

NEWSSTAND

***Equitas v. R&Q* - A Summary Analysis**

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The recent decision of Mr Justice Gross in *Equitas v R&Q* addressed specific aspects of two original LMX market catastrophe losses, Kuwait and Exxon Valdez, and the effect of those losses on the LMX spiral. The losses entered the spiral in 1990 and 1989 respectively but had since been judged to be “tainted” because they contained incorrectly aggregated (Kuwait) and irrecoverable (Exxon) elements.

The question for Mr Justice Gross was whether Equitas could establish that its claims fell properly within the scope of cover of its reinsurance contracts with R&Q. This involved a two stage analysis: first (i) whether the actuarial modelling approach was permissible as a matter of law and, if so, (ii) whether the Equitas models provided evidence of the claims such as to satisfy the burden of proof ie on the balance of probabilities – a question of fact.

The loss settlement provision in the contracts provided the starting point. This was the same “double proviso” loss settlement provision (ie requiring the loss to fall within the terms both of the reinsurance and of the original insurance), addressed by the House of Lords in *Hill v M&G*.

Justice Gross decided that a reinsured could, as a matter of principle, choose the evidence it deemed appropriate to seek to prove its claims. That could include an actuarial model.

The reinsured was not required to prove liability under each and every underlying contract. Consequently, the inability of Equitas to reconstruct the LMX spiral and to provide evidence of the untainted Exxon and Kuwait claims through it, on a contract by contract basis, was not fatal to its claim. On the question of fact, Mr Justice Gross decided that the Equitas models were “both capable of making the transition from the general to the particular and [did] go on to provide a reasonable representation of reality”. The models assisted “in doing practical justice in this case”, demonstrating his desire to “kickstart” the LMX spiral.

Immediately following the judgment, R&Q stated that it was considering bringing an appeal. However that possibility has been eliminated by the settlement between Equitas and R&Q, announced publicly on 14 December 2009.