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THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT
MERRIMACK SS
DOCKET NO. 03-E-0106

IN THE MATTER OF: :
 :
THE LIQUIDATION OF :
THE HOME INSURANCE : DEPOSITION OF:
COMPANY :
 : JONATHAN ROSEN
 :
 :
 :

TRANSCRIPT of the stenographic notes
of the proceedings in the above-entitled
matter, as taken by and before CAROLYN
CHEVANCE, a Notary Public of the State of New
Jersey, held at the office of LOVELLS, 900
Third Avenue, New York, New York on June 14,
2005, commencing at 10:01 a.m.

JONATHAN ROSEN

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2 extent of Equitas's offset?

3 A If they can prove up \$20
4 million that is contractually capped at
5 that number.

6 Q Is that number predicated on
7 some analysis of unpaid paid's outstandings
8 and IBNR?

9 A Their analysis? In other
10 words, I was prepared for purposes of them
11 reserving their offset to be totally
12 driven by their number, because I didn't
13 care one way or the other. They were
14 given a certain time period in which to
15 prove it up, and if they couldn't prove it
16 up they had to give me cash.

17 So it was really just a
18 withholding, it was part of the price of
19 the commutation, and they withheld \$20
20 million from the commutation price in
21 order to enable them, if they could, to
22 prove it up as offset.

23 I saw that Mr. Williams called
24 it a hard number. It was only a hard
25 number to the extent that it is \$20

1 JONATHAN ROSEN

2 million and no more. But it certainly
3 could be less.

4 Q So Equitas cannot prove offset
5 in the Home liquidation in Excess of \$20
6 million?

7 A Correct. I commuted my
8 outwards book any way, and that caps their
9 offset entitlement.

10 But let me qualify that.
11 You've probably seen the agreement that
12 has been provided in a lesser redacted
13 form, where certain classes -- certain
14 types of business were excluded from the
15 commutation, such as pools in which Home
16 participated.

17 I presume those could
18 potentially have some offset in relation
19 to those, if there is both ceded and
20 assumed relationship. But nobody has done
21 analysis of those involvements.

22 So I just qualify it to that
23 extent, because I think it keeps my
24 testimony a little bit purer.

25 Q Has the offset for specific

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JONATHAN ROSEN

hasn't been resolved yet. As you know that is a work in progress. It depends what that number ultimately translated to.

Q So as you sit here today what percentage now does the offset represent?

A Somewhere between 25 and 30 percent. But again, that is not hard and fast. We still have work to do.

Q Could it be over 30 percent?

A I don't know. I don't think so, but I don't know.

(A luncheon recess is taken.)

AFTERNOON SESSION

CONT'D EXAMINATION BY MR. LEE:

Q Just to go back over something with relation to Equitas.

Can you tell us to what extent the commutation with Equitas address its

1 JONATHAN ROSEN

2 AFIA set-off position?

3 A I believe I already testified,
4 and let me reiterate, that there was no
5 commutation with Equitas in relation to
6 AFIA.

7 At the time we did the
8 commutation there was a recognition that
9 they had AFIA involvement. And all we did
10 was reserve unto them a right to claim
11 offset through the financial element of
12 the transaction, up to a specific amount.

13 And if they could prove it up
14 within a certain period of time, then they
15 got the benefit of the offset. If they
16 are unable to prove it up within that
17 period of time then anything that they
18 couldn't prove up up to a cap of \$20
19 million they would have to pay us.

20 Q Am I correct that the
21 commutation agreement directly addresses
22 their rights in relation to AFIA set-off?

23 A It does to the extent that it
24 provides that they -- first of all in two
25 ways. The first element is an exclusion

1 JONATHAN ROSEN
2 of AFIA from the commutation itself.
3 I think it's The Home U.K.
4 branch business. Then there is a
5 provision that essentially starts off that
6 they asserted an offset in relation to the
7 Home U.K. branch business of \$20 million.
8 Then it goes on to make
9 provision as I just described, as to how
10 that is going to be dealt with on a going
11 forward basis.
12 (Whereupon, Rosen 10, E-mail,
13 was marked for identification.)
14 Q I'm going to mark as Rosen 10,
15 an e-mail from you to Gareth Hughes, with
16 a number of copied recipients.
17 Mr. Rosen, did you draft this
18 e-mail?
19 A I did.
20 Q This is your e-mail?
21 A This is it.
22 Q I'll read the sentence in the
23 second line, the piece that is in the
24 parenthetical: "Although you can rest
25 assured that we did obtain a quid pro quo

1 JONATHAN ROSEN

2 hard number any way.

3 Q What do you mean --

4 A From the point of view it was
5 a mere cap, not an exact number.

6 Q What do you mean by an
7 allowance of \$20 million for purpose of
8 offset?

9 A That could have up to \$20
10 million. I go on to explain that it is a
11 claw back entitlement, in the unlikely
12 event that Equitas cannot prove up at
13 least \$20 million.

14 Q In relation to that \$20
15 million, what do you mean when you say
16 that that is effectively Home's exclusive
17 asset?

18 A The agreement that we reached
19 with the ICC, which at this stage was
20 still a proposed agreement, and in its
21 ultimate agreement form requires any
22 offset amounts to be deducted as a first
23 charge against any receipts from ACE.

24 So therefore, this wouldn't be
25 subject to any sharing with the AFIA

1 JONATHAN ROSEN

2 creditors, it's Home's money.

3 Q In addition to the \$20 million
4 that Home would receive, am I right that
5 it also would then have a \$20 million
6 claim against ACE under the assumption
7 agreement?

8 A Did you say in addition to the
9 --

10 Q Yes.

11 A No, not at all. Home would
12 have a claim for against Equitas for any
13 amount up to the \$20 million that they
14 couldn't prove up. Any amount that they
15 could prove up, Home derives from ACE;
16 subject, of course, to any offsets that
17 may be applicable as between Home and ACE.
18 But that resides exclusively in Home.

19 Q The first \$20 million of
20 claims that Equitas proves up are
21 effectively cash recoveries that would
22 come back to the Home, net of any ACE
23 offset?

24 A Not net of any ACE offset. In
25 other words, the first \$20 million that

1 JONATHAN ROSEN

2 quantified a number that was palatable to
3 the Home, based on a theory that the Home
4 had presented, namely protected versus
5 quoted syndicate.

6 So I just wanted to add that
7 because I think that clears up my
8 testimony in that regard.

9 Q Have you seen this commutation
10 agreement before?

11 A In both redacted and
12 unredacted form.

13 Q Was it you that negotiated the
14 commutation with Equitas?

15 A Yes, and to the large degree
16 was the draft person of this agreement.

17 Q When were the negotiations
18 completed?

19 A I believe the negotiations
20 were completed on December the 11th, 2003.
21 Which prompted my sending the e-mail to
22 Gareth, that is what I obviously referred
23 to as an agreement in principal that was
24 derived on that day. We hadn't finalized
25 the final terms of the agreement from the

1 JONATHAN ROSEN

2 A By them submitting claims as
3 their case reserves and IBNR ultimately
4 translate into paid.

5 Q Do you know what the value of
6 Equitas's unpaid paid position is?

7 A I know what they filed in
8 their proof of claim.

9 Q What was that?

10 A I believe it was to the order
11 of about \$20 million, may have been
12 something slightly less than that, as of
13 the date of the proof of claim. That's
14 obviously a moving target.

15 Q What is it a moving target?

16 A Because case reserves become
17 paid as time goes by, and IBNR becomes
18 case reserves becomes paid over a period
19 of time. It's really a reflection of
20 time.

21 Q When will Equitas's offset
22 position be finally established?

23 A June 30, 2008.

24 Q Do you recall that Home
25 presented the Equitas commutation for the

1 JONATHAN ROSEN

2 approval of the New Hampshire court?

3 A Yes.

4 Q Do you recall if the subject
5 of the Equitas commutation came up at a
6 hearing on April 9, 2004?

7 A I'll take your word for it. I
8 have no specific recollection of it.

9 Q Do you recall my seeking
10 confirmation that the Equitas commutation
11 didn't address AFIA liabilities?

12 A From me?

13 Q From The Home.

14 A I don't recall whether you did
15 or you didn't.

16 Q I'm going to read from the
17 transcript of the April 9th hearing,
18 Mr. Roth speaking.

19 "What he said about the
20 various syndicates is correct, and it did
21 not involve any AFIA business, that is why
22 I answered the question 'no'."

23 Do you know who told Mr. Roth
24 that the Equitas Home commutation didn't
25 involve any AFIA business?

1 JONATHAN ROSEN

2 A No, I don't. But there is a
3 context to that, because the AFIA business
4 was not commuted. So I don't know what
5 context in which he was making that
6 assertion to the court; whether it was in
7 the context of has it been commuted or
8 hasn't it been commuted.

9 The net net of it is it was
10 not commuted.

11 Q In relation to Paragraph 7 of
12 your affidavit.

13 Aside from Equitas and
14 Agrippina, did any other AFIA Cedent
15 inform you they were considering
16 attempting to cut through and deal
17 directly with ACE?

18 I'm limiting my question to
19 any time period prior to the execution of
20 the agreement in February of 2004.

21 A Not directly, no. Indirectly,
22 yes.

23 Q What do you mean by
24 "indirectly"?

25 A Subliminally.