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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

Page 2

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1 Friday, June 3, 2005  
 2 (10.11 am)  
 3 RHYDIAN WILLIAMS,  
 4 having been duly sworn,  
 5 testified as follows:  
 6 DIRECT EXAMINATION BY MR. LEE:  
 7 Q. Can you please state your name for the record?  
 8 A. Rhydian Williams.  
 9 MR. LEE: Just before I continue, do you want to  
 10 agree to the same stipulations that we had at the  
 11 Bengelsdorf deposition?  
 12 MR. GORDON: What are those?  
 13 MR. LEE: That all objections save as to form are  
 14 reserved for trial.  
 15 MR. SMITH: And motions to strike are also  
 16 reserved.  
 17 MR. GORDON: We reserve the right to read and  
 18 sign. We're not waiving signature.  
 19 MR. LEE: Understood.  
 20 MR. GORDON: Before you get started, I have  
 21 additional documents, some of which are the privileged  
 22 documents we've been talking about. I'm willing to give  
 23 those to you if everybody agrees that in doing so, we're not  
 24 waiving privilege.  
 25 MR. LESLIE: The liquidator agrees.

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1 MR. BOUFFARD: That's fine with me.  
 2 MR. GORDON: Being on behalf of?  
 3 MR. BOUFFARD: Benjamin Moore.  
 4 MR. LEE: That's fine on behalf of ACE. (Handed).  
 5 MR. GORDON: I'll run you through briefly what  
 6 there is.  
 7 MR. LEE: I was going to say we could leave it  
 8 until the end, but that's fine.  
 9 MR. GORDON: I just want to point out a few  
 10 things. The first page, Bates stamped 900 --  
 11 MR. BOUFFARD: Do you have another copy? (Handed).  
 12 MR. GORDON: The first page, Bates stamped 900:  
 13 just for your information, that's a cover e-mail that goes  
 14 with, I think, document 845, the draft counterproposal.  
 15 I realised that that had been omitted inadvertently.  
 16 The next document is something that was located  
 17 yesterday, it is 901 through 914.  
 18 MR. LEE: Just so I'm clear, neither 900 nor 901  
 19 were privileged, they were just inadvertently not produced?  
 20 MR. GORDON: Exactly. 915 to 921, I'm not sure  
 21 they're called for, but you can have them anyway. 922 to  
 22 934 is the typewritten transcription of the documents  
 23 previously provided. Then 935 through 40 are the privileged  
 24 documents that had previously been withheld. I know those  
 25 are handwritten, but I don't have a transcription of those.

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1 You can get him to read them into the record if you like.  
 2 MR. LEE: Okay, thank you.  
 3 Q. Mr. Williams, can you tell me, are you  
 4 currently employed?  
 5 A. Yes, I am.  
 6 Q. By whom?  
 7 A. Equitas.  
 8 Q. What is Equitas?  
 9 A. Equitas is a company set up to run off the  
 10 1992 and prior Lloyd's of London syndicates.  
 11 Q. And what is your current position at Equitas?  
 12 A. I'm head of PSI, which stands for pools  
 13 security and insolvencies.  
 14 Q. How long have you held that position?  
 15 A. Since 98.  
 16 Q. Have you held any other positions at Equitas?  
 17 A. Prior to that, I would have been  
 18 a facilitator, project manager.  
 19 Q. And how long have you been employed by  
 20 Equitas?  
 21 A. Since its inception, 1996.  
 22 Q. And prior to Equitas, did you work in the  
 23 insurance industry?  
 24 A. Yes, I worked for Syndicate Underwriting  
 25 Management Limited, SUM, I joined them in 1989.

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1 Q. What are your current responsibilities as the  
 2 head of PSI?  
 3 A. My principal responsibility is to oversee the  
 4 relationship with insolvent reinsurers, but more recently  
 5 I've acquired the pools responsibility, so I'm responsible  
 6 for relationships with pools of reinsurers. I also have  
 7 working for me an individual who looks at the security of  
 8 particular reinsurance.  
 9 Q. And in relation to the insolvency aspect of  
 10 your current position, what does that entail precisely?  
 11 A. Liaising with bust reinsurance companies,  
 12 trying to establish the value of our relationship with them,  
 13 trying to crystalize that relationship, and if there is cash  
 14 to be realized, to realize that cash.  
 15 Q. And is that with reinsurance companies both in  
 16 the US and in the UK?  
 17 A. Principally in the UK; I have a watching brief  
 18 on the US.  
 19 Q. Okay. Is there anybody else involved in the  
 20 relationship with bust US reinsurance companies?  
 21 A. There are others that have had relationships  
 22 with bust US companies, principally on the inward side, the  
 23 claims unit, as well as my boss, Jeremy Heap.  
 24 Q. And who is responsible for the outward  
 25 relationship with bust US reinsurers at Equitas?

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1 and in terms of responsibilities, yes.  
2 Q. But there's nothing in terms of practices and  
3 procedures?  
4 A. No.  
5 Q. I'd like to mark as Williams exhibit 1 for  
6 identification the affidavit of Rhydian Williams in support  
7 of the liquidators' reply.  
8 MR. SMITH: Just for clarification, I thought we  
9 were going to be numbering exhibits through. I'm happy to  
10 do it this way --  
11 MR. LEE: Nobody told me.  
12 MR. SMITH: That's what we did in the last  
13 deposition, and in terms of the second deposition --  
14 MR. LEE: I thought we did Bengelsdorf 1 through X  
15 and I was going to do Williams 1 through X. It's up to you.  
16 She's already done the stickers, it saves her time.  
17 (Exhibit Williams 1 marked for identification)  
18 Q. Can you turn to the last page of this  
19 document? Is your signature on page 4?  
20 MR. GORDON: The last page or page 4?  
21 Q. I'm sorry, the penultimate page, in the  
22 version you've got.  
23 A. Yes, it is.  
24 Q. So this is your affidavit?  
25 A. Yes, it is.

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1 Q. Did you draft the contents of this affidavit  
2 yourself?  
3 A. No, I didn't.  
4 Q. Okay, who drafted the affidavit?  
5 A. I understand it's Clifford Chance.  
6 Q. Who are Clifford Chance?  
7 A. Clifford Chance is a law firm.  
8 Q. Do you know who at Clifford Chance?  
9 A. Oh, who at Clifford Chance? No, I don't.  
10 Q. Are Clifford Chance your counsel?  
11 A. No, they're not.  
12 Q. Is the version of the affidavit that you  
13 signed the version that Clifford Chance presented to you?  
14 A. No, it's not.  
15 Q. Were there prior drafts?  
16 A. There were.  
17 Q. Do you know who provided the draft to you?  
18 A. David Steinberg.  
19 Q. In addition to providing the affidavit to you,  
20 did he provide you with any other documents?  
21 A. Not that I recall.  
22 Q. Did you draft any part of this affidavit  
23 yourself?  
24 A. Some parts, I recall, yes.  
25 Q. Okay, can you go through it and tell me which

Page 16

1 parts you drafted?  
2 A. I can't remember precisely. Note 7, part of  
3 paragraph 7, when it relates to applicable offset, I would  
4 have reworded that, but I can't recall any other major  
5 amendments.  
6 Q. Okay. Do you recall what change you made in  
7 relation to paragraph 7?  
8 A. Just that I preferred the words that finally  
9 appeared on the affidavit.  
10 Q. Do you know what words originally appeared?  
11 A. I can't recall.  
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?

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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?

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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 him.  
24 MR. LEE: I just want the record to note that  
25 Mr. Gordon has asked whether he can consult with his client

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1 during the course of a pending question, and my answer is  
2 that's entirely inappropriate.  
3 MR. GORDON: Then I'm going to instruct him not to  
4 answer, because I think the question calls for privileged  
5 information.  
6 Q. On your counsel's instruction, are you  
7 declining to answer the question? I'm asking the witness  
8 whether he's declining to answer the question.  
9 A. If that's my advice.  
10 MR. GORDON: I'm suggesting that -- I'm offering  
11 to consult with the client to see if he can provide you  
12 an answer that would not infringe privilege, but if you  
13 don't want me to do that, I won't.  
14 MR. LEE: I think that the court has already ruled  
15 that if there is a privilege, it's overcome, and we've taken  
16 the position that by production of documents, it's not  
17 waived. So reserve that position --  
18 MR. GORDON: You can take whatever position you  
19 want, but your question is: did he give you any documents  
20 during the course of the Home liquidation? That's a very  
21 broad question, and I don't think the court's even ever  
22 considered that an issue.  
23 MR. LEE: Do you want to consult with your client  
24 now? Go ahead.  
25 MR. GORDON: Do you want me to?

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1 MR. LEE: Sure.  
2 MR. GORDON: Okay.  
3 (10.36 am)  
4 (A short break)  
5 (10.37 am)  
6 MR. GORDON: Mr. Williams can answer the question  
7 now.  
8 A. Could you repeat the question, please?  
9 MR. GORDON: He asked what documents -- what  
10 documents did Mr. Fleming provide to you?  
11 A. There would have been various communications  
12 through e-mail, and he would have been involved in the  
13 review and drafting of counterproposals that we made to the  
14 estate.  
15 Q. And did you provide copies of those e-mails to  
16 Mr. Gordon?  
17 A. Yes, I did.  
18 Q. And did Mr. Heap provide you any documents  
19 that relate to any matter in your affidavit?  
20 A. I don't understand the question.  
21 Q. Has Mr. Heap provided you any documents that  
22 relate to the Home liquidation?  
23 A. Yes, he has.  
24 Q. And you provided those to Mr. Gordon?  
25 A. Yes, I have.

Page 21

1 Q. Okay. And those are documents authored by  
2 Mr. Heap?  
3 A. I would have to check on that, I'm not sure.  
4 Q. Do you know whether he sent you any e-mails  
5 relating to the Home liquidation?  
6 A. I think he sent some, yes.  
7 Q. And has Miss Amos sent you any documents that  
8 relate to the Home liquidation?  
9 A. Yes.  
10 Q. Have those been provided to Mr. Gordon?  
11 A. Yes.  
12 Q. Do you recall what documents Miss Amos sent  
13 you?  
14 A. She sent me documents relating to -- meeting  
15 notes that she took in respect of her discussions with ACE.  
16 Q. And do you recall generally what documents or  
17 e-mails Mr. Heap sent you?  
18 A. He would have sent me similar types of  
19 documents.  
20 Q. And Mr. Amos, what sort of -- sorry,  
21 Mr. Fleming.  
22 A. As I said, he would have sent me e-mails  
23 and -- regarding the Home estate and the work on the  
24 counterproposals that we made.  
25 Q. Did you receive any legal advice from

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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?

Page 29

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. 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 paid 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 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 Wurttembergische  
22 were represented by Gernot 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?

Page 44

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

Page 45

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.



Page 46

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

Page 47

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.

Page 48

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.

Page 49

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

Page 50

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?

Page 51

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?

Page 52

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?

Page 53

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

Page 74

1 Q. And was Equitas involved in negotiating this  
2 agreement?

3 A. Yes.

4 Q. If you could just turn to point 1.3.4 on  
5 page A341, who was it that -- sorry, are you there? (Pause).  
6 Sorry, my question was: who proposed that any part  
7 of the proceeds be paid to AFIA cedents?

8 A. Say that again?

9 Q. Yes, sorry. Who was it that proposed that any  
10 part of the proceeds be paid to AFIA cedents?

11 MR. GORDON: I'm going to object --

12 Q. Who proposed the language in paragraph 1.3.4?

13 A. I can't recall.

14 Q. Who proposed the concept?

15 MR. GORDON: I'm going to object, I don't see  
16 1.3.4 talking about payments to AFIA cedents.

17 Q. Sorry, who was it that proposed that the  
18 proceeds, as defined in paragraph 1.3, be paid, in part, to  
19 the AFIA cedents?

20 A. That was based on the original proposal that  
21 came from the liquidators.  
22 (12.30 pm)

23 Q. Okay. So it was their suggestion?

24 A. Yes.

25 Q. When did you begin negotiating this agreement?

Page 75

1 A. Precisely, I can't recall. October/  
2 November 03.

3 Q. Okay. Did you notify anyone at ACE that you  
4 were negotiating the agreement?

5 A. I didn't, no.

6 Q. Do you know whether anybody at Equitas  
7 notified ACE?

8 A. I don't know whether they were notified  
9 precisely, but there were representatives of Equitas in  
10 negotiations with ACE at the time, and AFIA was part of the  
11 discussions.

12 Q. Okay, but did anybody at Equitas notify ACE  
13 that they were negotiating an agreement with the joint  
14 provisional liquidators?

15 A. I don't know.

16 Q. Okay. Who might know?

17 A. Karen Amos, Jeremy Heap.

18 Q. But to the best of your knowledge, you did not  
19 notify ACE?

20 A. I did not notify ACE, that's correct.

21 Q. And you don't know one way or the other  
22 whether anybody else did?

23 A. I'm aware that they were in discussions with  
24 ACE, I don't know precisely whether they referred to this  
25 particular agreement.

Page 76

1 Q. Did they tell you that they -- did Mr. Heap  
2 tell you that he had told ACE that Equitas was negotiating  
3 an agreement with the joint provisional liquidators?

4 A. I can't recall him saying that to me.

5 Q. Okay. Did Miss Amos say that to you?

6 A. I can't recall her saying that to me.

7 Q. Okay. Did anybody tell you that they had  
8 notified ACE that this agreement was being negotiated?

9 A. I was led to believe that they were aware that  
10 the AFIA cedents were looking to get an arrangement with the  
11 liquidators. I don't know precisely how much of that detail  
12 was imparted to ACE.

13 Q. Who led you to believe that?

14 A. Karen Amos and Jeremy Heap would have  
15 discussed the -- or mentioned the -- they were aware that  
16 they were in negotiations with the liquidators, and I'm  
17 aware that they were talking to ACE about the prospect of  
18 cut-through.

19 Q. Do you know whether anybody at the Home  
20 notified ACE that there were negotiations going on between  
21 the JPLs and Equitas?

22 A. I'm not aware.

23 Q. Do you know whether anybody at the JPLs told  
24 ACE that those negotiations were going on?

25 A. I can't recall anyone saying that.

Page 77

1 Q. Okay. Have you heard -- sorry, do you  
2 understand that the payments to Equitas, if there are any  
3 under this agreement, are to be classified as administrative  
4 expenses?

5 A. I've heard that recently, yes.

6 Q. Okay, when was the first time you heard that?

7 A. In the last month or so, with reference to the  
8 court proceedings.

9 Q. And until that time, you hadn't heard it  
10 before?

11 A. No.

12 Q. In your negotiations over the agreement, were  
13 there any discussions regarding the total value of the AFIA  
14 cedents' set-off?

15 A. Gosh, I -- I can't recall any precise numbers  
16 being given. There were indications that it could be up to  
17 100 million.

18 Q. Where did that indication come from?

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

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

23 MR. SMITH: Objection.

24 A. It would have been in that sort of environment  
25 that I heard it, I believe Jonathan would have said it,

Page 78

1 but -- as I understand it, that's his estimate, it might  
 2 have been.

3 Q. Did you have any discussions with the other  
 4 AFIA cedents about what the ballpark set-off number would  
 5 be?

6 A. Yes, I might -- yes, I did. We tried to  
 7 elicit from the AFIA cedents what the respective positions  
 8 were.

9 Q. Was that during these meetings, or outside of  
 10 the meetings?

11 A. That would be in AFIA creditors' meetings  
 12 only, not in the Home liquidation meetings, not in the  
 13 informal creditors' committee meetings. Some were very coy  
 14 as to what the values were. We were aware of our particular  
 15 involvement, and we estimated it would be upwards of --  
 16 between 50 and 100 million.

17 Q. That was your involvement or the total value  
 18 of the set-off?

19 A. No, our involvement, as we said earlier, was  
 20 about 40 million, so with the others, it would be up to  
 21 100 million or so.

22 Q. Did anybody else tell you what their set-off  
 23 number was?

24 A. English & American were upfront about it.  
 25 Q. And they told you it was how much?

Page 79

1 A. 20 million.

2 Q. Did XS tell you?

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

4 Q. Did Gernot Warmuth tell you?

5 A. I can't recall him saying specifically  
 6 a number, no.

7 Q. Did he give you a range?

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

10 Q. Did anybody else tell you what their set-off  
 11 amount was?

12 A. If they did, I can't recall the precise  
 13 numbers.

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

16 A. No.

17 Q. I'd like to mark as Williams 7 for  
 18 identification a document with Bates numbers A813 through  
 19 844.  
 20 (Exhibit Williams 7 marked for identification)

21 Q. I'm not going to take you through the whole  
 22 thing.

23 A. Thank you.

24 Q. I just have a couple of questions. Who sent  
 25 you the original spreadsheets that are referred to in this

Page 80

1 e-mail?

2 A. Sarah Ellis of Ernst & Young.

3 Q. There is a reference in here to Home's  
 4 actuary, who's that?

5 A. I don't know.

6 Q. But is it right that the worksheets that are  
 7 encompassed by this e-mail were based on information  
 8 provided to you by Home's actuary?

9 A. According to Sarah Ellis, yes.

10 Q. So turn to page A817, and there's -- there are  
 11 a number of assumptions, but if you could just look at the  
 12 fifth assumption, which says:  
 13 "Cedents collective offset against Home."  
 14 Then it has a number, 100 million:  
 15 "Estimate for purposes of illustration."  
 16 Where did that \$100 million number come from?

17 A. That would have been presented as part of the  
 18 original pack from Sarah Ellis.

19 Q. Okay. And has that, to the best of your  
 20 knowledge, number changed?

21 A. Changed in what sense?

22 Q. Is that estimate still correct?

23 A. I've no idea.

24 Q. Have you had any subsequent discussions with  
 25 AFIA cedents regarding the total value of their offset?

Page 81

1 A. Subsequent to when?

2 Q. Subsequent to execution of the agreement.

3 A. No.

4 Q. Who is Simon Merrett?

5 A. Simon Merrett is a colleague who works for me.

6 Q. What's his job?

7 A. He assists me in the work associated with  
 8 insolvent companies.

9 Q. What is he responsible for?

10 A. Sorry?

11 Q. Is he responsible for anything specifically?

12 A. There are a number of insolvent estates that  
 13 he is specifically responsible for.

14 Q. Are any of them in the US?

15 A. No.

16 Q. Did he have any involvement in relation to the  
 17 Home liquidation on behalf of Equitas?

18 A. He assisted me on occasions to -- he's useful  
 19 for bouncing ideas off.

20 Q. Okay. What's Mr. Fleming's title at Equitas?

21 A. I think it's inhouse solicitor.

22 Q. Can I mark as Williams 8 for identification  
 23 a document with Bates numbers A531 through 543?  
 24 (Exhibit Williams 8 marked for identification)

25 Q. Have you seen this document before?

Page 86

1 Q. Yes.

2 A. I can't recall when Gareth Hughes communicated

3 with us first, but with the exception of that on

4 Gareth Hughes, I wasn't talking to the Home.

5 Q. Okay, who is Joanna Ames?

6 A. Jo Ames works for Karen Amos.

7 Q. And Jon Collins?

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

9 Q. And Graham Findlater?

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

11 Q. So just to be clear, you didn't have any input

12 into this document at all?

13 A. No.

14 Q. Do you know whether Miss Amos sent any other

15 documents to Mr. Rosen of this type?

16 A. Of this type?

17 MR. GORDON: Objection.

18 Q. For commutation discussion purposes.

19 A. I don't know.

20 Q. Do you have an understanding of what Ms. Amos

21 was trying to present here to Mr. Rosen?

22 A. I think she was trying to outline the relative

23 positions of the three parties that she could see involved

24 in the commutation discussions, the relative position of

25 ACE, the relative position of Equitas and the Home estate,

Page 87

1 and look at the impacts of various aspects of set-off which

2 were in negotiation, and alternatives to a negotiated

3 settlement with the Home cut through to ACE.

4 Q. Do you understand what the difference is

5 between how she's calculated the minimum offset offered and

6 the maximum offset offered?

7 A. Not the precise detail, no.

8 Q. Is it correct there's a suggestion, at least

9 as far as the maximum offset offered is concerned, that

10 Equitas's maximum offset that's being offered is

11 \$50 million?

12 A. The note at the top suggests the figures are

13 indicative for discussion purposes only, so I don't know

14 whether that relates to a precise number.

15 Q. Do you know where she obtained these

16 indicative numbers from?

17 A. No, I don't.

18 Q. She's laid out two commercial scenarios. Do

19 you know whether the notion that Equitas could cut through

20 to ACE/Cigna at 100 percent was something that she came up

21 with?

22 A. I don't know whether she alone came up with

23 that, it was always speculated as an alternative worth

24 exploring.

25 Q. Turning to paragraph 12 of your affidavit, you

Page 88

1 state that Equitas had actively considered what alternatives

2 may be available to it.

3 A. Right.

4 Q. What do you mean by active consideration?

5 A. Anything from discussing it with Jeremy Heap

6 or amongst ourselves as a PSI team to seeking counsel's

7 opinion.

8 Q. Did you personally discuss any of these

9 alternatives with ACE?

10 A. With ACE?

11 Q. Yes.

12 A. I had no discussions with ACE.

13 Q. In paragraph 8, you refer to UK situs assets.

14 What did you mean by UK situs assets?

15 A. We were looking at the branch being treated as

16 a separate liquidation, and therefore we were looking at the

17 liabilities that were due and the asset that was generated,

18 so in principle, we were looking at how the reinsurance

19 could be converted into cash and distributed to

20 UK creditors.

21 Q. And did you determine what the UK situs assets

22 were?

23 A. We believed that it was small elements of cash

24 and reinsurance asset.

25 Q. And what was the reinsurance asset?

Page 89

1 A. We had looked at it as the claim against the

2 AFIA book of business.

3 Q. You mean the AFIA cedents' claims against Home

4 were the asset?

5 A. No, the reinsurance that was recoverable from

6 ACE would be the asset.

7 Q. You mean the reinsurance of Home, in that

8 sentence?

9 A. In this context, we were talking about

10 exploring ways of ringfencing the estate, the UK branch, as

11 a separate entity, and the liabilities of that estate would

12 be the claims that the AFIA cedents would make, and the

13 asset of that estate would be the asset, cash generated from

14 claims presented to ACE. The pot that was then generated

15 would be distributed to the AFIA cedents, the UK cedents.

16 That was the notion, that was the idea.

17 Q. Okay, so the ACE reinsurance -- sorry, one of

18 the things you were exploring was whether the ACE

19 reinsurance was a UK situs asset, or had you concluded that

20 it was a UK situs asset?

21 A. This refers to the consideration of

22 ringfencing the insolvent UK branch and treating that as

23 a separate liquidation.

24 Q. How did you come to understand that there were

25 UK situs assets? Who told you that there were UK situs

Page 98

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.

Page 99

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

Page 100

1 anybody else at ACE regarding cut-throughs?  
2 A. No.  
3 Q. Has Equitas negotiated a cut-through with a US  
4 reinsurer 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 A. No. Let me just go back on that question.  
2 Did I receive -- you started off by saying internal --  
3 Q. Let's start with internal legal advice.  
4 A. Internal legal advice, I had no advice of that  
5 sort, either one way or the other.  
6 Q. Did you receive any external legal advice  
7 regarding whether Equitas could negotiate a cut-through with  
8 ACE?  
9 A. Yes.  
10 Q. And was that legal advice that you could not  
11 negotiate a cut-through?  
12 A. The advice was that we could negotiate  
13 a cut-through.  
14 Q. So did you conclude that Equitas could  
15 negotiate a cut-through to the assumption agreement with  
16 ACE?  
17 A. I concluded that it was a viable alternative,  
18 yes.  
19 Q. Were you advised that it was legally  
20 permissible?  
21 A. Yes.  
22 Q. And did you share that conclusion with  
23 anybody?  
24 A. Anybody?  
25 Q. Yes.

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1 A. Not outside of the parties that would have  
2 received the internal communication.  
3 Q. Okay. Did you advise Ernst & Young that it  
4 was Equitas's position that they could legally negotiate  
5 a cut-through with ACE?  
6 A. Quite probably.  
7 Q. Do you recall whether they responded to that?  
8 A. I can't recall.  
9 Q. Did they advise you that it was their opinion  
10 that it was not legally permissible?  
11 A. I can't recall that.  
12 Q. Did Home tell you that?  
13 A. Yes.  
14 Q. Who told you?  
15 A. Jonathan Rosen.  
16 Q. And when did he tell you that?  
17 A. I believe around about September/October time.  
18 Q. But you maintained the position that it was  
19 legally permissible, notwithstanding Mr. Rosen's view?  
20 A. It's his opinion.  
21 Q. Did you ever receive any advice contradicting  
22 that conclusion?  
23 A. Which conclusion?  
24 Q. That a cut-through was legally permissible  
25 under the assumption agreement.

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1 A. No.  
2 Q. Did you consider whether the Home could  
3 challenge a cut-through in the US liquidation?  
4 A. Yes.  
5 Q. And what did you conclude?  
6 A. That they were likely to challenge.  
7 Q. Did you have any advice on whether that  
8 challenge would likely be successful?  
9 A. No.  
10 Q. What would have happened to your set-off if  
11 you had pursued a cut-through?  
12 A. I've no idea.  
13 Q. Do you know whether you would have lost your  
14 set-off rights if you had pursued a cut-through?  
15 A. No.  
16 (2.15 pm)  
17 Q. Do you know whether Equitas discussed  
18 commuting the AFIA book specifically with ACE prior to  
19 signing the agreement?  
20 A. It's my understanding that they did.  
21 Q. Was that part of an overall commutation  
22 between ACE and Equitas, or was it AFIA specific?  
23 A. As part of an overall commutation.  
24 Q. Do you know what proportion the AFIA  
25 liabilities represent to the overall claims Equitas has

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1 against ACE?  
2 A. No.  
3 Q. Is it a significant portion?  
4 A. The AFIA book is \$100 million plus. It's  
5 a significant portion of any relationship.  
6 Q. In relation to paragraph 12(c), what did you  
7 mean by asserting that ACE Group companies are primarily  
8 liable to the AFIA cedents?  
9 A. It was my understanding that the ACE Group  
10 companies had assumed responsibilities for the AFIA book of  
11 business, and that they had acted in that capacity for many  
12 years, and they were therefore primarily liable to the AFIA  
13 cedents.  
14 Q. When you signed your affidavit in April 2004,  
15 that was after the discussion you had with Mr. Hughes  
16 regarding the fact that Home was the AFIA cedents'  
17 reinsurer, is that correct?  
18 A. Yes. Well, you say the reinsurer, but there  
19 was a relationship. Whether the assumption agreement is  
20 a reinsurance or an indemnity, I'm not sure.  
21 Q. Okay. In your statement in here, that Century  
22 or its predecessors had been paying AFIA cedents' claims  
23 direct on this business for almost 20 years, you made that  
24 statement notwithstanding the fact that Mr. Hughes had told  
25 you that in fact Home was the AFIA cedents' reinsurer, is

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1 Q. Turn to the next page, which is 865. There's  
2 a heading here, number 3:  
3 "Valuing offset."  
4 Then it says:  
5 "Valuing offset [and then] distribution."  
6 Do you recall what that meant?  
7 A. Not specifically, no.  
8 Q. Do you have a general understanding -- sorry,  
9 who was communicating that?  
10 A. I can't recall specifically.  
11 Q. Do you have a general idea of what those two  
12 points refer to?  
13 A. This would have been in the formulation of the  
14 letter agreement.  
15 Q. Sorry, when did this meeting take place?  
16 A. This is December 03.  
17 Q. And how was offset to be valued?  
18 A. I think that's referring to the aggregate  
19 offset and how it would be treated in the overall  
20 distribution.  
21 Q. Okay. Do you know what was redacted at the  
22 bottom of this page?  
23 A. No.  
24 Q. Do you know whether it related to this  
25 meeting?

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1 A. I do not.  
2 Q. Is it your habit just to pick up at the end of  
3 a page and start taking notes on other meetings or unrelated  
4 matters?  
5 A. Yes.  
6 Q. Turning to the last page of your notes, which  
7 is page 869, is this a conversation that you're having with  
8 Eric Smith and Peter Roth?  
9 A. Yes, I believe it is.  
10 Q. When was that conversation?  
11 A. I don't know precisely. Early 2004.  
12 Q. It says:  
13 "New Hampshire paper."  
14 Then underneath that, it says:  
15 "Letter will be aspirational."  
16 Which letter are you referring to?  
17 A. I can't recall.  
18 Q. Was this a letter to be sent by you to ACE?  
19 A. By me to -- no.  
20 Q. Was it a letter to be sent by the Home to ACE?  
21 A. I don't recall.  
22 Q. Well, looking at the next line, it says:  
23 "What ultimately appears will depend on  
24 discussions with ACE INA."  
25 Does that refresh your recollection what letter

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1 you were talking about?  
2 A. I can't recall whether this was the letter  
3 agreement. I've got a feeling it isn't, but I honestly  
4 can't recall.  
5 Q. Do you know what was redacted on this page?  
6 A. No.  
7 Q. Do you know whether it related to AFIA  
8 matters?  
9 A. No.  
10 Q. Let me mark 937 and 938 as Williams 13 for  
11 identification.  
12 (Exhibit Williams 13 marked for identification)  
13 Q. Whose note is this?  
14 A. It appears be a note prepared by  
15 Robert Fleming.  
16 Q. Is this at a conference that he attended with  
17 Mr. Trower?  
18 A. I believe so, yes.  
19 Q. Did you attend that conference?  
20 A. Yes, I did.  
21 Q. Did you prepare a note of that meeting?  
22 A. I would have made some notes.  
23 Q. Did Mr. Trower provide his advice to you in  
24 writing?  
25 A. Not to me, no.

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1 Q. Did he provide it to Mr. Fleming in writing?  
2 A. Yes, I think he did.  
3 MR. LEE: Okay, I'm going to call for the  
4 production of that advice.  
5 MR. GORDON: It's not -- the witness is mistaken.  
6 MR. LEE: There's none?  
7 MR. GORDON: No, this is it.  
8 MR. LEE: Fleming didn't get any?  
9 MR. GORDON: This is it.  
10 A. My apologies.  
11 Q. Who is William Trower?  
12 A. I believe he's a barrister.  
13 Q. In the middle of the page, there's a black  
14 line through what I'm assuming is a sentence. Do you know  
15 what was stricken out there?  
16 A. No.  
17 Q. Did you provide this document to your counsel  
18 without that line there, or is that some highlighting that  
19 hasn't reproduced?  
20 MR. GORDON: It's a redaction.  
21 MR. LEE: Okay. Does that relate to any of the  
22 alternatives that were considered by Mr. Williams?  
23 MR. GORDON: No.  
24 MR. LEE: Does it relate to Mr. Trower's  
25 handicapping of the issues that are referred to in his



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1 affidavit?

2 MR. GORDON: No.

3 MR. LEE: Completely unrelated to the AFIA

4 matters?

5 MR. GORDON: It's completely unrelated to the

6 affidavit for sure.

7 Q. Okay, turning to the second page of this

8 conference note, third paragraph down, is it correct that

9 Mr. Trower concluded that the issue of whether a cut-through

10 deal could work in principle:

11 "... will be determined by the law governing the

12 retrocession contract, ie the reinsurance assumption

13 agreement between Home and INA which is governed by New York

14 law."

15 A. That's what it says there.

16 Q. Okay. Did you receive advice contrary to that

17 statement?

18 A. I can't recall.

19 Q. You can't recall receiving any contrary advice

20 or you can't recall one way or the other?

21 A. I can't recall receiving advice in addition to

22 this or contrary to it.

23 Q. Did Equitas take advice on the validity and

24 enforceability of cut-through deals under New York law?

25 A. Yes.

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1 Q. Okay, and what was that advice?

2 A. That it was possible.

3 (3.15 pm)

4 Q. And who did they obtain that advice from?

5 A. That refers to a conversation I had with

6 Baach Robinson.

7 Q. Did they provide you with any written advice?

8 A. No.

9 Q. Do you know what was at point number 2 that's

10 now been redacted?

11 A. No.

12 Q. Do you know whether there was a redaction

13 after the paragraph ending in the words "liquidation

14 proceedings in New Hampshire", the last paragraph on 938?

15 A. No, I don't.

16 MR. GORDON: I'll represent there were.

17 MR. LEE: There were redactions?

18 MR. GORDON: Yes.

19 MR. LEE: Okay. Do those matters relate to the

20 alternatives considered by Equitas?

21 MR. GORDON: No.

22 Q. I'm going to mark 935 and 936 as Williams 14.

23 (Exhibit Williams 14 marked for identification)

24 Q. Mr. Williams, is this your handwriting?

25 A. Yes, it is.

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1 Q. At the top, it says -- somebody has written

2 the words "Alan Marsh"?

3 A. Yes.

4 Q. Who's he?

5 A. He's a colleague of mine, works for

6 Karen Amos.

7 Q. Was he present at the conference with

8 Mr. Trower?

9 A. No.

10 Q. Do you know why you made that notation?

11 A. I can't remember.

12 Q. Did you provide this document to Mr. Gordon in

13 unredacted form?

14 A. Yes, I did.

15 Q. Do you know what the redactions were?

16 A. I can't recall.

17 Q. Do you know whether they related to your

18 affidavit?

19 A. I can't recall.

20 Q. Do they relate to your consideration of the

21 alternatives?

22 A. On the basis I don't know what they are

23 redacting, I don't know whether they're relevant.

24 MR. LEE: Mr. Gordon?

25 MR. GORDON: They do not.

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1 MR. LEE: They are unrelated to the AFIA matters

2 that are raised in Mr. Williams' affidavit?

3 MR. GORDON: They are not related to the matters

4 raised in the affidavit, no.

5 Q. I'm sorry to have to do this, but I can't read

6 your handwriting, so I'm going to need you to read this in,

7 if you would.

8 A. I shall try. It says:

9 "7th October 03", abbreviation "William Trower".

10 Then next line, "ancillary", arrow to "BCCI was

11 ancillary", then miss a line, says:

12 "Legal distribution was legally centered in

13 Luxembourg [and] the biggest issue was set-off."

14 Next line:

15 "Luxembourg set-off was more limited. Should the

16 asset be repatriated or should net be sent back. English

17 court said English set-off rule had to be applied."

18 Then missing a line, it says:

19 "Priority issue? Prior liquidation [and] exit

20 route. English court look at liquidation on global basis."

21 Then misses a line, it says:

22 "Denying Home a claim? Can we be forced to make

23 a claim. Can see no reason why you can't withdraw claim, no

24 reason why we can't consider cut-through."

25 And that ends 935.

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1 A. I think it was more by word of mouth as to who  
2 might have an involvement, it was a market meeting to  
3 discuss what was happening on the estate, and to share our  
4 collective views. I can't recall the precise process of  
5 invitation or how I acquired the names of individuals, but  
6 the list of people attending would be on one of the  
7 exhibits, so I could go through that and repeat the names.  
8 Q. On one of the exhibits that's been marked  
9 already?  
10 A. I believe so.  
11 Q. Why don't you see if you can find that?  
12 (Pause).  
13 A. It's A0850.  
14 Q. What's the exhibit number there that you're  
15 referring to?  
16 A. A0850.  
17 Q. That's the Bates number.  
18 A. Sorry, Williams 12. (Pause).  
19 Q. I see an 800 series in exhibit 12, so maybe  
20 we've got our numbers crossed.  
21 A. 850.  
22 Q. When did this meeting take place?  
23 A. Mid-October, prior to the informal creditors'  
24 committee meeting.  
25 (4.00 pm)

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1 Q. Was there any kind of agenda prepared for the  
2 meeting?  
3 A. I think there were slides prepared for this  
4 meeting.  
5 Q. And those were produced today by your counsel,  
6 that was part of what was produced?  
7 A. Yes.  
8 Q. What was your goal for that meeting?  
9 A. To have an understanding of the respective  
10 exposures, to bring together the experiences of these firms  
11 in dealing with the Home, to try to solicit what options  
12 might be available to us.  
13 Q. What was the outcome of the meeting?  
14 A. I think we had a better understanding of what  
15 we were dealing with: some of the people had more specific  
16 knowledge of dealing with the Home, some remembered or some  
17 had some information regarding the novation of businesses in  
18 the 80s, and I think there was an understanding that this  
19 was a situation where we had a lot of collections due from  
20 the Home, the Home required us to present claims to it in  
21 order to effect recoveries from ACE, and that the likely  
22 outcome -- it was speculating, but the likely outcome was  
23 that we would not have any dividend as a class V creditor.  
24 Q. So is my understanding correct then that at  
25 least one of the topics of the meeting was strategies that

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1 you might pursue to go about obtaining some payment on your  
2 claims against the Home?  
3 A. Yes.  
4 Q. Now did this group of AFIA cedents ultimately  
5 become the informal committee of creditors?  
6 A. Many of them did, yes.  
7 Q. Over the course of time, there was a strategy  
8 developed by the committee of creditors for obtaining  
9 payment on their claims against the Home?  
10 A. There was a lot of strategies discussed, each  
11 member was there of his own accord and would make his own  
12 decision as to how he wanted to work ultimately, but it was  
13 felt that by sharing our respective positions and voicing  
14 concerns that we had, collectively, it would be of greater  
15 benefit to those creditors, yes.  
16 Q. Well, was there some discussion at the initial  
17 meeting in mid-October concerning a strategy for obtaining  
18 payment on AFIA cedent claims by threatening to withhold  
19 proofs of claim from the estate?  
20 A. It was discussed that no one would see any  
21 benefit in producing claims to the estate over and above  
22 offset if there was no reward for doing that, yes.  
23 Q. So that was identified as a strategy at that  
24 initial meeting?  
25 A. It was one of the options, yes.

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1 Q. And from that point, as I understand it, up  
2 through late January 2004/early February 2004, you went  
3 through a process of essentially fleshing out that strategy,  
4 culminating in the agreement that's involved in this case?  
5 A. Yes, that's what happened over time, yes.  
6 Q. So you started discussing -- at this initial  
7 meeting, you started discussing concerted strategy for  
8 obtaining some payment on your claims by somehow accessing  
9 reinsurance payments or indemnity payments that might be  
10 paid by ACE, is that right?  
11 MR. GORDON: Objection to form.  
12 A. To get recognition for presenting the claims,  
13 yes, beyond offset.  
14 Q. Well, not just recognition but payment of your  
15 claims, correct?  
16 A. Yes, mm. Some contribution.  
17 Q. Now the committee of creditors, that was  
18 formed and that has functioned for the sole benefit of the  
19 AFIA cedents, correct?  
20 A. An informal creditors' committee should have  
21 the outlook for all creditors generally, but one of the  
22 options being pursued was to see whether the AFIA cedents  
23 could be -- and the branch could be dealt with by itself,  
24 and insofar as the initial thrust was to look for the  
25 benefit of the UK creditors and the AFIA cedents, it

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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 didn't, and what documents he may have seen or didn't see,  
2 and that's all that's relevant from Mr. Williams'  
3 perspective.  
4 MR. LEE: For the sake of clarity, I'll refer  
5 Mr. Gordon back to the order that the judge entered on  
6 June 1st or May 12th as to the appropriate scope of the  
7 discovery that Mr. Williams and Equitas were required to  
8 produce.  
9 MR. GORDON: For the sake of clarity, commutation  
10 and set-off issues were not even within the scope of the  
11 motion to compel. But why don't we go on? I want to get  
12 out of here at some time.  
13 (Discussion off the record)  
14 (Exhibit Williams 17 marked for identification)  
15 (4.15 pm)  
16 Q. Mr. Williams, I've just handed you a two page  
17 exhibit which has Bates numbers A0436 and A0437. Do you  
18 recognize this document?  
19 A. Yes, I do.  
20 Q. What is it?  
21 A. It was an illustration given to the informal  
22 creditors committee by Sarah --  
23 Q. Ellis?  
24 A. Ellis, thank you very much.  
25 Q. So as far as you know, this was prepared by

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1 Ernst & Young?  
2 A. Yes, as far as I know.  
3 Q. Is this a hand-out from the first meeting of  
4 the creditors' committee in October?  
5 A. I can't recall, it was one of them, but  
6 I can't recall which one.  
7 Q. What's the purpose of the information that's  
8 on this exhibit, if you know?  
9 A. (Pause). I believe she was illustrating the  
10 inward/outward relationship between AFIA cedents and the  
11 Home, and the impact of offset, and how IBNR would feature  
12 in that relationship.  
13 Q. Are these numbers purely illustrative, or do  
14 these numbers bear some relationship to reality in terms of  
15 set-offs?  
16 A. I believe they're illustrative.  
17 (Exhibit Williams 18 marked for identification)  
18 Q. Mr. Williams, I've just handed you an e-mail  
19 chain that we marked exhibit 18, I am just going to state  
20 for the record that it's got Bates number A0001 and 0002 on  
21 it. Can you tell me, do these e-mails relate to your early  
22 work as you described a few minutes ago on organization of  
23 the informal committee of creditors?  
24 A. I believe it does.  
25 Q. It looks to me like you were exchanging

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1 e-mails with Mr. Harrison relating to the scheduling of  
2 a meeting with Ernst & Young.  
3 A. That's correct.  
4 Q. Did you have a meeting at Ernst & Young in  
5 this timeframe?  
6 A. In this timeframe?  
7 Q. Well, the e-mail is dated October 3, 2003, so  
8 did the meeting come about in early October?  
9 A. Yes, I believe it did.  
10 Q. What was the purpose of the meeting?  
11 A. I can't recall precisely, but I think this was  
12 a preparatory meeting in advance of the ICC meeting that was  
13 subsequently called on 21st October.  
14 Q. Well, were you working with Ernst & Young to  
15 try to identify who the potential candidates for the  
16 committee should be?  
17 A. I would have asked them as a source as to who  
18 are the major creditors.  
19 Q. You asked them for that information?  
20 A. They would be the obvious people to ask, yes.  
21 Q. Did you discuss the subject of organizing the  
22 committee at this meeting at Ernst & Young?  
23 A. I can't recall precisely. It's quite  
24 feasible.  
25 Q. Let's mark this one.

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1 (Exhibit Williams 19 marked for identification)  
2 Q. I've just handed you a three page exhibit,  
3 Mr. Williams, which we've marked exhibit 19, and it looks to  
4 me -- tell me if I've got it right, it looks to me to be  
5 an e-mail from Sarah Ellis at Ernst & Young to you dated  
6 October 12, 2003?  
7 A. That surprises me. I think the date's  
8 actually -- well, I thought the date was 10th December.  
9 This is December -- I think that's an American date. This  
10 looks more like a December e-mail than an October e-mail.  
11 Q. That's what I wanted to try to confirm. How  
12 do you know it's a December e-mail versus an October e-mail?  
13 A. Because these illustrations would not have  
14 been formulated in October.  
15 Q. Was there any other activity among the AFIA  
16 cedents concerning protecting their interests in the Home  
17 case prior to the meeting that was held on October 21?  
18 A. We met as a group the previous week, and  
19 shared our collective views, and that's the meeting  
20 I referred to earlier, but in terms of substantial activity,  
21 I can't recall any.  
22 Q. As I understand it, in early October -- I take  
23 that back, early November, the liquidator circulated  
24 a proposed letter agreement, do you remember that?  
25 A. In November, yes, vaguely.

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1 asset to effect, but it's his call as to whether he wants to  
2 continue to generate reinsurance recoveries, if his program  
3 allows him to recover additional reinsurances, and he can  
4 call a stop to the presentation of claims to the  
5 counterparty should he so wish.

6 Q. You testified earlier that you made some  
7 revisions to a draft affidavit that was prepared by  
8 Clifford Chance for your signature.

9 A. Yes.

10 Q. Did you refer to any documents in the process  
11 of making revisions to the affidavit?

12 A. Not that I recall, no.

13 Q. Would you take a look at exhibit 14, please?  
14 Page Bates number 936; did I understand correctly that  
15 page 936 was a second page of notes relating to your  
16 conference with attorney Trower, solicitor Trower?

17 A. I believe so, yes.

18 Q. The second page is "Major conclusions"; were  
19 these your major conclusions as a result of that  
20 consultation?

21 A. It's my summary of what I thought the counsel  
22 was saying.

23 Q. The first conclusion was:  
24 "The JPL point is academic."  
25 Did you mean to say there that as of October 7,

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1 2003, you viewed a JPL as really serving no purpose?

2 A. No, I don't think it meant that.

3 Q. What does it mean, it's academic?

4 A. I can't recall.

5 Q. Did you discuss matters in this conference  
6 with solicitor Trower other than AFIA on October 7?

7 A. Can you repeat the question?

8 Q. On October 7, 2003, in this conference with  
9 solicitor Trower, did you discuss matters other than the  
10 AFIA business?

11 A. I can't recall.

12 Q. We may just have a timing issue, Mr. Williams,  
13 that you might be able to help me with. When was it first  
14 communicated to -- as far as you know, when was the  
15 potential that AFIA cedents would not file claims first made  
16 known by the AFIA cedents to the liquidator of Home?

17 A. I can't recall whether I actually mentioned  
18 that to Gareth Hughes as something that Equitas was actively  
19 considering or not. It was a feasible proposition to us --  
20 throughout the summer.

21 Q. To your knowledge, was that ever communicated  
22 to the Home's liquidator prior to the October 21 meeting of  
23 creditors that was attended by the liquidator?

24 A. I certainly would have said that that was  
25 an alternative that Equitas would have considered.

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1 I couldn't see how people would want to claim above their  
2 offset position, but that was our view, not the collective  
3 view at that stage.

4 Then later in the month, when there was a meeting  
5 of the AFIA creditors, it was a view expressed by a number  
6 of other creditors. Yes, it was probably at that initial  
7 AFIA creditors' meeting that I became aware that there was  
8 a general sense that it would not be worthwhile.

9 Q. So as far as you know, the first time that was  
10 communicated to the Home's liquidator was at the October 21  
11 meeting?

12 A. As a collective, yes.

13 Q. As a position of more than one AFIA cedent?

14 A. Yes, I think so, that's probably right.

15 Q. And as I understand the sequence, it was -- we  
16 could get the document out, but I believe it was November 6  
17 when a draft proposal was circulated by Mr. Hughes to allow  
18 AFIA cedents to share in the recovery from ACE, is that  
19 consistent with your recollection?

20 A. It's early November, yes.

21 Q. About two to three weeks later?

22 A. Yes, that's reasonable.

23 Q. Is Zurich a UK creditor, in your view?

24 A. Define UK creditor.

25 Q. I think I heard you testify in a way that

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1 described Equitas as a UK creditor, so use whatever  
2 definition you were using when you applied that to Equitas.

3 A. Zurich subsidiary Agrippina, which is,  
4 I believe, a Swiss company, in that sense, it's not a UK  
5 company, but it may be and is, as I understand, a creditor  
6 of the UK branch.

7 Q. It's a class V reinsurance claimant of the UK  
8 branch?

9 MR. GORDON: Objection.

10 A. Possibly, yes.

11 MR. LEE: Can we take a break?

12 MR. BOUFFARD: I'm pretty much done.

13 (5.05 pm)

14 (A short break)

15 (5.15 pm)

16 MR. LEE: Mr. Williams has referred to documents,  
17 categories of documents, documents that have been redacted  
18 which we believe are relevant to this litigation and his  
19 affidavit, and we reserve the right to call him for  
20 a subsequent deposition if the court orders those documents  
21 produced.

22 MR. BOUFFARD: Same reservation here for the  
23 record.

24 CROSS-EXAMINATION BY MR. LESLIE:

25 Q. It's late in the day, Mr. Williams, I have

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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 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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