

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

2005 JUN 29 P 1:55

SUPERIOR COURT

Docket No. 03-E-0106

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

**EQUITAS' SUR-REPLY IN RESPONSE TO ACE COMPANIES' MOTION TO
STRIKE OR COMPEL PRODUCTION OF DOCUMENTS BY EQUITAS**

ACE's reply memo is nothing more than baseless rhetoric. Equitas has not withheld any documents called for by the letter or spirit of the Court's discovery Guidelines. ACE has not been deprived of any even arguably relevant documents. ACE had more than it needed to depose Rhydian Williams, and has more than it needs to proceed at the hearing, but ACE would prefer to keep Mr. Williams' testimony out of evidence altogether. Its reply demonstrates that its strategy for doing so is to create an ever-moving target of need, while repeating baseless accusations of "persistent non-disclosure." The Court should put an end to what is nothing but a manufactured "dispute" by denying ACE's present motion entirely.

1. ACE asserts that Equitas' and the Liquidators' failure to produce all documents surrounding the commutation agreement between Equitas and Home is "the most glaring example" of a "trial by ambush" strategy. Not so. ACE has received everything to which it is entitled under the law, the rules, and the prior rulings of this Court.

2. ACE admits that it agreed with Equitas not to seek discovery regarding the commutation agreement. It now asserts that its agreement was predicated upon an alleged assurance from the Liquidator that the commutation agreement "did not involve AFIA business." ACE's assertions are disingenuous afterthoughts.

3. ACE has never before stated that its agreement with Equitas was in any way conditioned upon prior representations by the Liquidator. Equitas was neither a party to, nor present at, the April 21, 2004 status conference during which such alleged representations were made. There is no mention of any such representations in ACE's January 7, 2005 letter agreeing not to seek documents concerning the commutation. Nor was there any mention of such representations during the course of Mr. Williams' deposition, when the parties' discussed the prior agreement regarding the scope of discovery. *See, e.g.*, Williams Transcript at 28:15-20, 152:23-154:12. (Copies of the transcript pages noted herein are attached). Moreover, ACE seeks documents relating to the commutation agreement only because that agreement caps Equitas' set-off for AFIA related claims. But ACE also agreed with Equitas not to seek documents concerning the set-off. Hence, any representation by the Liquidator concerning the scope of the commutation agreement is irrelevant to ACE's agreement with Equitas. ACE's agreement with Equitas regarding the scope of discovery was unconditional and binding upon ACE.

4. More critically, Mr. Williams' affidavit does not discuss the commutation agreement. He has already been questioned regarding his limited knowledge of that agreement. *See, e.g.*, Williams Transcript at 26:15-32:17, 41:12-42:1, 151:2-152:6. Mr. Williams testified that he did not work on, and had not seen, the commutation agreement. *Id.* at 151:2-152:6. There is absolutely no need for Mr. Williams to appear for additional questioning and absolutely no basis for ACE's request for documents concerning the commutation agreement.

5. Nor is ACE entitled to additional questioning of Mr. Williams concerning an agreement between the Liquidator and the AFIA Cedents that the Home would not enter into a commutation agreement with ACE without first advising the AFIA Cedents. ACE implies that it

first learned of such an agreement subsequent to Mr. Williams' deposition, when ACE elicited testimony from Mr. Rosen based upon documents produced pursuant to Referee Rogers' Appendix 4 ruling. As is easily demonstrated, however, Equitas itself produced documents reflecting the agreement between the Liquidator and the AFIA Cedents, including at least one that was used as an exhibit at Mr. Williams' deposition. *See Williams Exhibit 6 ¶ 1.4.* (Copy attached). In all events, ACE waived its right to question Mr. Williams about "Appendix 4" documents when it proceeded to take Mr. Williams' deposition before it had access to those documents. Nor did ACE say anything about reserving its right to continue Mr. Williams' deposition on that basis. *Compare Williams Transcript at 173:16-21* (purporting to reserve rights with respect to other documents).

6. Despite constant repetition of the claim, the remainder (section II) of ACE's reply fails to establish that Equitas has withheld any document that was relied upon by Mr. Williams in preparing his affidavit. ACE asserts that Mr. Williams testified to internal communications regarding matters cited in his affidavit, but such testimony does not warrant ACE's broader request for all internal communications regarding the proposed Agreement. As did its motion, ACE's reply demonstrates that ACE is essentially seeking reconsideration of the Court's discovery Guidelines. Insofar as ACE fails to establish the relevance of internal documents to which the Liquidator and Joint Provisional Liquidator were not privy, ACE's motion should be denied.

7. Finally, there is no history whatsoever of Equitas impeding discovery in this proceeding. Equitas voluntarily produced documents in response to a massive, unauthorized document request by ACE. Equitas has not taken a "hyper-technical, narrow view" of the Guidelines. The Court implicitly denied ACE's motion to compel production of broad categories

of irrelevant documents when it issued the May 12 Guidelines. Equitas thereafter produced all documents called for by the May 12 Guidelines. After the Court modified the Guidelines on June 1, Equitas produced all privileged documents within the scope of the modified Guidelines. In sum, Equitas has produced all documents called for by the Guidelines and ACE's motion should be denied.

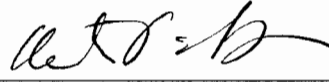
Respectfully submitted,

EQUITAS LIMITED

By its attorneys,

SULLOWAY & HOLLIS

Dated: June 24, 2005

By 

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-and-

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Attorneys for Equitas Limited

CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2005, a copy of this Sur-reply was delivered by hand (if noted on the service list) or sent by first-class mail, postage prepaid, to those on the attached service list.



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Equitas Limited
33 St Mary Axe
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EC3A 8LL

23 January 2004

For Attention of: Rhydian Williams

Direct Line: 020 7951 9838

Dear Rhydian

The Home Insurance Company (In Provisional Liquidation) ("Home")

Please find enclosed a final copy of the Home's proposal letter, together with the tolling agreement and a copy of the letter from the New Hampshire Department of Justice outlining the procedures which the liquidator proposes to follow in connection with any proofs of claim submitted by AFIA cedants.

Although the proposal letter contains a long stop date for signature of 23 February 2004, we would prefer to proceed to the next stage of the process without delay as this will be imperative if the proposed deadlines are to be met. I should be grateful, therefore, if you would sign and return the enclosed copy to me immediately or let me know if for any reason this is not going to be possible.

Kind regards

Yours sincerely
for the Home Insurance Company

Gareth Hughes
Joint Provisional Liquidator

qs Thanks for all your help to date on this one!

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Williams
EX 6

WITHOUT PREJUDICE AND FOR SETTLEMENT PURPOSES ONLY

Equitas Limited
33 St Mary Axe
London
EC3A 8LL

22 January 2004

For Attention of: Rhydian Williams

Dear Sirs

1. ACE Group proceeds

1.1 In compromise of disputed positions respecting the non-novated AFIA reinsurance treaties underwritten by or on behalf of The Home Insurance Company ("Home") through the Home's UK Branch (the "AFIA Treaties"), we agree that, as soon as reasonably practicable following the agreement of a number of Informal Creditors' Committee members sufficient to give adequate assurance to Home that the Scheme (as defined in sub-paragraph 1.1.2 below) will be approved by the requisite majorities of AFIA Cedents (as defined in sub-paragraph 1.1.2 below), we will take the following steps:

1.1.1 notify members of the Informal Creditors' Committee that a sufficient number of Informal Creditors' Committee members (as described in paragraph 1.1 above) have agreed to the arrangement reflected by the proposals set out in this letter agreement by returning a signed copy of this letter agreement to us;

1.1.2 seek the approval of the supervising New Hampshire Court ("New Hampshire Order") to a compromise involving the implementation of a scheme of arrangement pursuant to section 425 of the Companies Act 1985 ("Scheme") between Home and cedents of Home in respect of the AFIA Treaties ("AFIA Cedents"), the main features of which are described in sub-paragraph 1.9 below, such New Hampshire Order to be on terms that it is conditional upon:

- (1) the sanction of the English Court in respect of the Scheme;
- (2) an order of the English Court approving the remission of the Home's assets situated in England and Wales (other than the "Net Recoveries" (as defined in sub-paragraph 1.2 below)) to the New Hampshire Liquidator for administration and distribution as part of the New Hampshire Liquidation ("Global Liquidation Order"); and
- (3) the approval, or "non-objection", of the Financial Services Authority to the Scheme and to the making of the Global Liquidation Order ("FSA Approval");

1.1.3 as soon as reasonably practicable after the making of the New Hampshire Order:

- (1) make an application to the English Court for permission to convene a meeting of AFIA cedants to approve the Scheme; and
- (2) following the approval of the Scheme by the requisite majorities of AFIA Cedants, seek the sanction of the English Court in respect of the Scheme,

provided that the Scheme shall not become effective on its terms until after the making of the Global Liquidation Order and the granting of FSA Approval,

the New Hampshire Order and the Scheme to be upon such terms as may be approved by the New Hampshire Court and English Court; and

1.1.4 in order to reduce the costs of disputed claim proceedings to the Home estate, the Liquidator will recommend to the New Hampshire Court that in the resolution of reinsurance claims against Home under the AFIA Treaties, where the reinsurance contract under which the claim arises contemplates arbitration or other dispute resolution procedures with more limited discovery than that permitted under the Order Establishing Procedures Regarding Claims Filed with The Home Insurance Company in Liquidation entered by the New Hampshire Court on December 19 2003 or such amended order as appropriate ("the Claims Procedures Order"), discovery in the disputed claim proceeding (including, without limiting the generality of the foregoing, requests for documents, interrogatories, requests for admissions, or evidence depositions) shall be limited to that available under the contractually contemplated procedures.

1.2 "Net Recoveries" means 50% of the "Proceeds" (as defined in sub-paragraph 1.3 below), plus 100% of those proceeds described in sub-paragraph 1.3.5 below:

1.3 "Proceeds" means the proceeds received by Home from the ACE Group or any "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) (after deducting amounts offset between Home and either the relevant ACE Group company concerned or any "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) in relation to AFIA business and after having taken all reasonable arguments and/or defences as regards the validity of such off-set) with respect to the AFIA Treaties (whether such proceeds are derived through an ongoing resolution process with the ACE Group or any "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) or through a commutation or similar compromise arrangement with any ACE Group company or any "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) relating to that company's indemnity and/or reinsurance obligations to Home) net of:

1.3.1 the costs of the UK provisional liquidation;

1.3.2 any collection costs;

1.3.3 costs incurred in our seeking the orders of the New Hampshire and English Courts set out in sub-paragraphs 1.1.1 and 1.1.2 above (including, without prejudice to the generality of the foregoing, the costs of any legal and other professional advisors in obtaining and implementing such approvals);

1.3.4 the proceeds received by Home from the ACE Group or any "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) with respect to those inwards liabilities of

A 0341

Homes under the AFIA Treaties which are, or will upon final adjudication be, settled by way of offset as between Homes and the relevant AFIA Cedent concerned (whether such offset right derives from contract or statute); and

1.3.5 the proceeds received by Homes from the ACE Group or any Third Party Reinsurer with respect to Homes's liability under an adverse costs order as described in sub-paragraph 1.9.7 below (which amount shall be credited direct to Net Recoveries, as provided in that sub-paragraph).

1.4 We also agree that during the "Standstill Period" (as defined in paragraph 1.6 below) we will not enter into a commutation or similar compromise arrangement with any ACE Group company or any "Third Party Reinsurer" (as defined in sub-paragraph 1.8 hereof) relating to that company's indemnity and/or reinsurance obligations to Homes in respect of the AFIA Treaties without first:

- (1) promptly consulting with the Informal Creditors' Committee as to any such proposed commutation;
- (2) providing all relevant documentation to the Informal Creditors' Committee at least 5 working days (where practicable) prior to such consultation (and to this end, members of the Informal Creditors' Committee shall be deemed to have requested notice and entered into a confidentiality agreement with the Liquidator pursuant to paragraph 3 of the Order Establishing Procedures for Review of Reinsurance Commutation Agreements entered by the New Hampshire Court on July 23, 2003 or any such amended order as appropriate ("the Commutations Order")). If it is not practicable for Homes to comply with this 5 working days notice period, Homes shall make all reasonable efforts to provide as much notice as is possible in the circumstances; and
- (3) providing notice to the Informal Creditors' Committee in advance of any application to the supervising New Hampshire Court to approve the terms of any such proposed commutation, in accordance with the provisions of the Commutations Order.

1.5 You agree that:

- 1.5.1 during the Standstill Period you shall not seek to reach any agreement or arrangement with any member of the ACE Group or any "Third Party Reinsurer" (as defined in sub-paragraph 1.8 below) whereunder you receive payment from any such entity in respect of the AFIA Treaties; and
- 1.5.2 in determining your entitlement (if any) to receive any distribution payable to you in your capacity as a creditor in Homes's New Hampshire liquidation you will bring into account, and give credit for, any payments received by you pursuant to the arrangements described in this paragraph 1.

- 1.6 "Standstill Period" shall mean the period commencing upon the date on which you agree to the arrangement reflected by the proposals set out in this letter agreement by returning a signed copy of this letter agreement to us and ending on the "Standstill Termination Date" (as defined in paragraph 1.7 below).
- 1.7 "Standstill Termination Date" shall mean the earlier of:
- 1.7.1 27 February 2004, if by that date Home has not notified members of the Informal Creditors' Committee that it has determined that a sufficient number of Informal Creditors' Committee members (as described in paragraph 1.1 above) have agreed to the arrangement reflected by the proposals set out in this letter agreement by returning a signed copy of this letter agreement to us by that date;
 - 1.7.2 the date upon which the New Hampshire Court denies the New Hampshire Liquidator's motion for the approval of the New Hampshire Order in substantially similar terms to those described in paragraph 1.1 above;
 - 1.7.3 the date upon which the English Court refuses to grant permission to convene a meeting of AFIA Cedants to approve the Scheme in substantially similar terms to those described in paragraph 1.1 above;
 - 1.7.4 the date upon which a majority in number representing 75% in value of the AEIA Cedants do not approve the Scheme at the meeting specially convened for this purpose (or at any adjournment thereof) in substantially similar terms to those described in paragraph 1.1 above;
 - 1.7.5 the date upon which the English Court refuses to sanction the Scheme in substantially similar terms to those described in paragraph 1.1 above;
 - 1.7.6 the date upon which the English Court refuses to make the Global Liquidation Order;
 - 1.7.7 the date upon which the Financial Services Authority notifies Home that it will not grant the FSA Approval; or
 - 1.7.8 1 June 2004 (or such other date as Home and a sufficient number of Informal Creditors' Committee members (as described in paragraph 1.1 above) shall agree from time to time), if the English Court has not by that date sanctioned the Scheme under section 425 of the Companies Act 1985 as envisaged in paragraph 1.1.2 above.
- 1.8 "Third Party Reinsurer" shall mean a reinsurer (other than an ACE Group company), which has underwritten reinsurance in relation to AFIA business directly in favour of Home as reinsured.
- 1.9 It is intended that the Scheme will have the following main features:
- 1.9.1 subject to sub-paragraph 1.9.7 below, Net Recoveries will be distributed *pari passu* (as far as reasonably practicable) to all AFIA Cedants according to the value of their claims against Home under the AFIA Treaties as agreed or adjudicated (net of any applicable set-off) in the New Hampshire Liquidation of Home;

A 0343

- 1.9.2 Net Recoveries (together with all investment income and gain accruing thereon) will be held on a segregated basis by the Scheme Administrators for application in accordance with the Scheme;
- 1.9.3 a Creditors' Committee will be established with the right to be consulted by the Scheme Administrators on any transaction or litigation as between Home and any ACE Group company which is likely to have a material impact upon Net Recoveries;
- 1.9.4 Home will not enter into a commutation or similar compromise arrangement with any ACE Group company or any Third Party Reinsurer relating to that company's indemnity and/or reinsurance obligations to Home in respect of the AFIA Treaties without first:
- (1) promptly consulting with the Creditors' Committee as to any such proposed commutation;
 - (2) providing all relevant documentation to the Creditors' Committee at least 5 working days (where practicable) prior to such consultation (and to this end, members of the Creditors' Committee shall be deemed to have requested notice and entered into a confidentiality agreement with the Liquidator pursuant to paragraph 3 of the Commutations Order). If it is not practicable for Home to comply with this 5 working days notice period, Home shall make all reasonable efforts to provide as much notice as is possible in the circumstances; and
 - (3) providing notice to the Creditors' Committee in advance of any application to the supervising New Hampshire Court to approve the terms of any such proposed commutation or arrangement, in accordance with the provisions of the Commutations Order;
- 1.9.5 in the event of a commutation with the ACE Group, the Scheme Administrators will propose to AFIA Cedants a cut-off mechanism;
- 1.9.6 the costs referred to in sub-paragraph 1.3 above are to be recovered out of the Proceeds on an incurred basis; and
- 1.9.7 should a claim be denied in the Home liquidation and a disputed claim proceeding ensue, nothing in the Scheme shall preclude an AFIA Cedant, pursuant to RSA 402-C:6, from seeking an adverse cost order against Home in such proceeding, although under the Scheme the AFIA Cedant concerned will not be permitted to enforce payment by Home of any adverse cost order that may be forthcoming as an administrative expense in the Home liquidation, but shall rather be entitled to reimbursement to the extent of any cash recovered with respect thereto from an ACE Group company or from a Third Party Reinsurer, which cash recovery shall be credited directly to the Net Recoveries and shall be payable in full to the AFIA Cedant concerned from the Net Recoveries in priority to any distribution of the Net Recoveries to AFIA Cedants pursuant to paragraph 1.9.1 hereof.

2. Information

You agree that you will provide to us by 13 February 2004 sufficient information concerning your claims under the AFIA Treaties (including reasonable details of paid losses, outstanding losses and IBNR) only to enable us to make the determination referred to in paragraph 1.7.1

A 0344

hereof, and we will not use that information for the purposes of agreeing claims or obtaining payment from the ACE Group or Third Party Reinsurers until the Scheme is in place or you expressly agree otherwise.

3. Proof of Claim in Home's liquidation proceeding

We acknowledge that, by providing information to us pursuant to paragraph 2 of this letter, you shall not be deemed to be submitting a proof of claim or similar formal claim against Home, either in the New Hampshire liquidation proceeding or in any English proceeding. We acknowledge that, by providing us with the said information pursuant to this letter, you thereby reserve all your rights in that regard.

4. Confidentiality and Non-Disclosure

Save as provided above, we agree that we shall not, without your prior agreement, disclose any of the information provided under paragraph 2 above to any third party (save where required so to do so by law) with the exception of (a) our legal, accounting and actuarial advisers; (b) any applicable regulator; and (c) courts of competent jurisdiction for purposes of seeking judicial approval of the arrangement proposed herein.

We furthermore reaffirm that this letter and its contents constitute "Confidential Information" within the meaning of the Confidentiality Undertaking executed by you.

5. Authorisation

The New Hampshire Insurance Commissioner, Roger A. Sevigny, in his capacity as Liquidator of Home, has approved this proposal and authorised its circulation by the provisional liquidators to members of the Informal Creditors' Committee.

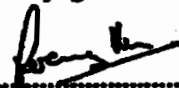
6. Acceptance by informal Creditors' Committee members

If this proposal is acceptable to you, please indicate your acceptance to its terms by signing one copy of this letter agreement where indicated below and returning such copy, duly signed, to us as soon as possible.



.....
Signed by G. H. Hughes
Joint Provisional Liquidator
for and on behalf of
The Home Insurance Company

We hereby agree to the arrangements reflected by the proposals set out in this letter agreement


.....
Signed by Equitas Limited

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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 26

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

Page 27

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?

Page 28

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.

Page 30

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

Page 31

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

Page 32

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

Page 33

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

Page 38

1 Q. Who calculated that number?

2 A. That would have been provided to me as

3 a product of the systems.

4 Q. And did you provide the information that

5 Mr. Hughes asked for in this bullet point?

6 A. I can't recall precisely, I may have given him

7 an indicative number, but not necessarily precisely.

8 Q. Turning to the penultimate bullet point, it

9 states here that you referred to the Folksam branch

10 situation; what did you mean by that?

11 A. That there was a UK insolvency for the Folksam

12 insurance company, and we were concerned that the UK branch

13 would be -- all the assets would be repatriated to Sweden

14 for liquidation proceedings in Sweden, and we were exploring

15 the possibility of having a UK proceeding for the UK branch.

16 Q. Who were you exploring that with?

17 A. With the provisional liquidators.

18 Q. Did they provide you with any advice on

19 whether or not one could have a separate liquidation for the

20 UK branch?

21 A. Yes, they did.

22 Q. Do you recall what that advice was?

23 A. I believe it became impractical.

24 Q. Do you know why it was impractical?

25 A. I can't recall.

Page 39

1 Q. Was that advice in writing?

2 A. I'm tempted to say it must be, but I can't

3 recall the document.

4 Q. Did you take separate advice on that point

5 yourself?

6 A. I can't recall.

7 Q. Turning to the last bullet point, what did you

8 mean by the first sentence?

9 A. The last bullet point?

10 Q. Yes.

11 A. "I said that UK creditors were more likely to

12 achieve most through the offset rather than through any

13 dividend."

14 Because my understanding was that the dividend

15 prospects were low for creditors, the most they could

16 realize is through the process of offset.

17 Q. And at the time that you wrote this e-mail,

18 did you know what Equitas's offset was?

19 A. Only the ballpark figures that I've advised to

20 you already.

21 Q. In the fourth bullet point from the bottom,

22 I guess I'll just read it, you're referring to what

23 Gareth Hughes said, that:

24 "... he had not heard that suggestion before, but

25 from his understanding, ACE were reinsurers."

Page 40

1 Do you know what he meant by that?

2 A. You'd have to ask him.

3 Q. Did you understand what he meant by that?

4 A. "He said that he had not heard that suggestion

5 before, but from his understanding, ACE were reinsurers."

6 This related to the transfer of business in the

7 80s, and it was my understanding that the business had

8 transferred absolutely to ACE, and he was asserting that

9 actually it wasn't a novation, that there was another

10 agreement in place, and he speculated it was a reinsurance

11 agreement.

12 (11.15 am)

13 Q. Okay. There's a portion of the document

14 redacted; do you know who redacted this document?

15 A. I think that was my counsel.

16 Q. Do you know whether or not a document without

17 the redaction has been produced to ACE by your counsel?

18 A. To ACE?

19 Q. To ACE's counsel.

20 A. I don't know.

21 MR. LEE: Jack, is that part of the package that

22 you provided to us?

23 MR. GORDON: No.

24 MR. LEE: Are you going to provide us the

25 nonredacted e-mail?

Page 41

1 MR. GORDON: I'd have to go back and look at what

2 the redaction was, why it was redacted.

3 MR. LEE: Can I inquire of the witness what was

4 redacted?

5 MR. GORDON: I think you did. I think he doesn't

6 know.

7 A. I can't recall.

8 Q. In relation to the claims that you filed in

9 the Home liquidation, is Home Equitas's sole reinsurer for

10 those claims?

11 A. I don't know.

12 Q. Am I right now that after the commutation,

13 Equitas doesn't have any other claims against the Home

14 beyond those that were submitted in the proof of claim?

15 A. That's my understanding.

16 Q. And that other than those claims that were

17 commuted, Home has no further claims against Equitas?

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

19 Q. And as a result of the commutation, Equitas is

20 paying an amount to the Home?

21 A. Or has paid.

22 Q. Or has paid, okay. And that amount is -- do

23 you know what that amount is?

24 A. No.

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

Page 42

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 150

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.

Page 151

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).

Page 152

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

Page 153

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

Page 154

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

Page 155

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

Page 156

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.

Page 157

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.

Page 170

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,**

Page 171

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.

Page 172

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**

Page 173

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**