A. I'm aware that they were in discussions with
18 ACE, I don't know precisely whether they referred to this
19 particular agreement.
20 Q. Did they tell you that they -- did Mr. Heap
21 tell you that he had told ACE that Equitas was negotiating
22 an agreement with the joint provisional liquidators?
23 A. I can't recall him saying that to me.
24 Q. Okay. Did Miss Amos say that to you?
25 A. I can't recall her saying that to me.
0 72
1 Q. Okay. Did anybody tell you that they had
2 notified ACE that this agreement was being negotiated?
3 A. I was led to believe that they were aware that
4 the AFIA cedents were looking to get an arrangement with the
5 liquidators. I don't know precisely how much of that detail
6 was imparted to ACE.
7 Q. Who led you to believe that?
8 A. Karen Amos and Jeremy Heap would have
9 discussed the -- or mentioned the -- they were aware that
10 they were in negotiations with the liquidators, and I'm
11 aware that they were talking to ACE about the prospect of
12 cut-through.
13 Q. Do you know whether anybody at the Home
14 notified ACE that there were negotiations going on between
15 the JPLs and Equitas?
16 A. I'm not aware.
17 Q. Do you know whether anybody at the JPLs told
18 ACE that those negotiations were going on?
19 A. I can't recall anyone saying that.
20 Q. Okay. Have you heard -- sorry, do you
21 understand that the payments to Equitas, if there are any
22 under this agreement, are to be classified as administrative
23 expenses?
24 A. I've heard that recently, yes.
25 Q. Okay, when was the first time you heard that?
0 73
1 A. In the last month or so, with reference to the
2 court proceedings.
3 Q. And until that time, you hadn't heard it
4 before?

5 A. No.
6 Q. In your negotiations over the agreement, were
7 there any discussions regarding the total value of the AFIA
8 cedents' set-off?

9 A. Gosh, I -- I can't recall any precise numbers
10 being given, there were indications that it could be up to
11 100 million.

12 Q. Where did that indication come from?

13 A. That would have been Jonathan Rosen, perhaps,
14 in an AFIA creditors' meeting.

15 Q. So if I understand you, Jonathan Rosen told
16 you that the set-off could be up to \$100 million?

17 MR. SMITH: Objection.

18 A. It would have been in that sort of environment
19 that I heard it, I believe Jonathan would have said it,
20 but -- as I understand it, his estimate, it might have been
21 (check).

22 Q. Did you have any discussions with the other
23 AFIA cedents about what the ballpark set-off number would
24 be?

25 A. Yes, I might -- yes, I did. We tried to

0 74
1 elicit from the AFIA cedents what the respective positions
2 were.

3 Q. Was that during these meetings, or outside of
4 the meetings?

5 A. That would be in AFIA creditors' meetings
6 only, not in the Home liquidation meetings, not in the
7 informal creditors' committee meetings. Some were very coy
8 as to what the values were (check). We were aware of our
9 particular involvement, and we estimated it would be upwards
10 of -- between 50 and 100 million.

11 Q. That was your involvement or the total value
12 of the set-off?

13 A. No, our involvement, as we said earlier, was
14 about 40 million, so with the others, it would be up to
15 100 million or so.

16 Q. Did anybody else tell you what their set-off
17 number was?

18 A. English & American were upfront about it.

19 Q. And they told you it was how much?

20 A. 20 million.

21 Q. Did XS tell you?

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

23 Q. Did Gernot Warmuth tell you?

24 A. I can't recall him saying specifically

25 a number, no.

0 75

1 Q. Did he give you a range?

2 A. I can't recall a range, but I believe he said
3 that there was some set-off.

4 Q. Did anybody else tell you what their set-off
5 amount was?

6 A. If they did, I can't recall the precise
7 numbers.

8 Q. Okay. Did you do your own calculation of the
9 set-off, you personally?

10 A. No.

11 Q. I'd like to mark as Williams 7 for
12 identification a document with Bates numbers A813 through
13 844.

14 (Exhibit Williams 7 marked for identification)

15 Q. I'm not going to take you through the whole

12 to executing this agreement that they knew what their
13 set-off was?

14 A. That they knew what their set-off was?
15 I can't recall someone saying that they know precisely what
16 their set-off is.

17 Q. Did you know what your set-off was before you
18 executed the agreement?

19 A. Precisely, the exact figure, I can't say
20 I did.

21 Q. Can I mark as Williams 10 for identification
22 a two page document Bates numbers 870 and 871.
23 (Exhibit Williams 10 marked for identification)

24 Q. Do you know who prepared the second page of
25 this document?
81

1 A. I believe it was Karen Amos.

2 Q. Okay. Do you know whether this is the only
3 version of this document?

4 A. I believe it is.

5 Q. Were there any drafts?

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

7 Q. Pardon me?

8 A. I don't know.

9 Q. Did you comment on a draft before it was sent
10 to Jonathan Rosen?

11 A. I can't recall commenting.

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

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

14 Q. Do you know why Miss Amos sent this document
15 to Jonathan Rosen?

16 A. You'd have to ask her.

17 Q. Well, were you in discussions with the Home at
18 that point in time?

19 A. "You" meaning Rhydian Williams?

20 Q. "You" meaning Rhydian Williams, yes.

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

22 Q. Yes.

23 A. I can't recall when Gareth Hughes communicated
24 with us first, but with the exception of that on
25 Gareth Hughes, I wasn't talking to the Home (check).
82

1 Q. Okay, who is Joanna Ames?

2 A. Jo Ames works for Karen Amos.

3 Q. And Jon Collins?

4 A. He's Equitas's chief actuary.

5 Q. And Graham Findlater?

6 A. He's a data manipulator, works for Karen Amos.

7 Q. So just to be clear, you didn't have any input
8 into this document at all?

9 A. No.

10 Q. Do you know whether Miss Amos sent any other
11 documents to Mr. Rosen of this type?

12 A. Of this type?

13 MR. GORDON: Objection.

14 Q. For commutation discussion purposes.

15 A. I don't know.

16 Q. Do you have an understanding of what Ms. Amos
17 was trying to present here to Mr. Rosen?

18 A. I think she was trying to outline the relative
19 positions of the three parties that she could see involved
20 in the commutation discussions, the relative position of
21 ACE, the relative position of Equitas and the Home estate,
22 and look at the impacts of various aspects of set-off which

23 were in negotiation, and alternatives to a negotiated
24 settlement with the Home cut through to ACE.

25 Q. Do you understand what the difference is
□ 83

1 between how she's calculated the minimum offset offered and
2 the maximum offset offered?

3 A. Not the precise detail, no.

4 Q. Is it correct there's a suggestion at least as
5 far as the maximum offset offered is concerned that
6 Equitas's maximum offset that's being offered is
7 \$50 million?

8 A. The note at the top suggests the figures are
9 indicative for discussion purposes only, so I don't know
10 whether that relates to a precise number.

11 Q. Do you know where she obtained these
12 indicative numbers from?

13 A. No, I don't.

14 Q. She's laid out two commercial scenarios. Do
15 you know whether the notion that Equitas could cut through
16 to ACE/Cigna at 100 percent was something that she came up
17 with?

18 A. I don't know whether she alone came up with
19 that, it was always speculated as an alternative worth
20 exploring.

21 Q. Turning to paragraph 12 of your affidavit, you
22 state that Equitas had actively considered what alternatives
23 may be available to it.

24 A. Right.

25 Q. What do you mean by active consideration?
□ 84

1 A. Anything from discussing it with Jeremy Heap
2 or amongst ourselves as a PSI team to seeking counsel's
3 opinion.

4 Q. Did you personally discuss any of these
5 alternatives with ACE?

6 A. With ACE?

7 Q. Yes.

8 A. I had no discussions with ACE.

9 Q. In paragraph 8, you refer to UK situs assets.
10 what did you mean by UK situs assets?

11 A. We were looking at the branch being treated as
12 a separate liquidation, and therefore we were looking at the
13 liabilities that were due and the asset that was generated,
14 so in principle, we were looking at how the reinsurance
15 could be converted into cash and distributed to UK
16 creditors.

17 Q. And did you determine what the UK situs assets
18 were?

19 A. We believed that it was small elements of cash
20 and reinsurance asset.

21 Q. And what was the reinsurance asset?

22 A. We had looked at it as the claim against the
23 AFIA book of business (check).

24 Q. You mean the AFIA cedents' claims against Home
25 were the asset?
□ 85

1 A. No, the reinsurance that was recoverable from
2 ACE would be the asset.

3 Q. You mean the reinsurance of Home, in that
4 sentence?

5 A. In this context, we were talking about
6 exploring ways of ringfencing the estate, the UK branch, as
7 a separate entity, and the liabilities of that estate would

15
16 (2.00 pm)
17 Q. Okay, if you could turn to page 3 of your
18 affidavit, paragraph 12(b)?
19 A. Yes.
20 Q. What's a cut-through arrangement?
21 A. What I meant by that is rather than deal via
22 the Home estate, that we would cut through, ignore the Home
23 estate, and deal directly with ACE.
24 Q. Which ACE company would you cut through to?
25 A. To be honest, I don't know.

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1 Q. Were you aware --
2 MR. GORDON: Hold on one second, Gary.
3 (testing, testing)
4 (testing, testing)
5 (Discussion off the record)
6 Q. Were you aware of the assumption agreement by
7 August 2003?
8 A. Yes.
9 Q. And you understood at that time that ACE
10 reinsured the Home under that agreement?
11 A. I understood that the assumption agreement
12 conferred obligations on ACE.
13 Q. And do you know whether or not that agreement
14 was governed by US law?
15 A. No.
16 Q. Did you become aware of that at any point in
17 time?
18 A. I don't know what law covers it.
19 Q. Do you know whether the Insurance Company of
20 North America is a US company?
21 A. No.
22 Q. And you're not aware that the assumption
23 agreement is governed by New York law?
24 A. No.
25 Q. Did you discuss the assumption agreement with

94

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