

No. of 2013

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

ROYAL COURTS OF JUSTICE

**IN THE MATTER OF
ENGLISH & AMERICAN INSURANCE COMPANY LIMITED
AND
IN THE MATTER OF THE TRUSTEE ACT 1925**

B E T W E E N

(1) JOHN MITCHELL WARDROP

(2) MICHAEL STEVEN WALKER

Claimants

**EXHIBIT JMW1 TO THE
FIRST WITNESS STATEMENT
OF JOHN MITCHELL WARDROP**

This is exhibit "JMW1" referred to in my First Witness Statement dated 29 May 2013. The copy documents in this exhibit are listed below.

Item	Description	Page
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Scheme and Trust Documents

- | | | |
|----|--|-----|
| 1. | A copy of the Court-sanctioned 2003 Proposal in relation to the English & American Group plc and English & American Insurance Holdings plc schemes of arrangement, including: | |
| | a. A copy of the scheme of arrangement, which became effective on 8 February 1995 (the " Original Scheme "); and | 1 |
| | b. A copy of the ILU Trust Deed, executed on 29 May 2003 (the " Trust Deed "). | 31 |
| 2. | A copy of the document whereby the English & American Insurance Company Limited scheme of arrangement implemented in February 1995 (the " Original Scheme ") was subsequently amended by an amending scheme of arrangement, which became effective on 31 August 2000 (the " Run-Off Scheme "). | 57 |
| 3. | A copy of the deed appointing Mr Walker and Mr Wardrop as Trustees of the Trust in place of Mr Riddell, dated 21 December 2011. | 106 |

Information from Pro and the Actuaries

- | | | |
|----|---|-----|
| 4. | A copy of a table of figures produced by Pro setting out the information required from Pro in respect of this s57 Application. | 113 |
| 5. | A copy of KPMG LLP's actuarial review of outstanding claim liabilities for Marsh ILU Guaranteed Policies relating to English & American Insurance Company Limited as at 31 July 2011, dated 15 November 2012 (the " Actuarial Report "). | 117 |

Documents for the Trustees' s.57 Application

- | | | |
|----|---|-----|
| 6. | A copy of the draft order. | 152 |
| 7. | A copy of the Opinion of chancery counsel (Giles Richardson) regarding the s.57 Application, dated 13 March 2013. | 155 |

Signed:



JOHN MITCHELL WARDROP

Dated:

29/5/13

PART II

SCHEMES OF ARRANGEMENT

**IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION**

**Claim No: 3506 of 2003
Claim No: 3507 of 2003**

IN THE MATTER OF ENGLISH & AMERICAN GROUP PLC

and

IN THE MATTER OF ENGLISH & AMERICAN INSURANCE HOLDINGS PLC

and

IN THE MATTER OF THE COMPANIES ACT 1985

SCHEMES OF ARRANGEMENT

between

ENGLISH & AMERICAN GROUP PLC

and between

ENGLISH & AMERICAN INSURANCE HOLDINGS PLC

and their respective

SCHEME CREDITORS

(as defined in the Schemes of Arrangement)

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Preliminary

1. Definitions

1.1 In this Scheme, unless inconsistent with the subject or context, the following words shall have the following meanings:

“Administration Creditors’ Committee”	the Creditors’ Committee established in accordance with section 26 of the Insolvency Act in relation to the Administration Process to which EAG is subject;
“Administration Date”	10 May 1993;
“Administration Order”	the administration order granted by the Court on 10 May 1993 in respect of the Company;
“Administration Process”	the administration process under Part II of the Insolvency Act to which the Company is subject by virtue of the Administration Order;
“Balance of Company Property”	the remainder of the Company’s Property after provision has been made for payment: (a) of all Scheme Expenses in accordance with Clause 13; and (b) to Non-ILU Creditors in accordance with Clause 13;
“Company”	in the context of the EAG Scheme, EAG, and in the context of the EAIH Scheme, EAIH;
“Companies Act”	the Companies Act 1985, as amended and in force at the Effective Date;
“Company Directors Disqualification Act”	the Company Directors Disqualification Act 1986, as amended, modified or re-enacted from time to time;
“Court”	the High Court of Justice of England and Wales;

"Debt"

any debt or liability to which the Company is subject at the Effective Date including any interest claimable pursuant to Clause 5.

In relation to the above:

- (i) it is immaterial whether the debt or liability is present or future, whether it is certain or contingent, or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion;
- (ii) "liability" means (subject to (i) above) a liability to pay money or money's worth, including any liability under any enactment, any liability for breach of trust, any liability in contract, tort or bailment, and any liability arising out of an obligation to make restitution;
- (iii) in determining whether any liability in tort is a Debt, the Company is deemed to become subject to that liability by reason of an obligation incurred at the time when the cause of action accrued;
- (iv) "debt" or "liability" does not include a debt or liability which would be statute barred at the Petition Date under English law or the law of any other jurisdiction which applies to the relevant debt or liability;
- (v) for the avoidance of doubt Debt does not include a Scheme Expense;

"Disputed Non-ILU Claim"

a Non-ILU Claim in respect of which there is a dispute between the Company or the Scheme Managers and a Non-ILU Creditor relating to the existence and/or the quantum of the Non-ILU Claim, or a dispute in relation to the amount/and or existence of set-off;

"Dispute Resolution Procedure"	the procedure for the resolution of disputes set out in Clause 24;
"Distribution Amount"	the amount as calculated pursuant to Clause 13.3 required to pay Established Claims in respect of Preferential Debts in full and in respect of all other Established Claims, a dividend calculated at the Dividend Rate;
"Dividend Rate"	5.1% in the EAG Scheme and 2.7% in the EAIH Scheme;
"EAG"	English & American Group plc, Company Number 1692716 (formerly English & American Group Ltd, London & Gloucester Limited and Dellalpha Limited);
"EAG Scheme"	the scheme of arrangement in the form set out in the Scheme Document, as approved in respect of EAG by the requisite majority of its creditors pursuant to section 425(2) of the Companies Act and sanctioned by Order of the Court, such order being delivered to the Registrar of Companies for registration, with or subject to any modification, addition or condition approved or imposed by the Court;
"EAIH"	English & American Insurance Holdings plc, Company Number 1768409 (formerly English & American Insurance Group plc);
"EAIH Scheme"	the scheme of arrangement in the form set out in the Scheme Document, as approved in respect of EAIH by the requisite majority of its creditors pursuant to section 425(2) of the Companies Act and sanctioned by order of the Court, such order being delivered to the Registrar of Companies for registration, with or subject to any modification, addition or condition approved or imposed by the Court;
"Effective Date"	the date on which an office copy of the order of the Court sanctioning the Scheme shall be delivered for registration to the Registrar of Companies;

"Established Claim"	the total amount established as being due in respect of a Non-ILU Claim in accordance with Clause 11;
"Explanatory Statement"	the explanatory statement provided in accordance with section 426 of the Companies Act in relation to the EAG Scheme and the EAIH Scheme;
"Final Claims Submission Date"	the 28th day following the Effective Date;
"ILU"	the Institute of London Underwriters;
"ILU Creditor"	a person (excluding the ILU) who is or claims to be a creditor of the Company or otherwise entitled in respect of an ILU Debt;
"ILU Debt"	any Debt to which the Company is subject by virtue of the ILU Guarantee and includes for the avoidance of doubt any sum which the Company is obliged to pay by virtue of the ILU Guarantee, whether or not that Debt existed at the Administration Date;
"ILU Guarantee"	the guarantee dated 5 June 1987 issued by the Company to the ILU in respect of liabilities of English & American Insurance Company Limited (Company No. 240656) under policies signed and issued by the ILU on behalf of English & American Insurance Company Limited (or on behalf of that company and other members of the ILU) on and after 1 September 1983, as extended by an addendum dated 4 January 1988;
"ILU Trust"	the trust established in accordance with the provisions of the document annexed to the Scheme Document as Appendix 1;
"Insolvency Act" and the "Insolvency Rules"	the Insolvency Act 1986 and the Insolvency Rules 1986 as amended and in force and relating to the Company at the Effective Date;
"Joint Administrators"	Richard Claude Boys-Stones and Paul Anthony Brereton Evans or other persons appointed to act as administrator

pursuant to the Administration Process and references thereto shall mean one or both of the Joint Administrators;

- "Non-ILU Claim" a claim for a Non-ILU Debt in respect of which the Established Claim has not yet been determined;
- "Non-ILU Claim Form" the document entitled "Non-ILU Claim Form" setting out the Non-ILU Claim in respect of a Non-ILU Creditor according to the Company's records and details of any set-off, an example of which is annexed to the Scheme Document as Appendix 2;
- "Non-ILU Creditor" a person who is or claims to be a creditor of the Company in respect of a Non-ILU Debt excluding for the avoidance of doubt any person in respect of whom it has been established to the satisfaction of the Scheme Managers that no Non-ILU Debt is owed;
- "Non-ILU Debt" any Debt to which the Company is subject which is not an ILU Debt including any liability of the Company in respect of corporation tax incurred prior to the Effective Date;
- "Petition Date" 28 April 1993, being the date on which the petition for the Administration Order was presented in respect of the Company;
- "Post" first class post or air mail or a generally recognised commercial courier service;
- "Preferential Creditor" a creditor with an Established Claim in respect of Preferential Debt;
- "Preferential Debt" a Non-ILU Debt to which the Company is subject which would have been preferential under section 386 of the Insolvency Act if the Company were being wound up by the Court and the relevant date for the purposes of Schedule 6 to the Insolvency Act were the Administration Date;

“Proceedings”	any form of proceedings in any jurisdiction or forum including without limitation any demand, legal proceedings, arbitration, alternative dispute resolution, adjudication, mediation, seizure, distraint, forfeiture, re-entry, execution or enforcement of judgment or any step taken for the purpose of creating or enforcing a lien;
“Property”	all forms of property including money, goods, things in action, land, books, records and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property;
“Registrar of Companies”	the registrar or other officer performing under the Companies Act the duty of registration of companies in England and Wales;
“Scheme”	in the context of the EAG Scheme, the EAG Scheme and in the context of the EAIH Scheme, the EAIH Scheme;
“Scheme Account”	a separate interest-bearing bank account opened pursuant to Clause 21.1.7;
“Scheme Adjudicator”	any person appointed as such in accordance with Clause 22.1 or 24.2;
“Scheme Creditors”	Non-ILU Creditors and ILU Creditors;
“Scheme Document”	the document containing the terms of the EAG Scheme and the EAIH Scheme and the Explanatory Statement together with the appendices thereto;
“Scheme Expenses”	the expenses referred to in Clause 8;
“Scheme Managers”	the persons for the time being appointed as Scheme Managers pursuant to the provisions of the Scheme;
“Scheme Period”	the period from the Effective Date to the Termination Date;

“Scheme Rate”	the rate of exchange for the relevant currency, being the mid-market rate of exchange as published in the <i>Financial Times</i> on the Effective Date;
“Sterling”	the currency of the United Kingdom for the time being;
“Termination Date”	the date on which the Scheme ceases to have effect in accordance with Clause 25;
“Working Day”	any day other than Saturday, Sunday or any other day which is a public holiday in England.

1.2 In the Scheme:

- 1.2.1 references to Clauses are references to Clauses of the Scheme and references to Appendices are references to Appendices to the Scheme;
- 1.2.2 references to a person include a company, unincorporated association or partnership;
- 1.2.3 references to the date of a document, form, notice or report mean the date shown on such document, form, notice or report as the date thereof;
- 1.2.4 references in the Scheme other than in Clause 18.2 to PricewaterhouseCoopers LLP shall be deemed to refer also to any successor firm or business entity or such other firm or business entity from which a duly appointed Scheme Manager for the time being holding office practises;
- 1.2.5 the singular includes the plural and vice versa, and masculine includes feminine;
- 1.2.6 headings are for ease of reference only and shall not affect the interpretation of the Scheme.

The Scheme – General

2. Effective Date

The Scheme shall come into operation on the Effective Date.

3. Application of the Scheme

3.1 The Scheme shall apply to all Debts of the Company.

3.2 Except as expressly provided, nothing in the Scheme shall be deemed to alter or confer any right on any Scheme Creditor or any other person.

4. Enforcement of Non-ILU Claims

4.1 Each Scheme Creditor is deemed to acknowledge that the process of establishing Established Claims in accordance with Clauses 11 and 12 of the Scheme, and of making full and final payment in respect of those Established Claims in accordance with Clause 13 and 14 of the Scheme is fair and that all Scheme Creditors shall be bound thereby.

4.2 Each Scheme Creditor is deemed to acknowledge that the transfer of the Balance of Company Property to the Trustees of the ILU Trust in accordance with Clause 15.1 and the extinguishing of the ILU Creditors' claims against the Company and replacement of such with a claim under the ILU Trust in accordance with Clause 15.2 is fair and that all Scheme Creditors shall be bound thereby.

4.3 Save as expressly provided for in the Scheme no Scheme Creditor shall be entitled to take or continue any step or do or continue any act against or in respect of the Companies or their Property or the Scheme Managers (including by way of any Proceedings) after the Effective Date for the purpose of obtaining payment, or establishing the quantum, of any Debt.

4.4 If any Scheme Creditor takes any action which is prohibited by Clause 4.3 after the Effective Date he shall be deemed to have received on account of any dividend(s) or any claim against the ILU Trust to which he would otherwise be entitled pursuant to the Scheme an advance payment under the Scheme equal to the amount or gross value of any Property or advantage obtained by him at the expense of the Company as a result of such action and the extent, if any, to which he is entitled to a payment from the Company or the ILU Trust shall be determined accordingly. In the event that the amount of any such deemed receipt(s) attributable to such Scheme Creditor exceeds the total of all sums by way of dividend which that Scheme Creditor would otherwise receive pursuant to the Scheme or the total sum which such Scheme Creditor would be entitled to receive from the ILU Trust he shall be treated as a debtor of the Company or the ILU Trust, as applicable, in respect of such excess.

- 4.5 For the purpose of Clause 4.4 the value of any Property, benefit or advantage obtained as aforesaid shall be conclusively determined by the Scheme Managers and (without prejudice to the generality of the foregoing) may include such amount as the Scheme Managers may in their absolute discretion consider to be appropriate in respect of interest, and of any costs, charges and expenses incurred by the Company or the Scheme Managers as a consequence of the action prohibited by Clause 4.3.
- 4.6 Each Scheme Creditor is deemed to acknowledge that if he takes Proceedings against the Company in breach of Clause 4.3 the Scheme Managers shall be entitled to obtain an order staying those Proceedings and providing for payment by the Scheme Creditor concerned of interest and of any costs, charges and expenses incurred by the Companies or the Scheme Manager as a result of those Proceedings.
5. Interest
- 5.1 Where a Non-ILU Debt is owed by the Company to a Non-ILU Creditor and a demand for payment was made in writing by or on behalf of the Non-ILU Creditor before the Petition Date and notice given that interest would be payable from the date of demand to the date of payment, that interest shall form part of the Non-ILU Debt except in so far as it is payable in respect of any period after the Effective Date.
- 5.2 The rate of interest payable under Clause 5.1 in respect of any Non-ILU Debt is 4% per annum or the rate specified in the written demand for payment referred to in Clause 5.1, whichever shall be the lesser.
6. Set-off
- 6.1 Where before the Effective Date there have been mutual credits, mutual debts or other mutual dealings between the Company and any Non-ILU Creditor making a Non-ILU Claim, an account shall be taken of what is due from the Company to the Non-ILU Creditor pursuant to the terms of the Scheme and what is due from the Non-ILU Creditor to the Company in respect of the mutual credits, mutual debts or other mutual dealings and, in accordance, where relevant, with Clause 6.3, the sums due from one party shall be set off against the sums due from the other.
- 6.2 The account referred to in Clause 6.1 shall be taken after the data contained in the Non-ILU Claim Form in relation to all of a Non-ILU Creditor's Non-ILU

Claims have been determined pursuant to Clause 11, and only the balance, if any, due from the Company shall thereafter constitute that Non-ILU Creditor's Established Claim. Any balance due to the Company shall constitute a debt owed to the Company. Such debt shall be paid to the Company forthwith.

- 6.3 Sums due from the Company to a Non-ILU Creditor shall not be included in the account taken under Clause 6.1 where the sums have become due to the Non-ILU Creditor by reason of any transfer, assignment, sale or novation of debt or of right to receive payment, or by reason of any reorganisation or reconstruction of companies on a date after the Petition Date.

7. Foreign Currency Conversion

- 7.1 Where a Non-ILU Debt or any sum owed to the Company which is the subject of a claim to set-off under Clause 6 has been incurred in, or is payable in, a currency other than Sterling for the purposes of the Scheme the amount thereof shall be converted into Sterling at the Scheme Rate.

8. Scheme Expenses

- 8.1 All costs, charges and expenses of and incidental to the Scheme, and of the performance by the Joint Administrators of their functions pursuant to the Administration Order during the Scheme Period, shall be Scheme Expenses, including, without prejudice to the generality of the foregoing:

8.1.1 any remuneration of the Joint Administrators (calculated by reference to the work done by them and employees of PricewaterhouseCoopers LLP under their control, to the time spent by them and on the basis of that firm's usual rates for the type of work involved) relating to the performance of their functions pursuant to the orders appointing them to the Company, together with all costs, charges and expenses incurred by them including the fees and expenses of any third party service providers incurred after the Effective Date provided that such remuneration has been incurred, calculated and approved in accordance with the remuneration processes established pursuant to the Administration Process;

8.1.2 all costs, charges and expenses incurred by the Company in connection with the negotiation and preparation of the Scheme (including, but not limited to, all legal, accounting, actuarial, financial, run-off and other consultants' fees, expenses and other costs);

- 8.1.3 any court and filing fees and stamp or other duty or tax and any disbursements incurred in relation to the Scheme;
- 8.1.4 the costs of holding meetings of Scheme Creditors and any meetings of shareholders or directors convened to consider the Scheme and the costs of obtaining the sanction of the Court and delivering the Court's order sanctioning the Scheme to the Registrar of Companies for registration;
- 8.1.5 all liabilities, expenses, costs and disbursements incurred by the Company, the Joint Administrators and the Scheme Managers in the course of exercising or performing his or their respective powers, duties and functions under, or for the purpose of, implementing the Scheme;
- 8.1.6 the cost of remunerating the Scheme Managers and any of their partners and the partners and staff of all PricewaterhouseCoopers LLP firms, associated firms, associations and companies and their successors or any of them in connection with the exercise and performance of the powers, duties and functions of the Scheme Managers under the Scheme. Such remuneration shall be calculated by reference to time spent at the usual rates of the relevant PricewaterhouseCoopers LLP firm, associated firm, association or company or its successor for the type of work involved;
- 8.1.7 the costs incurred in employing agents and professional advisers to advise or assist the Scheme Managers and their staff in connection with the exercise and performance of their powers, duties and functions as Scheme Managers;
- 8.1.8 the fees of and the costs, charges and expenses incurred by any Scheme Adjudicator (as approved by the Scheme Managers pursuant to Clause 24.1.4 and subject to Clause 24.1.4.2) in connection with the exercise and performance of his powers, duties and functions under the Scheme;
- 8.1.9 any legal and other advisers' costs which the Company is liable to pay pursuant to the indemnity in Clause 28.1;
- 8.1.10 all administrative, licence, listing, audit, filing, registration, directors' and other fees, costs, and expenses incurred by the Company or by the Scheme Managers on behalf of the Company in connection with the Scheme;
- 8.1.11 all corporation tax incurred by the Company after the Effective Date;

8.1.12 all expenses, liabilities, costs and disbursements incurred by the Joint Administrators in obtaining the discharge of the Administration Order and their release and discharge under section 20 of the Insolvency Act.

9. Payment of Scheme Expenses

9.1 The Company acting by the Joint Administrators shall pay Scheme Expenses in full.

9.2 Scheme Creditors hereby acknowledge that expenses that are Scheme Expenses may have been incurred for the joint benefit of EAG and EAIH. In these circumstances, 70% of such expenses shall be borne by EAG and paid as a Scheme Expense in the EAG Scheme and 30% of such expenses shall be borne by EAIH and paid as a Scheme Expense in the EAIH Scheme.

10. Interaction of the Scheme and the Administration Process

10.1 During the Scheme Period the Scheme Managers shall perform all functions under the Scheme. All other powers in relation to the management of the affairs and business of the Company conferred on the Joint Administrators by the Administration Order shall be exercisable by the Joint Administrators.

10.2 The Joint Administrators shall incur no personal liability under or in respect of the Scheme.

Determination and Payment of Established Claims

11. Non-ILU Claims: establishing the Established Claim

11.1 Where at the Effective Date any Non-ILU Creditor has not already received a Non-ILU Claim Form, that Non-ILU Creditor may send to the Scheme Managers by Post or by facsimile a written request for a Non-ILU Claim Form at any time prior to 23:59 on the Final Claims Submission Date. On receipt of such a request the Scheme Managers shall forthwith dispatch a Non-ILU Claim Form to the relevant Non-ILU Creditor and Clauses 11.2 to 11.5 shall apply to such Non-ILU Claim Form.

11.2 In relation to the Non-ILU Claim Form sent to him, each Non-ILU Creditor shall be entitled to amend the data on the Non-ILU Claim Form (which, for the avoidance of doubt, shall include inserting details of any claim which the Joint Administrators or the Scheme Managers have or have not included in the

Non-ILU Claim Form) and shall sign and return the Non-ILU Claim Form (whether amended or in its original form) by Post or by facsimile to the Scheme Managers at PricewaterhouseCoopers LLP, Plumtree Court, London EC4A 4HT, to be received by him no later than 23:59 on the Final Claims Submission Date. Non-ILU Creditors shall make any amendments to the Non-ILU Claim Form in accordance with the instructions attached thereto and shall enclose any relevant supporting documentation relating to such amendments with the Non-ILU Claim Form when returning it to the Scheme Managers in accordance with this Clause 11.2.

- 11.3 Each Non-ILU Creditor shall be deemed to have accepted and confirmed as accurate the data set out in any Non-ILU Claim Form sent to it by the Joint Administrators or Scheme Managers when that Non-ILU Claim Form is signed and returned unamended in accordance with Clause 11.2. That Non-ILU Claim Form shall thereafter be binding on the Non-ILU Creditor, the Company, Scheme Creditors and the Scheme Managers as to the matters referred to therein. In the event that a Non-ILU Creditor amends his Non-ILU Claim Form and signs and returns it in accordance with Clause 11.2, that form being received no later than 23:59 on the Final Claims Submission Date, it shall be binding on the Non-ILU Creditor, the Company, Scheme Creditors and the Scheme Managers as to unamended data set out in it only.
- 11.4 Following receipt of a Non-ILU Claim Form amended and returned in accordance with the provisions of Clause 11.2, the Scheme Managers shall endeavour to agree any amended data with the relevant Non-ILU Creditor within 14 days of the Final Claims Submission Date. Once agreement has been reached in relation to any such data, that agreement shall be recorded in a revised Non-ILU Claim Form which shall be signed by the Scheme Managers and sent to the Non-ILU Creditor. The revised Non-ILU Claim Form when signed by the Scheme Managers will become binding on the Non-ILU Creditor, the Company, Scheme Creditors and the Scheme Managers.
- 11.5 If agreement has not been reached within 14 days of the Final Claims Submission Date the disputed matters shall be referred to a Scheme Adjudicator as a Disputed Non-ILU Claim under the Dispute Resolution Procedure set out in Clause 24. The decision of a Scheme Adjudicator shall be recorded in writing by the Scheme Adjudicator in accordance with Clause 24.1.2 and shall be final and binding on the relevant Non-ILU Creditor, the Company, the Scheme Creditors and the Scheme Managers to the extent permitted by law.

11.6 The amount established as being due in respect of a Non-ILU Claim following completion of the steps set out in Clauses 11.2 to 11.5, and after the application of any set-off in accordance with Clause 6 shall be binding on the Non-ILU Creditor, the Company, the Scheme Creditors and the Scheme Managers as the Established Claim in relation to each Non-ILU Creditor.

12. **Final Claims Submission Date**

12.1 As soon as practicable following the Effective Date, the Scheme Managers shall

12.1.1 notify Non-ILU Creditors of whom they are aware of the Final Claims Submission Date by notice in writing sent by Post; and

12.1.2 advertise the Effective Date and the Final Claims Submission Date as far as possible in the same publications as were used to advertise the meeting of Scheme Creditors to vote on the Scheme and in such other publications as they shall deem appropriate.

12.2 Subject to Clause 12.3, no Non-ILU Creditor shall be entitled to claim in, or receive any dividend under the Scheme in respect of a Non-ILU Claim and shall have no further rights against the Company in respect of such Non-ILU Claim unless it was included in that Non-ILU Creditor's Non-ILU Claim Form, such form being signed in accordance with Clause 11.2 and received by the Scheme Managers no later than 23:59 on the Final Claims Submission Date.

12.3 The Scheme Managers may, at their absolute discretion, accept Non-ILU Claim Forms returned after 23:59 on the Final Claims Submission Date.

13. **Distribution to Non-ILU Creditors**

13.1 As soon as practicable after the Effective Date, but not before they are due for payment, the Joint Administrators shall pay any Scheme Expenses and shall provide for those which are not then due.

13.2 The Joint Administrators shall be entitled, when making provision for Scheme Expenses, to estimate and retain the funds required to cover future Scheme Expenses and at the end of the Scheme Period any unused funds shall be transferred to the Trustees of the ILU Trust in accordance with Clause 25.2.

13.3 The Scheme Managers shall after all Scheme Expenses have been paid or provided for in accordance with Clauses 13.1 and 13.2 and as soon as practicable

after the Established Claims of all Non-ILU Creditors have been fixed in accordance with Clause 11 calculate the sum required to pay:

- 13.3.1 to each Preferential Creditor its Established Claim in respect of Preferential Debts; and
- 13.3.2 to each Non-ILU Creditor in respect of its Established Claim (other than those Established Claims or parts of Established Claims which constitute Preferential Debts) a dividend on those Established Claims calculated at the Dividend Rate.
- 13.4 As soon as practicable following calculation of the Distribution Amount pursuant to Clause 13.3, the Scheme Managers shall (where the Scheme Managers are not also Joint Administrators) notify the Joint Administrators of the Distribution Amount and the Joint Administrators shall transfer a sum equal to the Distribution Amount to the Scheme Account.
- 13.5 Where notice is sent by the Scheme Managers to the Joint Administrators pursuant to Clause 13.4, such notice shall include the sort code, account number and branch details of the Scheme Account.
- 13.6 As soon as practicable following receipt of the sum transferred pursuant to Clause 13.4 into the Scheme Account the Scheme Managers shall cause such sum to be applied in paying Established Claims in respect of Preferential Debts in full and to each Non-ILU Creditor in respect of its Established Claim (other than those Established Claims or parts of Established Claims which constitute Preferential Debts) a dividend calculated at the Dividend Rate.
- 13.7 The sum transferred to the Scheme Account pursuant to Clause 13.4 shall be used solely for the purpose of making payments to the Preferential Creditors and Non-ILU Creditors pursuant to Clause 13.6.
14. Method of Payment
 - 14.1 Payment of dividends shall be in Sterling.
 - 14.2 All payments by the Company to Non-ILU Creditors shall be made by cheque in favour of the Non-ILU Creditor, or of such other person as he may direct by notice in writing and sent by Post, but at the risk of the Non-ILU Creditor (who shall bear the costs of clearing each such cheque), to the last known address of the Non-ILU Creditor or to any other address of which the Scheme Managers may receive notification in writing from the Non-ILU Creditor.

- 14.3 Subject to Clause 16.2, the sending by Post of such cheque shall be good discharge to the relevant Non-ILU Creditor of the dividend in respect of which the cheque is drawn and shall constitute conclusive evidence that the relevant Non-ILU Creditor has received such cheque.
15. **ILU Creditors' rights under the Scheme**
- 15.1 As soon as reasonably practicable following completion of the steps referred to in Clause 13, the Joint Administrators shall transfer to the Trustees of the ILU Trust the Balance of Company Property to be held in accordance with the provisions of the ILU Trust.
- 15.2 Each ILU Creditor shall be deemed to agree that payment of the Balance of Company Property to the Trustees of the ILU Trust shall fully extinguish its claim against the Company whether in respect of an ILU Debt or otherwise, and that the ILU Debt shall be replaced by a claim under the ILU Trust.
- 15.3 The ILU shall be deemed to accept that the performance by the Company of its obligations under the Scheme fully discharges and satisfies the Company's obligations to the ILU pursuant to the ILU Guarantee and that, subject to the performance of such obligations under the Scheme, the ILU shall have no claim against the Joint Administrators, the Scheme Managers, any Scheme Adjudicator or the Company.
16. **Other Provisions**
- 16.1 Each Non-ILU Creditor shall be deemed to agree that payment of the dividend referred to in Clause 13.3 of his Established Claim shall be made and accepted in full and final settlement of that Non-ILU Creditor's Non-ILU Claim including, for the avoidance of doubt, any liabilities in respect of any and all matters arising or events occurring after the Effective Date, and each ILU Creditor shall be deemed to agree that such payment to Non-ILU Creditors under Clause 13.3 is made in full and final settlement of that Non-ILU Creditor's Non-ILU Claim.
- 16.2 Any balance remaining in the Scheme Account representing cheques issued to Non-ILU Creditors in accordance with Clause 14 in respect of which the Scheme Account has not been debited (and accumulated interest thereon) shall be transferred by the Scheme Managers to the trustees of the ILU Trust to be held in accordance with the provisions of the ILU Trust as soon as may be practicable following expiry of a period of not less than 6 months from the date of transfer of

the Balance of Company Property to the trustees of the ILU Trust in accordance with Clause 15.1.

- 16.3 All Non-ILU Creditors shall forfeit all rights to the dividend represented by the cheques referred to in Clause 16.2 on the expiry of a period of 6 months from the date of transfer of the Balance of Company Property in accordance with Clause 15.1, and, for the avoidance of doubt, neither the Company nor the ILU Trust shall have any liability to any such Non-ILU Creditor.

The Scheme Managers

17. The Scheme Managers
- 17.1 There shall be two Scheme Managers having the powers, duties and functions conferred upon them by the Scheme. In exercising their powers and carrying out their duties and functions under the Scheme, the Scheme Managers shall act in good faith and with due care and diligence in the interests of the general body of Scheme Creditors and shall exercise their powers under the Scheme for the purpose of ensuring that the Scheme is operated in accordance with its terms.
- 17.2 The Scheme Managers shall, during the Scheme Period, act as agent of the Company in exercising their powers and in carrying out their duties and functions under the Scheme.
- 17.3 Nothing in this Scheme shall render the Scheme Managers liable for any Debt or any other obligation of the Company.
- 17.4 Any act required or authorised under the Scheme to be done by the Scheme Managers may be done by either or both of the persons for the time being holding the office of Scheme Manager.
18. Qualifications of the Scheme Managers
- 18.1 Each Scheme Manager shall be an individual qualified to act as an Insolvency Practitioner under the Insolvency Act or any amendment, modification or re-enactment thereof.
- 18.2 The first Scheme Managers shall be Paul Anthony Brereton Evans and Dan Yoram Schwarzmans of PricewaterhouseCoopers LLP of Plumtree Court, London EC4A 4HT, United Kingdom.

19. Resignation and Removal of the Scheme Managers

19.1 Each Scheme Manager may resign his appointment at any time by giving not less than twelve months notice in writing to the Company.

19.2 The office of a Scheme Manager shall be vacated if he:

19.2.1 dies;

19.2.2 is convicted of an indictable offence;

19.2.3 resigns his office by notice in accordance with Clause 19.1;

19.2.4 becomes bankrupt;

19.2.5 is no longer a person qualified to act in accordance with Clause 18.1;

19.2.6 is disqualified from acting as a director of a company under the Company Directors Disqualification Act; or

19.2.7 is admitted to hospital because of mental disorder or is the subject of an order made by a court having jurisdiction whether in England or elsewhere in matters concerning his mental disorder.

19.3 If the office of a Scheme Manager is vacated in accordance with Clause 19.1 or 19.2 the Joint Administrators shall be entitled to appoint a replacement Scheme Manager provided that:

19.3.1 such replacement is qualified to act in accordance with Clause 18.1 and not ineligible by reason of any of the matters referred to in Clause 19.2 and consents so to act; and

19.3.2 the appointment of such a person shall be subject to ratification by the Administration Creditors' Committee at a meeting convened for the purpose by the Joint Administrators which meeting shall be convened within 28 days of such appointment.

19.4 Notwithstanding the provisions of Clause 19.3.2, the person appointed as replacement Scheme Manager shall be entitled to act as Scheme Manager

throughout the period from the date of his appointment by the Joint Administrators to the date of the next meeting of the said Administration Creditors' Committee convened pursuant to Clause 19.3.2. In the event that the appointment of such Scheme Manager is not ratified at the said meeting, the Administration Creditors' Committee shall, at that meeting, elect a replacement Scheme Manager. Such replacement Scheme Manager shall be a person qualified to act in accordance with Clause 18.1 and not ineligible by reason of any of the matters referred to in Clause 19.2 and who consents so to act. If no such election is made, the appointment made by the Joint Administrators shall, notwithstanding the provisions of Clause 19.3.2, stand until the next meeting of the Administration Creditors' Committee, which shall take place within 56 days. Failing actual ratification of the appointment made by the Joint Administrators, or election by the Administration Creditors' Committee of a replacement Scheme Manager at that meeting, the appointment made by the Joint Administrators shall be deemed to be ratified.

20. General Powers of the Scheme Managers

- 20.1 The Scheme Managers shall have the power to implement the Scheme subject to the provisions thereof, together with the powers specifically conferred on him thereby.

21. Specific Powers and Obligations of the Scheme Managers

- 21.1 In carrying out their duties and functions under the Scheme, the Scheme Managers shall (without prejudice to the full terms of the Scheme) be empowered:

21.1.1 to have full access to all such information as they may from time to time require in relation to the affairs of the Company or the operation of the Scheme and to all books, papers, documents and other information contained or represented in any format whatsoever in the possession or under the control of the Company. Such information, books, papers and documents may be disclosed by the Scheme Managers to the Scheme Creditors if they consider such disclosure to be for the benefit of the Scheme;

21.1.2 to employ and remunerate as a Scheme Expense accountants, actuaries, lawyers and other professional advisers or agents (including their partners and the partners and staff of all PricewaterhouseCoopers LLP firms, associated firms,

associations and companies or their successors or any of them) in connection with the Scheme;

- 21.1.3 to delegate in writing to any person qualified as set out in Clause 18.1 and not ineligible by reason of any of the matters referred to in Clause 19.2 all or any of the powers and discretion conferred upon the Scheme Managers under the Scheme, and from time to time to revoke any such delegation, provided that the Scheme Managers shall be personally responsible for any act or omission of any such delegate to the same extent as if they had expressly authorised it.
- 21.1.4 to petition the courts of any jurisdiction to obtain recognition or enforcement of the Scheme or to bring, commence or defend any Proceedings in the name and, insofar as is permitted by law, on behalf of the Company in any matter affecting the Company in any Jurisdiction, or to prevent the continuation or commencement of any Proceedings against the Company or its Property and/or to seek such other relief as they deem appropriate or which the relevant court may grant and, for the avoidance of doubt, this shall include the power to make application under Section 304 of the United States Federal Bankruptcy Code, 11 USC and any modification, amendment, re-enactment or replacement thereof;
- 21.1.5 to apply to the Court for directions in relation to any particular matter arising under, or in the course of the operation of the Scheme;
- 21.1.6 on behalf of the Company to negotiate, compromise, waive or settle claims by and against the Company;
- 21.1.7 to open, maintain and operate such bank accounts as they may think fit and to close such accounts;
- 21.1.8 to convene and attend meetings of the Administration Creditors' Committee for the purposes of consulting with or providing information to them;
- 21.1.9 to do all acts and to execute in the name and, insofar as permitted by law, on behalf of the Company any deed, transfer, instrument, cheque, bill of exchange, receipt or other document which may be necessary for or incidental to the full and proper implementation of the Scheme;
- 21.1.10 to do all such things as may be necessary for the preservation of the Property of the Company;

- 21.1.11 to make any payment which is necessary or incidental to the performance of their functions;
- 21.1.12 to use the Company's seal;
- 21.1.13 to exercise any other powers necessary for or incidental to the full and proper implementation of the Scheme; and
- 21.1.14 to do all other things incidental to the exercise of the foregoing powers.

The Scheme Adjudicator and Dispute Resolution Procedure

22. The Scheme Adjudicator

- 22.1 In the event that a Disputed Non-ILU Claim arises the Scheme Managers shall appoint a Scheme Adjudicator having the powers, duties and functions, and the rights, conferred upon him by the Scheme. In exercising his powers and carrying out his duties and functions under the Scheme, the Scheme Adjudicator shall act in *good faith and with due care and diligence in the interests of the Scheme Creditors as a whole*, and shall exercise his powers under the Scheme for the purpose of ensuring that the Scheme is operated in accordance with its terms.
- 22.2 The Scheme Adjudicator shall be a Barrister of at least ten years call and shall be a *fit and proper person who in the opinion of the Scheme Managers is duly qualified to carry out the functions allocated to him hereunder*.

23. Specific Powers, Duties and Functions of the Scheme Adjudicator

The Scheme Adjudicator shall adjudicate on all matters submitted to him pursuant to the Scheme as a Disputed Non-ILU Claim in accordance with the Dispute Resolution Procedure.

24. Dispute Resolution Procedure

- 24.1 In relation to any Disputed Non-ILU Claim which is referred to the Scheme Adjudicator:
 - 24.1.1 The Scheme Managers shall refer the disputed matter by notice in writing sent by Post to the Scheme Adjudicator, (and copied, with enclosures, by Post to the relevant Non-ILU Creditor) setting out details of the matter to be resolved and

enclosing evidence in support thereof, including copies of such of the Company's records as shall appear relevant, the relevant Non-ILU Claim Form and enclosures, if any, together with any supporting documents including those provided by the relevant Non-ILU Creditor.

24.1.2 The Scheme Adjudicator shall consider the papers and documents before him and shall as soon as possible and in any event within 30 days of receipt of the notice referred to in Clause 24.1.1 either:

24.1.2.1 achieve the agreement of the Scheme Managers and the relevant Non-ILU Creditor, to be recorded in writing by the Scheme Adjudicator, on the disputed matters by reference to the evidence submitted to him in accordance with Clause 24.1.1; or

24.1.2.2 in the absence of such agreement, certify in writing by Post to the Scheme Managers and the relevant Non-ILU Creditor his determination in relation to the disputed matters;

provided that the Scheme Adjudicator may, with the consent of the Scheme Managers (such consent not to be unreasonably withheld), extend the said 30 day period by such amount of time as he and the Scheme Managers shall agree.

24.1.3 The Scheme Adjudicator shall be entitled to consult with such advisers, including legal advisers and experts, as he may deem appropriate and shall be entitled to be remunerated and to be reimbursed his reasonable costs and expenses in carrying out his duties under the Scheme.

24.1.4 The remuneration of the Scheme Adjudicator shall be subject to the prior approval of the Scheme Managers and, subject thereto, the Scheme Adjudicator shall be entitled, in respect of his remuneration and reasonable costs and expenses incurred by him, to order the parties to deposit such sum as he shall deem appropriate in respect of such remuneration, costs and expenses and, in addition, to:

24.1.4.1 direct that any or all of his remuneration, costs, and expenses shall be paid by the Company, in which case the Joint Administrators shall cause the same to be paid forthwith from the Property of the Company as a Scheme Expense; or

24.1.4.2 direct that any or all of his remuneration, costs and expenses shall be paid by the Non-ILU Creditor in respect of whose Non-ILU Claim the dispute has arisen, in which case the same shall be paid by the Non-ILU Creditor forthwith and, in any

event, no later than 14 days from the date of such direction, failing which the Joint Administrators shall cause the same to be paid from the Property of the Company as a Scheme Expense.

24.1.5 In the event that the amount of the Scheme Adjudicator's remuneration, costs and expenses is paid as a Scheme Expense in accordance with Clause 24.1.4.2 only, the Scheme Managers shall, following such payment, either:

24.1.5.1 deduct the same from any amount which may be or may become due to the Non-ILU Creditor by way of dividend in accordance with Clause 13.3, such Non-ILU Creditor being treated for these purposes as having received, on account of any such dividend, an advance under the Scheme equal to the amount which he has been directed to pay; or

24.1.5.2 where the Non-ILU Creditor is not entitled to receive a dividend pursuant to the Scheme, or the amount of such remuneration, costs and expenses exceeds his entitlement, treat such amount or such excess as a debt owed by the Non-ILU Creditor to the Company.

24.1.6 The decision of the Scheme Adjudicator on any dispute referred to him in accordance with this Scheme shall be to the extent permitted by law final and binding and, for the avoidance of doubt, there shall be no right to appeal therefrom, or to make any claim against the Scheme Adjudicator in respect thereof.

24.2 In the event that the Scheme Adjudicator shall become aware that he has a conflict of interest in relation to any matter referred to him under the Dispute Resolution Procedure, he shall inform the Scheme Managers of such conflict forthwith, and the Scheme Managers may at their absolute discretion appoint an alternate Scheme Adjudicator.

Duration and Termination of the Schemes

25. Termination of the Schemes

25.1 Subject to Clause 26 the Schemes shall forthwith cease to have effect upon the discharge of the Administration Orders, which shall not occur before the expiry of 6 months from the transfer of the Balance of Company Property to the Trustees of the ILU Trust in accordance with Clause 15.1.

25.2 Upon the termination of the Schemes the Scheme Managers shall transfer any unused funds held by him by virtue of Clause 13.2 to the Trustees of the ILU Trust to be held in accordance with its terms.

26. **Provisions Surviving Termination**

26.1 Notwithstanding termination of the Schemes pursuant to Clause 25.1, the provisions of Clauses 15.2, 15.3, 16.1, 16.3, 25.2, 27, 28.2, 32 and this Clause 26 shall continue in full force and effect.

Indemnity and Scheme Creditors' Co-operation

27. **Validity of Acts of and Responsibility of the Scheme Managers**

Subject to any applicable provision of the Companies Act or the Insolvency Act or, in either case, any amendment, modification or re-enactment thereof no Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done in good faith by the Joint Administrators, the Scheme Managers or by a Scheme Adjudicator in pursuance of their or his respective functions or duties under the Scheme, or the exercise or non-exercise by the Scheme Managers or by a Scheme Adjudicator, in good faith of any power or discretion conferred upon them or him for the purposes of the Scheme, and neither the Joint Administrators, the Scheme Managers nor any Scheme Adjudicator shall be liable for any loss whatsoever and howsoever arising out of any such act or omission, exercise or non-exercise of any power or discretion, unless such loss is attributable to their or his own negligence, breach of duty or trust, fraud or dishonesty or (in the case of the Scheme Managers) to the negligence, breach of duty or trust, fraud or dishonesty of any delegate appointed by them under Clause 21.1.3.

28. **Indemnities and Validation**

28.1 The Company shall indemnify the Joint Administrators, the Scheme Managers and any Scheme Adjudicator against any liability by way of legal and other advisers' costs incurred by them in defending any proceedings in relation to the preparation, negotiation and implementation of the Scheme, whether civil or criminal, in which judgment is given in their favour, or which is discontinued before judgment is given, or in which they are acquitted, or in connection with any application in which relief is granted to them by the Court from liability for negligence, default, breach of duty or breach of trust.

28.2 Notwithstanding a subsequent discovery that there was some defect in the procedure for the appointment of the Scheme Managers or either of them all acts done by the Scheme Managers shall be valid as if every such procedure had been correctly adhered to and such Scheme Managers had been duly appointed, provided that, in the case of any meeting in respect of which such a defect is discovered, that meeting was quorate.

29. **Scheme Creditors to Co-operate**

29.1 The Scheme Creditors shall co-operate with and render such assistance to the Scheme Managers as they may reasonably require including, but not limited to, the provision of information and documents in connection with their Non-ILU Claims and the operation of the Scheme, and shall provide such assistance as the Scheme Managers may reasonably require in connection with the recovery of any Property or the enforcement of obligations owed to the Company.

Other Provisions

30. **Dispatch of Notices and Other Written Communications and Documents**

- 30.1 All notices and other written communications and documents required to be sent pursuant to the provisions of the Scheme shall be sent by Post, unless otherwise specifically provided in the Scheme.
- 30.2 Notices and other written communications and documents to be sent to the Scheme Managers and/or the Company shall be sent to Plumtree Court, London EC4A 4HT, United Kingdom, or such other address as may be notified to Scheme Creditors from time to time, and clearly marked for the attention of the Scheme Managers of English & American Group plc or for the attention of the Scheme Managers of English & American Insurance Holdings plc, as applicable.
- 30.3 Where the Scheme provides for notices or other written communications or documents to be sent to the Scheme Managers by facsimile, the appropriate facsimile number shall be +44 (0)207 212 6316 or such other facsimile number as may be notified to Scheme Creditors from time to time and such forms or notices shall be clearly marked for the attention of the Scheme Managers of English & American Group plc or for the attention of the Scheme Managers of English & American Insurance Holdings plc, as applicable.
- 30.4 Notices and other written communications and documents to be sent to Scheme Creditors may be sent to such address as they notify to the Scheme Managers

following the Effective Date and, failing such notification, to such address as may be shown in the Company's records or any other address, being the last known address of the Scheme Creditor, which the Scheme Managers may reasonably believe is appropriate.

30.5 Notices and any other written communications or documents sent by Post to Scheme Creditors pursuant to the Scheme shall be deemed, in the absence of evidence to the contrary, to have been received by the relevant Scheme Creditor on the second Working Day after dispatch, where the Scheme Creditor's address is in the United Kingdom, and on the seventh Working Day after dispatch in all other cases, and references to the receipt by a Scheme Creditor of any such notice, communication or document shall be construed accordingly. References to a Scheme Creditor's address in this Clause 30.5 are to that Scheme Creditor's address as established in accordance with Clause 30.4, and references to Working Days are to a Working Day in the country in which such address is located. Notice periods laid down by the Scheme are to be calculated by reference to clear days from the date on which the notice concerned was sent by Post.

30.6 A sworn statement by the Scheme Managers or a member of their staff that an envelope containing a notice was sent by Post shall be conclusive evidence that the notice was given.

31. **Extension and Calculation of Deadlines**

31.1 All or any of the deadlines laid down by the Scheme for the taking of any step by the Scheme Managers, or by any Scheme Creditor, or by the Scheme Adjudicator with the exception of the Final Claims Submission Date may be extended for such period or periods as may be determined by the Scheme Managers in their absolute discretion, whether in relation to one or more Non-ILU Claims only, or in relation to all Non-ILU Claims.

31.2 Deadlines laid down by the Scheme shall be calculated by reference to elapsed days and not Working Days, but in the event that such a deadline expires on a day which is not a Working Day, such deadline shall be deemed not to expire until close of business on the Working Day next following.

31.3 References in the Scheme to a time shall be to that time in England.

32. **Governing Law**

- 32.1 The Scheme shall be governed by, and construed in accordance with, English law and the Scheme Creditors hereby agree that the Court shall (save as provided in Clause 21.1.4) have exclusive jurisdiction to hear and determine any dispute or proceedings arising out of the Explanatory Statement, or the Scheme, or the operation of the Scheme, and the Scheme Creditors hereby submit to the exclusive jurisdiction of the Court for such purposes.

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SECRET

PART II
SCHEMES OF ARRANGEMENT

APPENDIX I

ILU TRUST DEED

DATED 29th May 2003

ANTHONY JAMES McMAHON AND THOMAS ALEXANDER RIDDELL
AND
THE INSTITUTE OF LONDON UNDERWRITERS
(ILU)

DEED OF DECLARATION OF TRUST
of sums receivable from English & American Group Plc
and English & American Insurance Holdings PLC
under guarantees of sums payable under policies issued
by the ILU on behalf of English & American Insurance
Company Limited on or after 1 September 1983

Lovells
Atlantic House
Holborn Viaduct
London
EC1A 2FG

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THIS DEED OF DECLARATION OF TRUST made the 29th day of May 2003 by ANTHONY JAMES McMAHON and THOMAS ALEXANDER RIDDELL of KPMG, 8 Salisbury Square, London EC4Y 8BB (the "Trustees") and THE INSTITUTE OF LONDON UNDERWRITERS (the "ILU") of 49 Leadenhall Street London EC3A 2BE WITNESSES as follows:

PART 1 - PRELIMINARY

1.1 Definitions

1.1.1 In this Deed, unless the context otherwise requires or otherwise expressly provides, the following expressions shall bear the meanings set opposite them:

"Beneficiary"	a creditor of EAIC (or his successor in title) who has (or potentially has) a valid and enforceable claim properly due and payable by EAIC under a policy signed and issued by the ILU on EAIC's behalf (or on behalf of EAIC and other members of the ILU) on or after 1 September 1983;
"Delegate"	any person to whom the Trustees may delegate any of their functions and powers under clause 3.3.2(iv);
"EAG"	English & American Group Plc (in administration) (formerly English & American Group Limited, London & Gloucester Limited and Delta Alpha Limited);
"EAIC"	English & American Insurance Company Limited (Incorporated in England under the Companies Acts 1908 to 1917 with registered number 240656);
"EAIC Scheme"	the scheme of arrangement of EAIC and its Scheme Creditors (as therein defined) dated 28 October 1994 as amended by an Amending Scheme of Arrangement dated 1 June 2000 and any subsequent amendment;
"EAIH"	English & American Insurance Holdings PLC (in administration) (formerly English & American Insurance Group plc);
"Employee"	a partner in the same firm as a Trustee, or any individual employed, whether under a contract of service or a contract for services, by that firm or by any company owned by that firm, who is employed by the Trustees in accordance with clause 3.3.2(ii) in connection with the conduct of their functions and powers under this Deed;
"Established Liability"	a Relevant Liability of EAIC which has become an Established Scheme Liability in accordance with the terms of the EAIC Scheme, ignoring any payments made (or treated as having been made) pursuant to the EAIC Scheme in respect thereof;
"Guarantees"	two guarantees both dated 5 June 1987 issued to the ILU by EAG and EAIH respectively (as extended by an Addendum dated 4 January 1988);

"Guarantors"	EAG and EAIH;
"Relevant Liability"	a liability of EAIC to a Beneficiary;
"Trust Fund"	all and any sums received by the Trustees in respect of the Guarantees and the property from time to time representing the same;
"Trustees"	the Trustees signatories hereto or other the trustee or trustees for the time being under or by virtue of this Deed.

1.1.2 Part and clause headings and the Index to this Deed are inserted for convenience of reference only and shall be ignored in the interpretation of this Deed.

1.1.3 In this Deed, unless the context otherwise requires or otherwise expressly provides:

- (a) references to clauses and Parts are to be construed as references to the clauses and the Parts respectively of this Deed;
- (b) words importing the plural shall include the singular and vice versa and words importing one gender shall include all genders;
- (c) references to a person shall be construed as including references to an individual, firm, partnership, company, corporation, unincorporated body of persons or any state agency; and
- (d) references to any enactment shall be deemed to include references to such enactment as re-enacted, amended or extended.

1.2 Recitals

1.2.1 Under the Guarantees the Guarantors are severally liable to pay all sums properly due and payable by EAIC under policies signed and issued by the ILU on behalf of EAIC (or EAIC and other members of the ILU) on and after 1 September 1983 on default by EAIC in respect thereof and the ILU declared that it held the benefit of such obligation on trust for such persons, firms or companies as were entitled to such sums.

1.2.2 EAIC is in default and is likely to remain in default in making payment of such sums, having entered into the EAIC Scheme.

1.2.3 Both the Guarantors are insolvent and subject to administration orders under Section 8 of the Insolvency Act 1986 but they are proposing a scheme of arrangement to their respective creditors pursuant to section 425 of the Companies Act 1985, under which, if approved and sanctioned by the Court, the Trustees expect to receive certain payments on account of the Guarantors' liabilities under the Guarantees which the Trustees shall hold upon, with and subject to the trusts powers and provisions of this Deed.

1.2.4 This Deed shall have no effect unless the proposed scheme of arrangement referred to in clause 1.2.3 takes effect within six months of the date hereof or by such later date as the parties hereto may agree.

1.3 Purpose of this Deed

The purpose of this Deed is to provide a mechanism for the distribution to Beneficiaries, once their respective entitlements are ascertained, of sums payable by the Guarantors under the Guarantees.

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PART 2 - PAYMENTS TO BENEFICIARIES

2.1 Trust

The Trustees shall hold and apply the capital and income of the Trust Fund for the benefit of Beneficiaries upon and with and subject to the trusts powers and provisions of this Deed.

2.2 Time of Payment

Subject to clause 2.5, payments shall be made to Beneficiaries only after the Trustees are satisfied that all Relevant Liabilities have become Established Liabilities (or the equivalent in the event of the winding up of EAIC) or ceased to be Relevant Liabilities, whereupon the Trust Fund shall, after payment of or allowance for all costs, charges, expenses and disbursements, be distributed amongst the Beneficiaries *pari passu*.

2.3 Currency of payment

Any amount payable to a Beneficiary under this Deed shall be paid in the same currency as is any amount payable to that Beneficiary pursuant to the EAIC Scheme in respect of the relevant Established Liability.

2.4 Method of payment

2.4.1 Payments to a Beneficiary under this Deed may be made, in the absolute discretion of the Trustees:

- (a) by cheque in favour of the Beneficiary concerned or as such Beneficiary may direct and sent through the post at the risk of such Beneficiary to the last known address of such Beneficiary or to such other address as such Beneficiary may from time to time notify to the Trustees;
- (b) by telegraphic transfer to such bank account as the Beneficiary concerned may from time to time notify to the Trustees; or
- (c) in such other manner as the Trustees may from time to time determine.

The cost of using any such payment method in a particular case shall be an expense of the Beneficiary concerned. The Trustees may treat as notification to them as such any notification received by them in their capacity as Scheme Administrators under the EAIC Scheme (or by their predecessors as such).

2.4.2 Payment under this Deed shall be deemed to have been made on the day that the cheque is posted or telegraphic transfer instruction given to the relevant bank (as the case may be). Payment of any such cheque by the banker on whom it is drawn shall be satisfaction of the monies in respect of which it was drawn; and receipt of the amount of such telegraphic transfer into such account shall be satisfaction of the monies in respect of which it was paid.

2.4.3 Without prejudice to clause 2.4.2, payment by the Trustees:

- (a) to a Beneficiary; or
- (b) where two or more persons comprise a Beneficiary, to any one such person; or
- (c) to any person acting on behalf of a Beneficiary;

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shall for all purposes constitute a valid discharge of the Trustees to the extent of such payment.

2.5 Commutations, settlements and other agreements

If the Trustees consider that to do so would be in the best interests of Beneficiaries (excluding the Beneficiary with whom such contractual arrangements are made), the Trustees may enter into contractual arrangements with a Beneficiary under which all or part of the rights of that Beneficiary under this Deed are satisfied in full in consideration of a payment made by the Trustees.

PART 3 - THE TRUSTEES

3.1 Qualification, appointment and resignation

3.1.1 A Trustee shall be an individual qualified to act as an insolvency practitioner within the meaning of section 390 of the Insolvency Act 1986. The Initial Trustees shall be Anthony James McMahon and Thomas Alexander Riddell of KPMG.

3.1.2 A Trustee may resign his appointment at any time by giving not less than six months' notice in writing to the ILU and shall cease to hold office if he ceases to hold office as a Scheme Administrator under the EAIC Scheme.

3.1.3 The statutory powers of appointing new and additional trustees shall apply hereto and be vested in the ILU provided that only persons who are Scheme Administrators under the EAIC Scheme may be so appointed unless no such persons exist.

3.2 Power to act jointly or severally

Where more than one person has been appointed as a Trustee, the functions and powers of the Trustees under this Deed may be performed and exercised jointly or severally and any act required to be done by the Trustees pursuant to this Deed may be done by all or any one or more of them.

3.3 Functions and powers

3.3.1 The Trustees shall have power to invest all or any part of the Trust Fund in such manner as they consider prudent from time to time, with full power from time to time to vary or transmute any such investments into others of any nature, as if they were an absolute beneficial owner, without any obligation to diversify the investment of the Trust Fund.

3.3.2 The Trustees shall:

- (a) manage the Trust Fund for the benefit of the Beneficiaries in accordance with this Deed; and
- (b) supervise and ensure the carrying out of the provisions of this Deed;

and for these purposes shall, without prejudice to the generality of the foregoing, be entitled:

- (i) to be remunerated as from time to time approved by the ILU (such approval not to be unreasonably withheld) for the carrying out of such functions and powers and to be reimbursed for all expenses properly incurred by them in connection therewith;

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- (ii) to employ and remunerate accountants, actuaries, lawyers and other professional advisers or agents in connection with the conduct of their functions and powers under this Deed;
- (iii) to borrow and to make any payment which is necessary or incidental to the performance of their functions and to give a valid discharge for amounts received on their behalf;
- (iv) to delegate to any person (being a partner in the same firm as a Trustee) qualified to act as an insolvency practitioner as mentioned in clause 3.1.1 and approved for the time being by the ILU for the purposes of this clause, all or any of the functions, powers, rights, authorities and discretions conferred upon the Trustees under this Deed and from time to time to revoke any such delegation, provided that the Trustees shall be personally responsible for any act or omission of any such delegate to the same extent as if they had expressly authorised it;
- (v) to the extent that the Court has jurisdiction, to apply to the Court for directions in relation to any particular matter arising in the course of the administration of the trusts hereof;
- (vi) to do all other things incidental to the exercise of the functions and powers referred to in this clause 3.3.2.

3.3.3 In carrying out their functions and exercising their powers under this Deed, the Trustees shall consult with, and take account of the views expressed by, the ILU on any matter material to this Deed.

3.4 Responsibility and Indemnity

3.4.1 In carrying out their functions and exercising their powers under this Deed, the Trustees shall act bona fide and with due care and diligence in the interests of Beneficiaries as a whole and shall use their powers under this Deed for the purpose of ensuring that this Deed is operated in accordance with its terms.

3.4.2 No Beneficiary shall be entitled to challenge the validity of any act done or omitted to be done in good faith and with due care by the Trustees in accordance with, and to implement the provisions of, this Deed, or the exercise by the Trustees in good faith and with due care of any power conferred upon them for the purposes of this Deed if exercised in accordance with, and to implement the provisions of, this Deed; and the Trustees shall not be liable for any loss unless such loss is attributable to their own negligence, default, breach of duty, breach of trust, fraud or dishonesty (or to that of any Employee or Delegate).

3.4.3 No Beneficiary shall be entitled to challenge the validity of any act done or omitted to be done in good faith and with due care by any Employee in accordance with and to implement the provisions of, this Deed, or the exercise by any Employee in good faith and with due care of any power conferred upon the Trustees for the purposes of this Deed if exercised in accordance with, and to implement the provisions of, this Deed; and no Employee shall be liable for any loss unless such loss is attributable to his own negligence, default, breach of duty, breach of trust, fraud or dishonesty.

3.4.4 No Beneficiary shall be entitled to challenge the validity of any act done or omitted to be done in good faith and with due care by any Delegate in accordance with, and to implement the provisions of, this Deed, or the exercise by any Delegate in good faith and with due care of any power conferred upon the Trustees for the purposes of this Deed if

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exercised in accordance with, and to implement the provisions of, this Deed; and no Delegate shall be liable for any loss unless such loss is attributable to his own negligence, default, breach of duty, breach of trust, fraud or dishonesty (or to that of any Employee).

3.4.5 Each Trustee (in his capacity as such) (and each Employee and Delegate) shall be entitled to an indemnity out of the Trust Fund against:

- (a) all actions, claims, proceedings and demands brought or made against such Trustee (or Employee or Delegate) in respect of any act done or omitted to be done by such Trustee (or Employee or Delegate) in good faith without negligence, default, breach of duty, breach of trust, fraud or dishonesty in the course of implementing the provisions of this Deed in accordance with its terms; and
- (b) all expenses and liabilities properly incurred by such Trustee (or Employee or Delegate) in carrying out his functions and powers (or the functions for which such Employee is employed by the Trustees or any Delegate) in the course of implementing the provisions of this Deed in accordance with its terms.

3.4.6 Without prejudice to the generality of clause 3.4.5, each such person as is expressed to be entitled to an indemnity in accordance with that clause (in the capacity in which he is entitled to such an indemnity) shall be entitled to an indemnity out of the Trust Fund against any liability incurred by him in defending any proceedings, whether civil or criminal, in respect of any negligence, default, breach of duty, breach of trust, fraud or dishonesty in which judgment is given in his favour or in which he is acquitted.

3.4.7 The Trustees may:

- (a) purchase and maintain for any such person as is referred to in clause 3.4.5 insurance against any liability in respect of which the Trustees would be obliged to indemnify that person in accordance with clauses 3.4.5 and 3.4.6; and
- (b) pay costs incurred by any such person as is referred to in clause 3.4.6 in defending proceedings of the nature described in clause 3.4.6 provided that the Trustees shall be obliged to reimburse the Trust Fund (with interest) in respect of any sum which would not, in the event, have been payable by the Trustees under clause 3.4.6.

PART 4 - GENERAL PROVISIONS

4.1 Costs

As soon as practicable there shall be paid in full by the Trustees out of the Trust Fund all costs, charges, expenses and disbursements reasonably incurred by, and the reasonable remuneration of, the ILU and the Trustees (notwithstanding that they had not at the time been appointed as such) or their firm in connection with the preparation and implementation and carrying out of the provisions of this Deed and the proposed scheme of arrangement referred to in clause 1.2.3 and all dealings of the ILU with the Guarantors and their administrators relating to the Guarantees (whether before or after the date hereof).

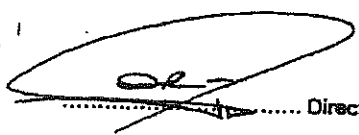
4.2 Governing law and jurisdiction

This Deed shall be governed by, and construed in accordance with, English law and the High Court of Justice in England shall have exclusive jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of any

provision of this Deed, or out of any action taken or omitted to be taken under this Deed or in connection with the administration of the trusts hereof.

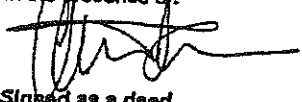
IN WITNESS whereof this Deed has been executed by the parties as a deed and will take effect on the date shown on the first page.

Executed as a Deed by
THE INSTITUTE OF LONDON
UNDERWRITERS

}  Director

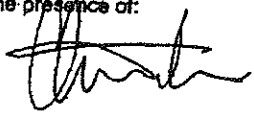
} E.A. Lloyd Holt Secretary

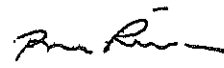
Signed as a deed
by ANTHONY JAMES McMAHON
in the presence of:

} 

} 

Signed as a deed
by THOMAS ALEXANDER RIDDELL
in the presence of:

} 

} 

CHRISTIAN TUBBENHAM
Solicitor
LOVELLS, HOLBORN VIADUCT, EC1A 2FG

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PART II
SCHEMES OF ARRANGEMENT
APPENDIX 2
NON-ILU CLAIM FORMS

ENGLISH & AMERICAN GROUP PLC ("COMPANY")

NON-ILU CLAIM FORM

Please note that the terms defined in the Scheme of Arrangement have the same meaning when used in this form.

Please check and, if applicable, complete or amend this Non-ILU Claim Form in accordance with the instructions overleaf.

The deadline for submitting signed Non-ILU Claim Forms is 23:59 (London time) on the Final Claims Submission Date (being the 28th day after the Effective Date). Returned Non-ILU Claim Forms must be signed and must reach the Scheme Managers on or before this date. Failure to do so means that the Non-ILU Creditor concerned will not qualify for a dividend under the Scheme. Forms must be returned by Post or by facsimile to the Scheme Managers at PricewaterhouseCoopers LLP, Plumtree Court, London EC4A 4HT, fax number +44 (0)20 7212 6316.

A	Name of Scheme Creditor ⁽¹⁾	
B	Address of Scheme Creditor ⁽¹⁾	
C	To the best of my knowledge and belief the information on this Non-ILU Claim Form and any supporting schedules, as amended or otherwise, is correct.	
	Signature of Scheme Creditor or person authorised to act on their behalf Name in BLOCK CAPITALS	
D	Total amount of claim for voting purposes, including any Value Added Tax and outstanding interest. ⁽²⁾	
E	If the total amount shown above includes outstanding interest, please state amount ⁽³⁾	
F	Details of any documents by reference to which the debt can be substantiated (please attach copies of invoices).	
G	Particulars of how and when the debt incurred	
H	Specify the total due from you to the Company	

NUMBERING IN THE ABOVE TABLE RELATES TO NUMBERED POINTS IN THE INSTRUCTIONS FOR COMPLETION OF THE CLAIM FORM OVERLEAF

ENGLISH & AMERICAN GROUP PLC ("COMPANY")**NON-ILU CLAIM FORM****INSTRUCTIONS FOR COMPLETION****GENERAL NOTES**

Where available, this form contains information in relation to your claims against the Company according to the Company's records. **IT IS MOST IMPORTANT** that you carefully check each and every item. If you agree with the contents, please sign and return the form, unamended, to the Company. If the details are inaccurate, please amend and sign this form before returning it enclosing any relevant documents supporting the amendments. Any amendment must be initialled by the person signing the form.

A continuation sheet is included with this form to allow you to provide details of any claims which your records indicate you have against the Company but which the Joint Administrators have not included in this form. If you have a number of claims in different currencies you should complete a separate continuation sheet for each currency. Please photocopy the continuation sheet as necessary, and provide supporting documents for claims entered in it.

Blank Non-ILU Claim Forms must be completed and returned in accordance with the instructions set out below. If you have a number of claims in different currencies, you should photocopy the form as necessary and complete a separate form for each currency. You should provide supporting documents for your claims.

Non-ILU Claim Forms must be signed and returned by Post or by facsimile to the Scheme Managers at PricewaterhouseCoopers LLP, Plumtree Court, London EC4A 4HT, fax number +44 (0)207 212 6316 and must arrive by 23:59 on the Final Claims Submission Date, failing which the Non-ILU Creditor concerned will not be entitled to receive a dividend in the Scheme.

INSTRUCTIONS

- (1) If not already included, enter the name and address of the Scheme Creditor in block capitals. If you are the duly authorised agent and/or attorney of the Scheme Creditor you should provide evidence (which must be satisfactory to the Scheme Managers) of your authority to sign the voting form on that Scheme Creditor's behalf. If you act for a number of Scheme Creditors, and have received blank forms, you should complete a separate form for each Scheme Creditor (photocopying the blank forms as necessary). Please note that each Scheme Creditor which is a company within a group of companies must complete a separate voting form, as a group submission is not permissible.
- (2) Where a claim figure has been included by the Joint Administrators, you should check it and, if you disagree with the valuation, amend it. If no claim information has been included, you should insert your own estimate of your claim. You must provide supporting information for any amendments made or new claims included in the form.
- (3) Non-ILU Creditors will be entitled to receive amounts in respect of interest where a written demand for payment was made before the Petition Date and notice given that interest would be charged from the date of the demand to the date of payment. Interest will be calculated for the period from the date of demand to the Effective Date in respect of the Established Claim at a rate of 4% per annum or the rate specified in the demand for payment. No other interest will be payable.

ENGLISH & AMERICAN GROUP PLC ("COMPANY")

NON-ILU CLAIM FORM

CONTINUATION SHEET

Please note that the terms defined in the Scheme of Arrangement have the same meaning when used in this form.

Please use photocopied sheets as required.

A	Name of Scheme Creditor ⁽¹⁾	
B	Address of Scheme Creditor ⁽¹⁾	
C	To the best of my knowledge and belief the information on this Non-ILU Claim Form and any supporting schedules, as amended or otherwise, is correct. Signature of Scheme Creditor or person authorised to act on their behalf Name in BLOCK CAPITALS	
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G	Particulars of how and when the debt incurred	
H	Specify the total due from you to the Company	

PLEASE REFER TO THE INSTRUCTIONS ON THE BACK OF THE NON-ILU CLAIM FORM

NUMBERING IN THE TABLE ABOVE RELATES TO NUMBERED POINTS IN THOSE INSTRUCTIONS

ENGLISH & AMERICAN INSURANCE HOLDINGS PLC ("COMPANY")

NON-ILU CLAIM FORM

Please note that the terms defined in the Scheme of Arrangement have the same meaning when used in this form.

Please check and, if applicable, complete or amend this Non-ILU Claim Form in accordance with the instructions overleaf.

The deadline for submitting signed Non-ILU Claim Forms is 23:59 (London time) on the Final Claims Submission Date (being the 28th day after the Effective Date). Returned Non-ILU Claim Forms must be signed and must reach the Scheme Managers on or before this date. Failure to do so means that the Non-ILU Creditor concerned will not qualify for a dividend under the Scheme. Forms must be returned by Post or by facsimile to the Scheme Managers at PricewaterhouseCoopers LLP, Plumtree Court, London EC4A 4HT, fax number +44 (0)207 212 6316.

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NUMBERING IN THE ABOVE TABLE RELATES TO NUMBERED POINTS IN THE INSTRUCTIONS FOR COMPLETION OF THE CLAIM FORM OVERLEAF

ENGLISH & AMERICAN INSURANCE HOLDINGS PLC ("COMPANY")

NON-ILU CLAIM FORM

INSTRUCTIONS FOR COMPLETION

GENERAL NOTES

Where available, this form contains information in relation to your claims against the Company according to the Company's records. **IT IS MOST IMPORTANT** that you carefully check each and every item. If you agree with the contents, please sign and return the form, unamended, to the Company. If the details are inaccurate, please amend and sign this form before returning it enclosing any relevant documents supporting the amendments. Any amendment must be initialled by the person signing the form.

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INSTRUCTIONS

- (1) If not already included, enter the name and address of the Scheme Creditor in block capitals. If you are the duly authorised agent and/or attorney of the Scheme Creditor you should provide evidence (which must be satisfactory to the Scheme Managers) of your authority to sign the voting form on that Scheme Creditor's behalf. If you act for a number of Scheme Creditors, and have received blank forms, you should complete a separate form for each Scheme Creditor (photocopying the blank forms as necessary). Please note that each Scheme Creditor which is a company within a group of companies must complete a separate voting form, as a group submission is not permissible.
- (2) Where a claim figure has been included by the Joint Administrators, you should check it and, if you disagree with the valuation, amend it. If no claim information has been included, you should insert your own estimate of your claim. You must provide supporting information for any amendments made or new claims included in the form.
- (3) Non-ILU Creditors will be entitled to receive amounts in respect of interest where a written demand for payment was made before the Petition Date and notice given that interest would be charged from the date of the demand to the date of payment. Interest will be calculated for the period from the date of demand to the Effective Date in respect of the Established Claim at a rate of 4% per annum or the rate specified in the demand for payment. No other interest will be payable.

ENGLISH & AMERICAN INSURANCE HOLDINGS PLC ("COMPANY")

NON-ILU CLAIM FORM

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H	Specify the total due from you to the Company	

PLEASE REFER TO THE INSTRUCTIONS ON THE BACK OF THE NON-ILU CLAIM FORM

NUMBERING IN THE TABLE ABOVE RELATES TO NUMBERED POINTS IN THOSE INSTRUCTIONS

PART III

NOTICE OF SCHEME MEETINGS

IN THE HIGH COURT OF JUSTICE (IN ENGLAND AND WALES)

CHANCERY DIVISION

No 3506 of 2003

COMPANIES COURT

No 3507 of 2003

REGISTRAR DERRET

IN THE MATTER OF ENGLISH & AMERICAN GROUP PLC

and

IN THE MATTER OF ENGLISH & AMERICAN INSURANCE HOLDINGS PLC

and

IN THE MATTER OF THE COMPANIES ACT 1985

NOTICE IS HEREBY GIVEN that, by an order dated 3 June 2003 made in the above matter the Court has directed that meetings ("Scheme Meetings") of ILU Creditors and Non-ILU Creditors (as defined in the schemes of arrangement referred to below) (together "Scheme Creditors") of the above named companies (the "Companies") be held on 18 July 2003 at the offices of DLA, 3 Noble Street, London EC2V 7EE commencing at 10.00 am.

The purpose of the Scheme Meetings will be to consider and, if thought fit, to approve (with or without modification) in the case of each of the Companies a scheme of arrangement proposed to be made between that company and its Scheme Creditors pursuant to section 425 of the Companies Act 1985 (the "Schemes").

Scheme Creditors may vote in person at the Scheme Meetings or may appoint another person, whether a Scheme Creditor or not, as their proxy holder to attend and vote in their place. A form of proxy and voting form for use at the Scheme Meetings are enclosed herewith.

Scheme Creditors are requested to lodge the appropriate form of proxy and accompanying voting form at PricewaterhouseCoopers LLP, Plumtree Court, London EC4A 4HT, United Kingdom, marked for the attention of Baljit Goraya, by 4.00 pm (London time) on 17 July 2003. Forms of proxy and voting forms may also be handed in at the registration desk prior to commencement of the Scheme Meetings. A faxed copy of the form of proxy and voting form will be accepted if legible but Scheme Creditors are requested to send the originals, to be received by the Company at the above address by

4.00 pm (London time) on 17 July 2003, or to hand them in at the registration desk prior to commencement of the Scheme Meetings.

A copy of the proposed Schemes and a copy of the statement required to be provided to creditors pursuant to section 426 of the Companies Act 1985 are incorporated in the document of which this notice forms a part. Copies of these documents, as well as blank forms of proxy and voting forms, may be obtained by attending at or on written application to Baljit Goraya of PricewaterhouseCoopers LLP, Plumtree Court, London EC4A 4HT before 4.00 pm London time on 17 July 2003.

The Court has appointed Paul Anthony Brereton Evans or, failing him, Dan Yoram Schwarzmann both of PricewaterhouseCoopers LLP, to act as chairman of the Scheme Meetings and has directed the chairman of the Scheme Meetings to report the result of such meetings to the Court.

If approved by the requisite majority of Scheme Creditors, the Schemes will be subject to the subsequent approval of the Court.

Dated 5 June 2003

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No. 3507 of 2003

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

COMPANIES COURT

**IN THE MATTER OF ENGLISH &
AMERICAN INSURANCE HOLDINGS PLC**

AND

**IN THE MATTER OF THE COMPANIES
ACT 1985**

**TO HER MAJESTY'S HIGH COURT OF
JUSTICE**

**DLA
3 Noble Street
London EC2V 7EE**

**Tel: 08700 111 111
Fax: 020 7796 6780**

Ref: TF/LONDP/30783/240/2521069

3506 of 2003

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

IN THE MATTER OF ENGLISH & AMERICAN
GROUP PLC

AND

IN THE MATTER OF THE COMPANIES ACT 1985

MINUTE OF ORDER

DLA
3 Noble Street
London EC2V 7EE

Tel: 08700 111 111
Fax: 020 7796 6780

Ref: TF/LONDP/30783/240/2605345
Solicitors for the Applicant

ORIGINAL SEEN 1692716
1st London

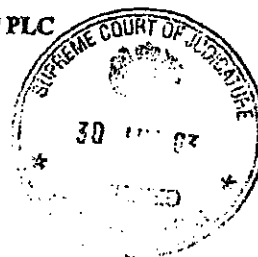
3506 of 2003

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

IN THE MATTER OF ENGLISH & AMERICAN GROUP PLC

AND

IN THE MATTER OF THE COMPANIES ACT 1985



ORDER

UPON THE PETITION of English & American Group Plc ("the Company") whose registered office is situated at 35 St Thomas Street, London SE1 9SN on 30 July 2003 presented to this Court

AND UPON HEARING Counsel for the Petitioner

AND UPON READING the documents recorded on the Court file as having been read

THE COURT DOTH HEREBY SANCTION the Scheme of Arrangement as set forth in the schedule to the said Petition and the Schedule hereto

IT IS ORDERED THAT:

1. the Company do deliver an office copy of this Order to the Registrar of Companies;
2. there be liberty to apply.

DATED 30 July 2003



TO: DLA

3 Noble Street London EC2V 7BB

ref: TF.30783.240

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
IN THE MATTER OF

ENGLISH & AMERICAN INSURANCE COMPANY LIMITED

and

IN THE MATTER OF THE COMPANIES ACT 1985

SCHEME OF ARRANGEMENT

(pursuant to section 425 of the Companies Act 1985)

between

ENGLISH & AMERICAN
INSURANCE COMPANY LIMITED *

and its

SCHEME CREDITORS

(as defined in the scheme of arrangement)

* *The general insurance business of Providence Capitol Life Assurance Company Limited (formerly Slater Walker Life Assurance Company Limited, Slater Walker Insurance Company Limited and Arrow Life Assurance Company Limited) was transferred to English & American Insurance Company Limited in accordance with section 51 of the Insurance Companies Act 1982.*

RESTATEMENT

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REGISTERED SCHEME
 OF ARRANGEMENTS

PART 1 - PRELIMINARY

1.1 Definitions

1.1.1 In the Scheme, unless the context otherwise requires or otherwise expressly provides, the following expressions shall bear the meanings set opposite them:

**"3 July 1980-6 October 1983
ILU Policyholder"**

a creditor of the Company who has a valid and enforceable claim properly due and payable by the Company under a policy signed and issued by the Institute of London Underwriters on the Company's behalf with an inception date between 3 July 1980 and 6 October 1983 (both dates inclusive);

"Admissible Interest"

shall have the meaning given to such expression in clause 2.7;

"Board"

the board of directors of the Company from time to time;

"Capped Sterling Equivalent"

shall have the meaning given to such expression in clause 4.2.3;

"Cash Assets"

the aggregate at any time of:

- (a) any cash deposits (excluding any cash deposits subject to any security or trust); and
- (b) those other assets of the Company at that time which are invested in accordance with the provisions of clause 2.13 (excluding any investments in subsidiaries or investments made for the purposes of effecting the run-off of the Company's business);

"Claims Submission Period"

the period of six months commencing on the Operative Date;

"Co-Insurer"

any insurer or reinsurer (apart from the Company);

"Common Liability"

any liability (including, but not limited to, any liability for compensatory damage, consequential damage, contractual damage, extra-contractual damage and damage provided for under statute or other law) arising under or otherwise in connection with a contract (whether of insurance, reinsurance, retrocession or otherwise) made between the Company, a Scheme Creditor and one or more Co-Insurers (whether by way of a single multi-lateral contract or by way of a number of contracts, on substantially identical terms, made variously between the Company, the Scheme Creditor and one or more Co-Insurers), such that the Company's and the Co-Insurers' rights and liabilities under the said contract relate to the same layer of cover (where the contract in question is of insurance, reinsurance or retrocession and where the risk giving rise to the liability is insured in layers) and are substantially identical, whether they are joint, several or differing in quantum;

"Companies Act"

the Companies Act 1985 of England, Scotland and Wales;

"Company"

English & American Insurance Company Limited (incorporated in England under the Companies Acts 1908 to 1917 with registered number 240656);

"Court"	the High Court of Justice in England;
"Creditors Committee"	the committee established pursuant to part 6;
"Current Policy"	a policy of insurance issued by the Company in respect of which the policy period has not expired on the Effective Date. For the avoidance of doubt, any 'extended discovery' or 'extended claims reporting' period shall not count as part of the policy period.
"Default Judgment"	<p>any order, judgment, decision or award of a court or other tribunal of competent jurisdiction which is obtained or entered by virtue only of a Co-Insurer having omitted to take a procedural step in relation to a Proceeding brought by a Scheme Creditor, including any such order, judgment, decision or award which has been obtained by virtue of the Co-Insurer having failed:</p> <ul style="list-style-type: none"> (a) to acknowledge the commencement and/or service of the process whereby the Scheme Creditor commenced such Proceeding; (b) to serve a defence, answer or other response to the Scheme Creditor's claim; or (c) to comply with any order or direction of the court or tribunal which was interlocutory, procedural or intermediate in nature, or with any procedural rules of the court or tribunal;
"Delegate"	any person to whom the Scheme Administrators may delegate any of their functions and powers under clause 5.3.3(k);
"Designated Representative"	shall have the meaning given to such expression in clause 6.1.4;
"Effective Date"	the date on which a copy of the order sanctioning the Scheme shall have been delivered to the registrar of companies in England and Wales for registration in accordance with clause 10.1.1;
"Employee"	a partner in the same firm as a Scheme Administrator, or any individual employed, whether under a contract of service or a contract for services, by that firm or by any company owned by that firm, who is employed by the Scheme Administrators in accordance with clause 5.3.3(g) in connection with the conduct of their functions and powers under the Scheme;
"Established Scheme Liability"	a liability of the Company which has become an Established Scheme Liability in accordance with clause 2.6;
"Explanatory Statement"	the statement dated 28 October 1994 (and the appendices thereto) explaining the effect of the Scheme, in compliance with section 426 of the Companies Act;
"Final Settlement"	a binding agreement, evidenced in writing, which of itself determines the obligations of a Co-Insurer under the contract in question (either as to liability or as to quantum);

RESERVED SCHEME
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"General Scheme Creditor"	a Scheme Creditor other than a Protected Policyholder or a 3 July 1980 – 6 October 1983 ILU Policyholder;
"Insolvency Act"	the Insolvency Act 1986 of England, Scotland and Wales;
"Interim Appointees"	shall have the meaning given to such expression in clause 6.9.1;
"liability"	any liability of a person, whether it is present, future, prospective or contingent, whether or not its amount is fixed or liquidated, whether or not it involves the payment of money and whether it arises at common law, in equity or by statute, in England or in any other jurisdiction, or in any other manner whatsoever, but such expression does not include any liability which is barred by statute or otherwise unenforceable; and, for the avoidance of doubt, a person who does not have a legal liability under a contract or policy because such contract or policy is void or, being voidable, has been duly avoided will not have a liability for the purposes of the Scheme;
"Nominated Representative"	shall have the meaning given to such expression in clause 6.1.6;
"Non-Sterling Amount"	shall have the meaning given to such expression in clause 4.2.3;
<u>"Operative Date"</u>	<u>the date on which the Special Resolution is passed in accordance with the terms of the Scheme;</u>
"Payment Percentage"	in relation to an Established Scheme Liability, the percentage of such Established Scheme Liability which is payable by the Company from time to time under the Scheme, as the same is from time to time set under clause 3.2;
"Petition Date"	23 March 1993 being the date of presentation of the Winding up Petition in relation to the Company;
"Policyholders Protection Act"	the Policyholders Protection Act 1975 of the United Kingdom as amended and in force on the Record Date (but incorporating also any amendment made after that date which has effect in relation to a company which was a company in liquidation on or before that date);
"Policyholders Protection Board"	the Policyholders Protection Board established by the Policyholders Protection Act <u>and any statutory successor of it;</u>
"Preferential Claim"	any claim against the Company which would have been preferential under section 386 of the Insolvency Act if the Company were being wound up and the Provisional Liquidation Date were the relevant date for the purposes of section 387 of the Insolvency Act;
"Pre-Scheme Costs"	all such costs, charges, expenses, disbursements and remuneration as are referred to in clause 10.2.1;
"Proceeding"	Any action or other legal proceeding: (a) including, for the avoidance of doubt, (i) arbitration (insofar as the same is provided for under the terms of a contract giving rise to a Scheme Claim) and (ii) any judicial action or proceeding; but

- (b) excluding (i) arbitration (insofar as not provided for under the terms of a contract giving rise to a Scheme Claim) and (ii) any other dispute resolution procedure which does not involve submission to the courts;

"Protected Liability"

any Established Scheme Liability in respect of which and to the extent to which the Policyholders Protection Board would owe a duty under sections 6 to 8 of the Policyholders Protection Act if the Company were a "company in liquidation" and the Record Date were the "beginning of the liquidation", in each case within the meaning of the Policyholders Protection Act and references in those sections to the amount of any liability were references to the amount as established in the case of an Established Scheme Liability in accordance with the Scheme (and, for the avoidance of doubt but without limitation, where such a duty would be owed under that Act in respect of a liability towards a "private policyholder" or under the terms of a "United Kingdom policy", as those expressions are respectively defined in that Act, or a liability of some other description, only an Established Scheme Liability which is also such a liability shall be capable of qualifying as a Protected Liability);

"Protected Percentage"

in relation to a Protected Liability, that percentage of such Protected Liability which the Policyholders Protection Board would have a duty to pay under sections 6 to 8 of the Policyholders Protection Act;

"Protected Policyholder"

in relation to a Protected Liability, any Scheme Creditor to whom the Company owes that Protected Liability and who, in addition, is eligible for protection under section 16(9) of the Policyholders Protection Act;

"Provisional Liquidation Date"

19 March 1993, being the date of the appointment of the Provisional Liquidators of the Company;

"Provisional Liquidators"

Anthony James McMahon and Roger Smith, in their capacity as joint provisional liquidators of the Company;

"Record Date"

28 October 1994, being the date of the Scheme;

"Relevant Date"

shall have the meaning given to such expression in clause 4.2.3;

"Review Date"

the Effective Date and 31 December of each year (commencing on 31 December 1995) or such other date as the Scheme Administrators may from time to time, in consultation with the Creditors Committee, in their absolute discretion decide;

"Scheme"

this scheme of arrangement in its present form subject to any modification, term or condition which the Court may think fit to approve or impose in accordance with clause 10.3;

"Scheme Administrators"

in the first instance, Anthony James McMahon and Roger Smith, or such other person as may be appointed as a Scheme Administrator in accordance with the provisions of the Scheme;

"Scheme Amount"

shall have the meaning given to such expression in clause 9.2(b)(i);

RESOLUTIONS OF THE BOARD OF DIRECTORS

"Scheme Assets"

all assets of the Company whether actual, prospective or contingent;

"Scheme Claim"

any claim against the Company (not being a Preferential Claim and not being a claim in respect of Pre-Scheme Costs) in respect of a liability to which the Company is subject at the Record Date or to which the Company may become subject after the Record Date by reason of an obligation incurred before that date save that if:

- (a) Protected Policyholders as a separate class do not vote in favour of the Scheme in accordance with the provisions of section 425 of the Companies Act at the relevant creditors' meeting convened to consider the Scheme (or any adjournment thereof), the expression "Scheme Claim" shall exclude any liability of the Company owed to Protected Policyholders; and/or
- (b) 3 July 1980 – 6 October 1983 ILU Policyholders as a separate class do not vote in favour of the Scheme in accordance with the provisions of section 425 of the Companies Act at the relevant creditors' meeting convened to consider the Scheme (or any adjournment thereof), the expression "Scheme Claim" shall exclude any liability of the Company owed to 3 July 1980 – 6 October 1983 ILU Policyholders but, for the avoidance of doubt, shall include any liability of the Company to Marsh & McLennan Companies, Inc following payment by the Institute of London Underwriters to a creditor of the Company pursuant to the letter of credit arrangements summarised in section 5.1 of the Explanatory Statement;

"Scheme Conflicts Administrator"

Gareth Howard Hughes, or such other person as may be appointed as a Scheme Conflicts Administrator in accordance with the provisions of the Scheme;

"Scheme Costs"

all such costs, charges, expenses, disbursements and remuneration as are referred to in clause 10.2.2;

"Scheme Creditor"

a creditor of the Company in respect of a Scheme Claim (and such expression shall include any assignee or other person entitled to claim in succession to or in substitution for any such Scheme Creditor in respect of the same Scheme Claim), save that if:

- (a) Protected Policyholders as a separate class do not vote in favour of the Scheme in accordance with the provisions of section 425 of the Companies Act at the relevant creditors' meeting convened to consider the Scheme (or any adjournment thereof), the expression "Scheme Creditor" shall exclude Protected Policyholders; and/or
- (b) 3 July 1980 – 6 October 1983 ILU Policyholders as a separate class do not vote in favour of the Scheme in accordance with the provisions of section 425 of the Companies Act at the relevant creditors' meeting

convened to consider the Scheme (or any adjournment thereof), the expression "Scheme Creditor" shall exclude 3 July 1980 – 6 October 1983 ILU Policyholders;

"Special Meeting"

a meeting of each class of Scheme Creditor convened by the Scheme Administrators to consider and, if thought fit, to pass a Special Resolution;

"Special Resolution"

a resolution in substantially the form set out in Appendix 2 to the Scheme (but with such amendments and modifications as the Scheme Administrators and the Creditors Committee (and, in the case of any amendment or modification which, in the opinion of the Policyholders Protection Board, would directly or indirectly adversely affect its interest, the Policyholders Protection Board) shall deem appropriate in the light of the circumstances prevailing at the time when the Special Meeting is convened) which is passed by a majority in number representing 75 per cent in value of each class of Scheme Creditors which, being entitled to do so, vote in person or by proxy at a Special Meeting;

"sterling"

pounds sterling in the lawful currency of the United Kingdom for the time being;

"Substantive Judgment"

in relation to a Common Liability, an order, judgment, decision or award of a court or other tribunal of competent jurisdiction which is:

- (a) final and conclusive in relation to the merits of a Scheme Creditor's rights against a Co-Insurer under the contract in question, in that the tribunal has established certain facts as proved or as not in dispute, identified the relevant principles of law applicable to such facts and reached its decision by applying those principles to such facts, such that the Co-Insurer's obligations under the contract in question (either as to liability or as to quantum) have been determined;
- (b) not subject to any pending appeal or to any right of appeal; and
- (c) not a Default Judgment;

"Trust Deed"

the deed to be executed by the Company, English & American Group Plc (in administration), English & American Insurance Holdings PLC (in administration) and the Trustee and having effect from the Effective Date;

"Trustee"

The Law Debenture Trust Corporation p.l.c. (incorporated in England under the Companies Acts 1948 to 1981 with registered number 1675231) or such other trustee for the time being under or by virtue of the Trust Deed;

"US dollars"

dollars in the lawful currency of the United States of America for the time being; and

"Winding up Petition"

the petition to wind up the Company numbered 002717 of 1993 presented to the Court on 23 March 1993.

TO STATED SCHEME

- 1.1.2 Clause and part headings and the index to the Scheme are inserted for convenience of reference only and shall be ignored in the interpretation of the Scheme.
- 1.1.3 In the Scheme, unless the context otherwise requires or otherwise expressly provided for:
- (a) references to clauses and parts are to be construed as references to the clauses and the parts respectively of the Scheme;
 - (b) references to (or to any specified provision of) the Scheme shall be construed as references to the Scheme (or that provision) as in force for the time being and as modified in accordance with the terms of the Scheme;
 - (c) words importing the plural shall include the singular and vice versa and words importing one gender shall include all genders;
 - (d) except in relation to the definitions of "Protected Liability" and "Protected Policyholder", references to a person shall be construed as including references to an individual, firm, partnership, company, corporation, unincorporated body of persons or any state or any state agency; and
 - (e) references to any enactment shall be deemed to include references to such enactment as re-enacted, amended or extended.

1.2 The Company

The Company was incorporated in England on 28 June 1929. Its authorised share capital is £25,000,000, divided into 25,000,000 shares of £1 each, 20,000,000 of which have been issued and are fully paid and the remainder of which are unissued. With effect from the Effective Date, the Trustee will be the registered holder of the 20,000,000 shares in issue in the capital of the Company and such shares will be held on trust pursuant to the terms of the Trust Deed for English & American Group Plc (in administration) and English & American Insurance Holdings PLC (in administration) (subject to the provisions of the Scheme and the rights of the Scheme Creditors thereunder).

1.3 Parties other than the Company and the Scheme Creditors

- 1.3.1 Each of the Trustee, the Policyholders Protection Board, English & American Group Plc (in administration) and English & American Insurance Holdings PLC (in administration) has agreed with the Company and the Provisional Liquidators to appear by counsel on the hearing of the petition to sanction the Scheme, to undertake to the Court to be bound thereby, to execute or do, or procure to be executed or done, all such documents, acts or things as may be necessary or as the Court may consider desirable to be executed or done by it or on its behalf for the purpose of giving effect to the Scheme and, subject to the Scheme becoming effective, to be bound thereby. The agreement of The Law Debenture Trust Corporation p.l.c. as the proposed Trustee under the Trust Deed is subject to no fact or matter arising prior to the Effective Date which in its opinion would prevent it from acting as the Trustee under the Trust Deed.
- 1.3.2 The Trustee carries on business as a trust corporation under the laws of England and Wales and has its principal office at Princes House, 95 Gresham Street, London EC2V 7LY.
- 1.3.3 Each of Anthony James McMahon and Roger Smith has given and has not withdrawn his consent to act as a Scheme Administrator from the Effective Date.
- 1.3.4 Gareth Howard Hughes has given and has not withdrawn his consent to act as Scheme Conflicts Administrator from the Effective Date.
- 1.3.5 The members of the Creditors Committee shall be as established pursuant to part 6.

1.3.6 Alan Kenneth MacKenzie and John Mitchell Wardrop have each given and have not withdrawn their consent to serve as a member of the Board from the Effective Date.

1.4 Purpose of the Scheme

1.4.1 The purpose of the Scheme is:

- (a) (subject to certain restrictions on the taking or continuing of any Proceeding against the Company) to enable the liabilities of the Company in respect of Scheme Claims to be established and ascertained in the normal course; and
- (b) to provide for the payment of dividends by the Company to those of its creditors whose Scheme Claims have from time to time become established; whilst
- (c) providing for the retention by the Company of sufficient cash assets to enable the same dividends to be paid by the Company to those of its creditors whose Scheme Claims become established at a later date.

1.4.2 The Policyholders Protection Board has agreed to join in the Scheme and to make payments in accordance with the Scheme to creditors of the Company who are policyholders protected under the Policyholders Protection Act (if the Scheme becomes binding on them).

RESTATEMENT
ARRANGEMENT

PART 2 – THE SCHEME

2.1 Application of the Scheme

The Scheme shall apply to all liabilities of the Company in respect of Scheme Claims including all liabilities which have been established before or may be established after the Record Date in respect of obligations incurred before that date.

2.2 Stay of Proceedings

2.2.1 Without prejudice to clauses 2.2.2 and 2.2.3, no Scheme Creditor shall institute or continue any Proceeding or other judicial, quasi-judicial, administrative or regulatory process whatsoever against the Company to establish the existence or amount of a Scheme Claim unless the Scheme Creditor shall first have given to the Company notice of such Scheme Claim in accordance with clause 10.4, which notice shall include:

- (a) fully particularised details of how and when the claim arose, of the contract (whether of insurance, reinsurance, retrocession or otherwise) pursuant to which the claim arose (where applicable), and of the quantum of the claim (if reasonably calculable); and
- (b) legible copies of all contracts, orders, judgments, decisions and awards which are relevant to the claim, and of all other items required to be provided to the Company pursuant to the terms of the contract between the Company and the Scheme Creditor, together with such other supporting information and documentation as the Scheme Administrators shall reasonably require.

2.2.2 Subject to clauses 2.2.1 and 2.2.8, no Scheme Creditor shall, without the prior agreement of the Scheme Administrators (which agreement, to be binding, must be in writing and must refer to this clause 2.2.2), institute or continue any Proceeding or other judicial, quasi-judicial, administrative or regulatory process whatsoever against the Company to establish the existence or amount of a Scheme Claim in relation to which there is a Common Liability until the later of:

- (A) the expiration of a period of six months after having given notice of its claim in the manner prescribed in clause 2.2.1, and
- (B) the expiration of a period of six months after notice by the Scheme Creditor to the Company in accordance with clause 2.2.4 of the occurrence of any one or more of the following events:
 - (a) a Substantive Judgment having been obtained in any Proceedings between the Scheme Creditor (or its predecessor in title) and a Co-Insurer in relation to the Common Liability giving rise to such Scheme Claim; or
 - (b) such Scheme Creditor (or its predecessor in title) having entered into a Final Settlement with a majority in value of the Co-Insurers in relation to the Common Liability giving rise to such Scheme Claim (a 'majority in value' being calculated by comparing the aggregate total of all Co-Insurers' proportionate shares in relation to the relevant contract (but leaving out of account those Co-Insurers against whom Proceedings have been stayed or restrained or have resulted in a Default Judgment in the manner described in clause 2.2.2(B)(c)) with the aggregate of the proportionate shares of the Co-Insurers with whom such Scheme Creditor (or its predecessor in title) has entered into the Final Settlement in question); or
 - (c) all Proceedings between such Scheme Creditor (or its predecessor in title) and all Co-Insurers in relation to the same Common Liability giving rise to such Scheme Claim having:

- (i) been stayed or restrained by operation of law (other than by virtue of an agreement between such Scheme Creditor (or its predecessor in title) and Co-Insurers or any of them), and/or
 - (ii) resulted in such Scheme Creditor (or its predecessor in title) entering or obtaining a Default Judgment,
- as against all such Co-Insurers.

Upon the expiration of the later of the two six month periods referred to in this clause 2.2.2, a Scheme Creditor shall be entitled to institute or continue appropriate legal proceedings against the Company in relation to the Scheme Claim in question, save that the Scheme Creditor shall not be entitled to institute or continue such proceedings to establish the amount of its Scheme Claim unless:

- (A) the relevant Substantive Judgment or Final Settlement determined the quantum of the Co-Insurer's liability; or
- (B) the relevant Substantive Judgment or Final Settlement determined the Co-Insurer's liability and the Scheme Creditor can demonstrate, to the Scheme Administrators' reasonable satisfaction, that the quantum of the Co-Insurer's liability is not and will not be in dispute as between the Scheme Creditor (or its predecessor in title) and the Co-Insurer.

2.2.3 Subject to clause 2.2.8, no Scheme Creditor in relation to whose Scheme Claim there is no Common Liability shall, without the prior agreement of the Scheme Administrators (which agreement, to be binding, must be in writing and must refer to this clause 2.2.3), institute or continue any Proceeding or other judicial, quasi-judicial, administrative or regulatory process whatsoever against the Company to establish the existence or amount of such Scheme Claim until the expiration of a period of six months after having given notice of its claim in the manner prescribed in clause 2.2.1.

2.2.4 For the purposes of clause 2.2.2 and subject to the Scheme Administrators' discretion conferred by clause 2.2.5, notice shall take effect only upon delivery by the Scheme Creditor concerned to the Company of:

- (a) in the case of notice of an event under clause 2.2.2(B)(a), either:
 - (i) a legible copy of the Substantive Judgment, certified by the issuing tribunal; or
 - (ii) a legible copy of the Substantive Judgment, certified as accurate by such Scheme Creditor (or its predecessor in title); or
 - (iii) a legible copy of the transcript of the Substantive Judgment, either certified by the tribunal which issued the judgment or certified as accurate by such Scheme Creditor (or its predecessor in title); or
 - (iv) a written certification from such Scheme Creditor's lawyer or attorney (or the lawyer or attorney of its predecessor in title) as to the fact of the Substantive Judgment and as to its precise terms, in a form reasonably satisfactory to the Scheme Administrators;
- (b) in the case of notice of an event under clause 2.2.2(B)(b), a copy of the Final Settlement, signed by or on behalf of all the parties thereto, certified as accurate by such Scheme Creditor (or its predecessor in title), or, where no such document exists, such other documentary evidence as is available, certified as accurate by such Scheme Creditor (or its predecessor in title), of the Final Settlement and its terms, together with legible copies of any orders, judgments, decisions or awards made by a court or tribunal in proceedings between such Scheme Creditor (or its predecessor in title) and the relevant Co-Insurers relating to the claim in question; and
- (c) in the case of notice of an event under clause 2.2.2(B)(c), either:

- (i) (where applicable) a legible copy of the relevant order, judgment, decision or award, certified by the issuing tribunal; or
- (ii) (where applicable) a legible copy of the relevant order, judgment, decision or award, certified as accurate by such Scheme Creditor (or its predecessor in title); or
- (iii) (where applicable) a legible copy of the transcript of the relevant order, judgment, decision or award, either certified by the issuing tribunal or certified as accurate by such Scheme Creditor (or its predecessor in title); or
- (iv) a written certification from such Scheme Creditor's lawyer or attorney (or the lawyer or attorney of its predecessor in title) as to the fact of the stay, restraint or Default Judgment in question and as to its precise terms, in a form reasonably satisfactory to the Scheme Administrators.

The items set out in paragraphs (i) to (iv) of paragraphs (a) and (c) above are in order of priority, so that (subject to the Scheme Administrators' discretion conferred by clause 2.2.5) the delivery to the Company by the Scheme Creditor of one of these items will suffice for the purposes of this clause 2.2.4 only if none of the preceding items is available.

- 2.2.5 Notwithstanding the provisions of clause 2.2.4, the Scheme Administrators shall have absolute discretion to acknowledge that any of the events referred to in clause 2.2.2 has occurred, even if none of the items referred to in clause 2.2.4 has been delivered to them, if they consider it reasonable to do so. In such a case, the six month period referred to in clause 2.2.2 shall be deemed to commence as at the date when the Scheme Administrators give such an acknowledgement in writing to the Scheme Creditor concerned, which acknowledgement, to be binding, must refer expressly to this clause 2.2.5.
- 2.2.6 Subject to clause 2.2.5, where a Substantive Judgment has been obtained as is referred to in clause 2.2.2(B)(a) or a Final Settlement has been entered into as is referred to in clause 2.2.2(B)(b) and following receipt of the documents and information referred to in clauses 2.2.1 and 2.2.4, the Company shall make all reasonable efforts to reach agreement with the Scheme Creditor concerned as to such Scheme Creditor's Scheme Claim on the basis of the Substantive Judgment or Final Settlement provided that, in so doing, the Company will take into account:
 - (a) the similarity of interests of the Company and Co-Insurer(s) party to the Substantive Judgment or Final Settlement;
 - (b) any material difference in the defences relied on by or claims made by the Co-Insurer(s) in the relevant Proceeding and the defences or claims which would or might be available to the Company in relation to the Scheme Claim; and
 - (c) the best interests of the Scheme Creditors of the Company generally.
- 2.2.7 If and to the extent that a Scheme Creditor obtains against the Company in relation to a Scheme Claim an order, judgment, decision or award of a court or tribunal in contravention of clauses 2.2.1, 2.2.2 or 2.2.3, such order, judgment, decision or award shall not give rise to an Established Scheme Liability in respect of the Scheme Claim and shall be disregarded when determining the liability of the Company in respect of the Scheme Claim.
- 2.2.8 Nothing in the Scheme shall preclude the Company from either:
 - (a) commencing or continuing any Proceeding against a Scheme Creditor; or
 - (b) seeking to be joined into any subsisting Proceeding between a Scheme Creditor and a Co-Insurer as an additional party thereto.

Where the Company commences, continues or is joined into any Proceeding against a Scheme Creditor as aforesaid, and without prejudice to the Scheme Creditor's rights of set-off referred to in

clause 2.5 and the Scheme Creditor's right to argue that the Proceeding in question has been commenced or is continuing in an inappropriate forum, nothing in the Scheme shall preclude the Scheme Creditor from asserting and prosecuting against the Company in that Proceeding (whether by way of claim or counterclaim) a Scheme Claim so long as:

- (i) the Scheme Claim arises out of the same transaction or occurrence that is the subject matter of the Company's claim in that Proceeding; and
- (ii) the Scheme Claim does not require for its adjudication the presence of third parties over whom the court or tribunal in question cannot acquire jurisdiction.

For the purposes of this clause 2.2.8, the Company shall not be deemed to be continuing any Proceedings which commenced prior to the Effective Date and in which the Company is not actively prosecuting its claims.

2.3 Enforcement of Scheme Claims

2.3.1 Except to the extent that the Company has failed to perform any obligation to make a payment to a Scheme Creditor under the provisions of the Scheme and subject to the rights of Scheme Creditors under clauses 2.2, 2.4 and 2.5, no Scheme Creditor shall be entitled to take any proceeding or step (whether by way of demand, legal proceedings, execution of judgment, arbitration proceedings or otherwise howsoever) against the Company or its property in any jurisdiction whatsoever for the purpose of enforcing payment of any Scheme Claim or any part thereof.

2.3.2 If any Scheme Creditor takes any such action as is prohibited by clause 2.3.1 after the Effective Date it shall be treated as having received, on account of its Scheme Claim, an advance payment under clause 3.3 equal to the amount or gross value of any money, property, benefit or advantage obtained by it at the expense of the Company as the result of such action; and the extent, if any, to which it is entitled to any payment under clauses 3.3.1(a) or 3.3.1(b) shall be reduced accordingly. For this purpose, the gross value of any such property, benefit or advantage shall be conclusively determined by the Scheme Administrators and, without limitation, may include such amount as the Scheme Administrators may consider to be appropriate by way of interest or costs, charges or expenses incurred by the Company as a consequence thereof.

2.4 Security, letters of credit and trusts

2.4.1 Nothing in the Scheme shall affect the right of any person to take any appropriate action to enforce:

- (a) any security over the property of the Company which could have been enforced if the Company were being wound up pursuant to the Winding up Petition and the order that the Company be wound up had been made on the Effective Date or which has been created after the Effective Date in accordance with clause 2.11.3; or
- (b) any letter of credit issued or trust created (expressly, by implication or by operation of law) in respect of the Company and of which he is a beneficiary, if such letter of credit or trust was issued or created before the Record Date or has been issued or created after the Effective Date in accordance with clause 2.11.3.

2.4.2 Nothing in the Scheme shall affect the right of the Company against any person in respect of any wrongful drawdown or enforcement of any security, letter of credit issued or trust created in respect of the Company.

2.5 Set-off

2.5.1 Subject to clause 2.5.2, a Scheme Creditor which is under a liability to the Company may rely on any set-off or cross claim upon which it could have relied if the Company were being wound up pursuant to the Winding up Petition and the order that the Company be wound up had been made on the Effective Date.

2.5.2 For the avoidance of doubt:

- (a) no Scheme Claim against the Company which has been assigned to a person after the Effective Date or which was assigned to him prior to that date but after he had notice of the Winding up Petition may be applied in extinguishing or reducing any liability of that person to the Company; and
- (b) no liability of a Scheme Creditor to the Company which arises out of an obligation incurred by such Scheme Creditor after the Effective Date may be extinguished or reduced by any Scheme Claim which such Scheme Creditor has against the Company.

2.6 Established Scheme Liabilities

2.6.1 Subject to clauses 2.2, 2.3, 2.6.2, 2.7 and 2.12.1(a)(ii), a liability of the Company in respect of a Scheme Claim shall be an Established Scheme Liability when there has been established (whether (i) by agreement or (ii) by Proceedings which are not subject to any appeal) in relation thereto a present obligation of the Company to pay an ascertained sum of money after account has been taken (whether (i) by agreement or (ii) by Proceedings which are not subject to any appeal) of:

- (a) any security over the property of the Company which the Scheme Creditor is entitled (or claims to be entitled) to enforce in accordance with clause 2.4.1(a);
- (b) any letter of credit issued or trust created in respect of the Company which the Scheme Creditor is entitled (or claims to be entitled) to enforce in accordance with clause 2.4.1(b); and
- (c) any set-off or cross claim which may be taken into account from time to time in accordance with clause 2.5.

2.6.2 For the purposes of the Scheme, the amount of an Established Scheme Liability shall be the amount at which it was established in accordance with clause 2.6.1, notwithstanding any payment which has been made (or is treated as having been made) under the Scheme.

2.7 Interest

For the purpose of paying or providing for payments under the Scheme, there shall not be included as part of an Established Scheme Liability (save as provided for in clause 3.3.2) any interest except interest (Admissible Interest) to which a Scheme Creditor is entitled by reason of contract, judgment against the Company, decree or otherwise for a period or periods ending on the Record Date. No payment shall be made under the Scheme in respect of any part of a Scheme Claim which represents interest which is not Admissible Interest.

2.8 Payment of Preferential Claims

As soon as practicable after the Effective Date the Company shall pay all debts due from it in respect of Preferential Claims but nothing herein shall oblige it to pay any such debt at any time before the date on which such debt would, apart from the Scheme, otherwise have become due and payable.

2.9 Currency of payment

2.9.1 Any amount payable to a Scheme Creditor under the Scheme in respect of an Established Scheme Liability owed to such a Scheme Creditor (whether by the Company under part 3 or, without prejudice to the provisions of clause 4.2.3, by the Policyholders Protection Board under part 4) shall be paid in the currency in which such Established Scheme Liability was incurred (or where the relevant contract allows such Scheme Creditor to elect to make a claim in any other currency, and any such election is made in accordance with the terms of such contract (but not after an amount in respect of such Established Scheme Liability has already been paid under the Scheme), in that currency).

ESTABLISHED SCHEME
POLICYHOLDERS PROTECTION BOARD

2.9.2 In determining any set-off or cross claim in relation to a Scheme Claim, where the set-off or cross claim is expressed in a currency other than that of the relevant Scheme Claim, the set-off or cross claim shall, in the absence of agreement otherwise between the Scheme Creditor and the Company, be converted into the currency of the relevant Scheme Claim at the rate of exchange specified in the contract to which the Scheme Claim relates or, if there is no such rate specified, the rate of exchange published in the *Financial Times* for the purchase of such currency at close of business (London time) on the date upon which the Scheme Administrators accept that the set-off or cross claim is available to the relevant Scheme Creditor or the set-off or cross claim is otherwise determined, or, if no such rate is published in the *Financial Times* in respect of that currency on that date, the mid-market rate for that currency on such date quoted by Lloyds Bank Plc, or, if no such rate is so published or quoted, such rate as may reasonably be determined by the Scheme Administrators.

2.10 Method of payment

2.10.1 Payments to a Scheme Creditor under the Scheme may be made, in the absolute discretion of the Scheme Administrators or, in the case of payments to be made by the Policyholders Protection Board, of the Policyholders Protection Board:

- (a) by cheque in favour of the Scheme Creditor concerned or as such Scheme Creditor may direct and sent through the post at the risk of such Scheme Creditor to the last known address of such Scheme Creditor or to such other address as such Scheme Creditor may from time to time notify to the Company (or, as the case may be, the Policyholders Protection Board);
- (b) by telegraphic transfer to such bank account as the Scheme Creditor concerned may from time to time notify to the Company (or, as the case may be, the Policyholders Protection Board); or
- (c) in such other manner as the Scheme Administrators or, as the case may be, the Policyholders Protection Board may from time to time determine.

The cost of using any such payment method in a particular case shall be an expense of the Scheme Creditor concerned.

2.10.2 Payment under the Scheme shall be deemed to have been made on the day that the cheque is posted or telegraphic transfer instruction given to the relevant bank (as the case may be). Payment of any such cheque by the banker on whom it is drawn shall be satisfaction of the monies in respect of which it was drawn; and receipt of the amount of such telegraphic transfer into such account shall be satisfaction of the monies in respect of which it was paid.

2.10.3 The Scheme Administrators may determine that any payment under the Scheme (when aggregated with any amounts to be paid to the Scheme Creditor under part 4) of less than a certain amount (not being greater than £50 or its equivalent in any other currency from time to time or such greater amount as the Scheme Administrators may reasonably determine from time to time (the de minimis amount)) shall not be sent to a Scheme Creditor because of the costs involved in making and/or receiving such payment, in which case any such amount shall be retained for the benefit of such Scheme Creditor, such Scheme Creditor shall be notified of any such retention and such amount shall be paid to such Scheme Creditor upon the earlier of demand made by that Scheme Creditor or such time as the aggregate of sums owed to such Scheme Creditor under the Scheme exceeds the de minimis amount.

2.10.4 Without prejudice to clause 2.10.2, payment by the Company or the Policyholders Protection Board, as the case may be, in respect of an Established Scheme Liability or a Protected Liability:

- (a) to a Scheme Creditor or a Protected Policyholder; or
- (b) where two or more persons comprise a Scheme Creditor or a Protected Policyholder, to any one such person; or

- (c) to any person acting on behalf of a Scheme Creditor or Protected Policyholder,

shall for all purposes constitute a valid discharge of the Company or the Policyholders Protection Board, as the case may be, in respect of such Established Scheme Liability or Protected Liability to the extent of such payment.

2.11 Carrying on of insurance business

2.11.1 The Company shall not:

- (a) enter into any further, or renew, replace or extend any existing, contracts (whether of insurance, reinsurance, retrocession or otherwise) or vary the same in a manner which would increase the total amount of any liability of the Company to any person under such a contract except:

(i) contracts of insurance protecting the Company or its directors, officers, employees or agents against risks incurred in the run-off of the Company's business; and

(ii) contracts of reinsurance in relation to liabilities of the Company arising out of obligations incurred by the Company prior to the Record Date; nor

- (b) carry on any other business except in connection with the carrying out of the Scheme and all other matters which are incidental thereto; nor

- (c) without prejudice to clause 2.11.3, create or cause or permit to be created any trust of or in relation to any of its assets (including, without limitation, any cash deposit) or appropriate or set aside any asset to meet a liability of the Company (otherwise than in accordance with clause 2.11.3 or clauses 3.2.4 and 3.2.5 3.2.6).

- 2.11.2 The Company may, after consultation with the Policyholders Protection Board, enter into, vary or terminate arrangements with an agent for the provision of such services to the Company as it may require for the run-off of its existing insurance business (including agreeing and adjusting claims under any insurance contracts).

- 2.11.3 If the Scheme Administrators consider that to do so would be in the best interests of the Scheme Creditors, the Company may arrange for the issue or creation of new letters of credit, trusts, bonds or other instruments or security over any of its assets:

(a) to replace existing letters of credit or trusts; or

(b) to secure liabilities incurred after the Record Date; or

(c) to provide security for the purposes of any Proceeding in relation to any liabilities of the Company,

but not otherwise and the Company may renew or permit to be renewed any existing letter of credit.

2.12 Commutations, settlements and other agreements

- 2.12.1 Subject to clause 2.12.2, if the Scheme Administrators consider that to do so would be in the best interests of the Scheme Creditors (excluding in the case of contractual arrangements entered into pursuant to paragraph (a) below, the Scheme Creditor with whom such contractual arrangements are made), the Company may enter into contractual arrangements:

(a) with a Scheme Creditor under which:

- (i) all or part of the liability (which may include, without limitation, a liability to provide or fund the costs of that Scheme Creditor's defence) of the Company to that Scheme Creditor is discharged in full in consideration of payment made by the Company; or
 - (ii) all or part of the liability of the Company to that Scheme Creditor becomes an Established Scheme Liability otherwise than as a result of an obligation to pay an ascertained sum of money being established in accordance with clause 2.6.1; or
- (b) with any of its reinsurers for the discharge of any of such reinsurer's liabilities to the Company under reinsurance contracts in consideration for payment to the Company.

2.12.2 The Company may not enter into a contractual arrangement of the nature described in clause 2.12.1(a) unless either:

- (a) the Policyholders Protection Board has consented in writing to such arrangement; or
- (b) the Scheme Creditor concerned has confirmed, in a legally binding form satisfactory to the Policyholders Protection Board, that he is not a Protected Policyholder in relation to the liability concerned or that he waives any rights which he may have against the Policyholders Protection Board in relation to that liability and agrees to the discharge of the liability.

2.12.3 Without prejudice to clauses 2.12.1 and 2.12.2, the Scheme Administrators shall consider any request made by a Scheme Creditor, supported by appropriate actuarial information, for the Company to enter into any such contractual arrangements as are referred to in clause 2.12.1 with such Scheme Creditor.

2.13 Investment

The Company shall have power to invest all or any of its assets in such manner as the Scheme Administrators consider prudent from time to time, with full power from time to time to vary or transpose any such investments into others of any nature hereby authorised.

2.14 Current Policies

Notwithstanding any other provision of the Scheme, the liability of the Company under the Scheme in relation to that part of the policy period of a Current Policy which has not expired on the Effective Date shall be calculated as if a winding-up order had been made in relation to the Company on the Effective Date and, for the avoidance of doubt, (a) any claim in respect of such liability shall be a Scheme Claim and (b) any Established Scheme Liability in respect of such a liability shall not give rise to a Protected Liability.

PART 3 – PAYMENTS TO SCHEME CREDITORS

3.1 Application of assets of the Company

On and from the Effective Date the Scheme Assets assets of the Company shall be applied for the benefit of Scheme Creditors in accordance with the provisions of the Scheme.

3.2 Computation of the Payment Percentage

3.2.1 Subject as hereinafter provided in this part 3, the Scheme Administrators shall from time to time:

- (a) set the Payment Percentage; and
- (b) revise a Payment Percentage previously set by setting a new Payment Percentage of a greater or lesser amount.

3.2.2 As soon as practicable after each Review Date before an initial Payment Percentage has been set, the Scheme Administrators shall consider, in the light of clauses 3.2.4 ~~3.2.5~~, and ~~3.2.5~~ ~~3.2.6~~, whether an initial Payment Percentage should be set.

3.2.3 As soon as practicable after each Review Date after the initial Payment Percentage has been set, the Scheme Administrators shall review the Payment Percentage and consider, in the light of clauses 3.2.4 ~~and~~ 3.2.5, and ~~3.2.6~~ whether it should be revised.

3.2.4 The Scheme Administrators shall not set a Payment Percentage unless they consider, on the basis of the information and advice referred to in clause ~~3.2.7~~ ~~3.2.8~~, that after:

- (a) the Company has (by reference to a Payment Percentage at that rate) complied with the provisions of clause 3.3 in relation to all Established Scheme Liabilities owed by it as at the Review Date concerned; and
- (b) ~~subject to clause 3.2.5~~ such reserves have been created by the Company as they consider to be prudent to enable the Company to meet its liabilities for Pre-Scheme Costs, Preferential Claims and Scheme Costs as and when they fall due,

the Company will retain ~~Cash~~ Scheme Assets of an amount which the Scheme Administrators consider sufficient to enable the Company to comply with the provisions of clause 3.3 (by reference to a Payment Percentage at that rate) in relation to all liabilities of the Company in respect of Scheme Claims which have become, or which the Scheme Administrators consider may become, Established Scheme Liabilities after the Review Date concerned.

~~3.2.5 In considering whether sufficient reserves have been created in accordance with clause 3.2.4.(b), the Scheme Administrators shall be entitled to take into account:~~

- (a) ~~all assets of the Company including, without limitation, its rights against reinsurers and retrocessionaires whether actual, prospective or contingent (and the prospects of actually successfully enforcing such rights); and~~
- (b) ~~the prospect of future income, including income derived from Cash Assets retained in accordance with clause 3.2.4 and any other cash deposits which may from time to time be subject to any security or trust (provided the income is not subject to any security or trust).~~

~~3.2.5~~ 3.2.56 Subject to clause 3.2.4, for the purposes of 3.2.2 or 3.2.3, the Payment Percentage, if set, in relation to the Company shall be set at, or increased to, such rate as the Scheme Administrators consider will ensure that all the Cash Assets of the Company remaining after:

- (a) the Company has retained Cash Scheme Assets of an amount which the Scheme Administrators consider sufficient to enable it to comply with the provisions of clause 3.3 (by

reference to a Payment Percentage at that rate) in relation to all liabilities of the Company in respect of Scheme Claims which have become, or which the Scheme Administrators consider may become, Established Scheme Liabilities after the Review Date concerned; and

- (b) the creation of the reserves referred to in clause 3.2.4(b),

are distributed proportionately in respect of all the Established Scheme Liabilities owed by the Company as at the Review Date concerned.

3.2.67 If on considering the current Payment Percentage pursuant to clause 3.2.3 the Scheme Administrators shall consider that there are not sufficient Cash Scheme Assets for such Payment Percentage to be set at that level and for the provisions of clause 3.2.4 to be complied with, they shall reduce such Payment Percentage to such level as they consider appropriate. ~~to comply with the provisions of clause 3.2.6 but provided that the provisions of clause 3.2.4 are not infringed.~~

3.2.78 For the purpose of setting the Payment Percentage as at a particular Review Date, the Scheme Administrators shall obtain and consider such financial and/or actuarial information and advice as the Scheme Administrators, following consultation with the Creditors Committee, shall consider appropriate.

3.3 Payments to Scheme Creditors

3.3.1 In respect of an Established Scheme Liability, the Company shall, subject to clause 2.3.2:

- (a) as soon as reasonably practicable but, in any event, within ninety days following the date on which it becomes an Established Scheme Liability or on which the relevant initial Payment Percentage has been set (whichever is the later), pay to the Scheme Creditor concerned an amount equal to the then current Payment Percentage of such Established Scheme Liability; and
- (b) as soon as reasonably practicable, but in any event within ninety days following an increase in the Payment Percentage under clause 3.2, pay to the Scheme Creditor concerned (whether or not the same person who received payment under clause 3.3.1(a)), a further amount equal to the difference between (A) the Payment Percentage (as increased) of such Established Scheme Liability and (B) the amount of such Established Scheme Liability which has previously been discharged by the Company or is treated as having been discharged under clause 2.3.2.

3.3.2 Notwithstanding clause 2.7, if all liabilities of the Company in respect of Scheme Claims shall have become Established Scheme Liabilities and been paid in full (including for this purpose only liabilities for interest, other than Admissible Interest referred to in clause 2.7, which shall then become payable) the Company shall pay additional interest in respect of each such Established Scheme Liability in accordance with this clause 3.3.2. The amount of such additional interest shall be an amount equal to fifteen per cent per annum (or such higher rate of interest as may be from time to time prescribed pursuant to section 17 of the Judgments Act 1838 of England, Scotland and Wales) on the unpaid amount of such Established Scheme Liability from time to time (such additional interest to be calculated on a daily basis from the later of the Effective Date and the date on which the liability of the Company in respect of the relevant Scheme Claim became an Established Scheme Liability up to the date of payment of such additional interest), Provided that the amount of such additional interest shall not exceed the surplus assets of the Company after adequate provision has been made for all other liabilities of the Company (otherwise than in respect of share capital) in existence at the time of payment of such additional interest (and so that the amount of additional interest payable in respect of each such Established Scheme Liability shall, if necessary, be reduced *pro rata* accordingly).

3.3.3 The Scheme Administrators shall suspend payments under clause 3.3.1 for such period (not exceeding six months) as they consider appropriate if information becomes available to them concerning the financial position of the Company as a result of which they require to consider whether or not to set a reduced Payment Percentage. As soon as practicable during, and in any event at the end of, such period, the Scheme Administrators shall set a reduced Payment Percentage or conclude that the Payment Percentage need not be reduced, and thereupon the suspension of payments shall be lifted.

PART 4 – PAYMENTS TO PROTECTED POLICYHOLDERS

4.1 Payments by the Policyholders Protection Board

4.1.1 Subject to the following provisions of this part 4, the Policyholders Protection Board shall pay to each Protected Policyholder in respect of each Protected Liability owed to him an amount equal to:

- (a) the Protected Percentage of that Protected Liability; less
- (b) the aggregate of:
 - (i) whichever is the greater of the Payment Percentage of that Protected Liability already paid, or treated as having been paid, by the Company and the Payment Percentage of that Protected Liability in force at the time when the Policyholders Protection Board makes its payment;
 - (ii) the amount of any Admissible Interest paid or payable at that time pursuant to clause 2.7, save to the extent that it arises under the terms of the relevant policy; and
 - (iii) the amount of any payment previously made by the Policyholders Protection Board pursuant to section 15 of the Policyholders Protection Act in respect of that Protected Liability.

4.1.2 Payment under clause 4.1.1 in respect of a Protected Liability shall be made as soon as reasonably practicable following whichever is the later of:

- (a) the date on which the Company notifies the Policyholders Protection Board that the liability is an Established Scheme Liability;
- (b) the date on which the Policyholders Protection Board agrees or it is otherwise determined (so as to bind the Policyholders Protection Board) that the Established Scheme Liability concerned is a Protected Liability;
- (c) if there is a Payment Percentage which is in excess of zero, the date of payment by the Company of all amounts payable in respect of the Protected Liability under clause 3.3.1;
- (d) if there is no Payment Percentage, or if the Payment Percentage is zero, the date which is thirty days after the Effective Date; and
- (e) in any case where it appears to the Policyholders Protection Board that the funds available it fall short of what it requires to make the payment in question and to meet its responsibilities under or pursuant to the Policyholders Protection Act (as in force at any time) or otherwise, the date on which it appears to the Policyholders Protection Board that its funds are adequate for those purposes;

and, if at any time payments have been suspended under clause 3.3.3, such payment under clause 4.1.1 in respect of a Protected Liability (other than a Protected Liability in respect of which the period for payment under clause 3.3.1 shall have expired on or prior to the date on which payments are suspended without payment having been made by the Company) shall be made as soon as reasonably practicable following whichever is the later of the dates referred to in this clause 4.1.2(a), (b), (d) or (e) in relation to the liability in question.

4.2 Limitations on the Policyholders Protection Board's obligations

4.2.1 Any obligation of the Policyholders Protection Board to a Protected Policyholder under this part 4 in respect of a Protected Liability shall be subject to the same conditions, limitations, qualifications and other provisions (*mutatis mutandis*) contained or referred to in, or capable of being imposed

under, sections 9, 13(1) to (3) and 14 of the Policyholders Protection Act (and, for the avoidance of doubt, so that for the purposes of section 13(3) in its application to the Scheme the Policyholders Protection Board shall be entitled to have regard both to its obligations under the Scheme and to its responsibilities otherwise than under the Scheme) as the duty which the Policyholders Protection Board would have had under sections 6 to 8 of that Act to secure the making of a payment to any policyholder or any other person in respect of that Protected Liability if the Company were a company in liquidation (as defined in that Act).

4.2.2 Any obligation of the Policyholders Protection Board to make a payment under clause 4.1.1 in respect of a Protected Liability shall:

- (a) if there is a Payment Percentage which is in excess of zero and save during any period when payments have been suspended under clause 3.3.3 (other than where the Protected Liability in question is one in respect of which the period for payment by the Company under clause 3.3.1 shall have expired on or prior to the date on which payments are suspended without payment having been made by the Company), be conditional on payment by the Company of all amounts payable in respect of that Protected Liability under clause 3.3.1 before the time when the payment by Policyholders Protection Board falls, or would but for this clause 4.2.2 fall, to be made; and
- (b) unless the Policyholders Protection Board otherwise consents in any case, be conditional on the Protected Policyholder being entitled and able to assign to the Policyholders Protection Board all the rights and claims mentioned in clause 4.3.1, as originally arising and free from any lien, charge, prior assignment, equity, encumbrance or other third party right.

4.2.3 (a) Any sum payable in respect of any Protected Liability by the Policyholders Protection Board under clause 4.1.1 in a currency other than sterling (the Non-Sterling Amount) shall not exceed its Capped Sterling Equivalent.

(b) For the purpose of clause 4.2.3(a) the Capped Sterling Equivalent in relation to any Non-Sterling Amount means the amount in the currency in which such Non-Sterling Amount is denominated, determined as follows: convert the equivalent of the Non-Sterling Amount in sterling at the Specified Exchange Rate into the currency in which the Non-Sterling Amount is denominated at the exchange rate prevailing on the business day (the Relevant Date) falling immediately prior to the date of payment under clause 4.1.1 in respect of the relevant Protected Liability.

(c) For the purpose of this clause 4.2.3:

- (i) the Specified Exchange Rate shall be twelve and a half per cent below the exchange rate into sterling for the currency in which the Non-Sterling Amount is denominated prevailing on the Effective Date;
- (ii) the exchange rate prevailing on the Effective Date shall be taken, in relation to any currency, as the average daily exchange rate over the period three months prior to the Effective Date taken from the rates published on each business day during that period in the *Financial Times* or, if on any such business day no such rate is published in the *Financial Times* in respect of that currency, as the mid-market rate for that currency on such date quoted by Lloyds Bank Plc, or if no such rate is so published or quoted, such rate as may reasonably be determined by the Scheme Administrators and the Policyholders Protection Board; and
- (iii) the exchange rate prevailing on the Relevant Date shall be taken, in relation to any currency, as the exchange rate for that date published in the *Financial Times* or, if no such rate is published in the *Financial Times* for that date in respect of that currency, as the mid-market rate for that currency on the Relevant Date quoted by Lloyds Bank Plc, or, if no such rate is so published or quoted, such rate as may reasonably be determined by the Scheme Administrators and the Policyholders Protection Board.

- 4.2.4 (a) Subject to clause 4.2.4(b), the Policyholders Protection Board shall not have any greater obligation under the Scheme in respect of any Scheme Creditor or liability of the Company than it would have had (and neither Scheme Creditors nor the Company shall have any different or greater relief or remedy against the Policyholders Protection Board than they or it would have had) if the Company had been a company in liquidation (as defined in the Policyholders Protection Act), the beginning of the liquidation (as so defined) had been the Record Date, and the payment to be made by the Policyholders Protection Board in respect of each Protected Liability had been reduced by the amounts referred to in clause 4.1.1(b); and no right of, or condition imposed by, the Policyholders Protection Board under the Scheme in relation to any Scheme Creditor shall be limited or restricted by virtue of any obligation of the Policyholders Protection Board to that Scheme Creditor under the Scheme being less than the obligation which the Policyholders Protection Board would have had to it if the Company had been a company in liquidation (as so defined).
- (b) For the purpose of clause 4.2.4(a) it shall be assumed that:
- (i) the currency of payment by the Policyholders Protection Board in respect of any liability (and where that currency is not sterling, its rate of exchange) would be the same on a liquidation of the Company as under the Scheme (including for these purposes the exchange rate limit set out in clause 4.2.3); and
 - (ii) the amount of any liability of the Company in liquidation would be as established in the case of an Established Scheme Liability in accordance with the Scheme.

4.2.5 For the avoidance of doubt, the Policyholders Protection Board:

- (a) shall not be liable in respect of any interest payable in relation to a Scheme Claim to the extent that it is payable in respect of any period after the Record Date; and
- (b) without prejudice to clauses 4.2.1 and 4.2.4, shall not have any greater obligation under the Scheme by virtue of any amount of any such letter of credit, trust fund, guarantee, guarantee fund or deposit as is described in sections 5.1, 5.3, 5.4, 5.5 and 5.6 of the Explanatory Statement (or any other amount falling to be taken into account under clause 2.6.1) being deductible in the calculation of any Established Scheme Liability than it would have had if that amount (as well as the amounts referred to in clause 4.1.1(b)) had been treated under section 14(1) of the Policyholders Protection Act as reducing any sum which would have been payable by it in respect of the liability concerned if the Company had been a company in liquidation (as defined in that Act) and the beginning of the liquidation (as so defined) had been on the Record Date (but making the assumption in clause 4.2.4(b)(i)),

nor shall the Policyholders Protection Board have any obligation under the Scheme towards any person who has paid or is liable to pay any such amount.

4.2.5A For the avoidance of doubt, the Policyholders Protection Board shall not by virtue of, or of anything in, the Amending Scheme or the Restated Scheme (as those expressions are respectively defined in the document dated 1 June 2000 and sent to Scheme Creditors containing a proposal in relation to an amending scheme of arrangement) have any obligation in respect of any policyholder or liability of the Company which it would not have had, or greater than it would have had (and neither any Scheme Creditor nor the Company shall by reason of, or of anything in, the Amending Scheme or the Restated Scheme have any different or greater relief or remedy against the Policyholders Protection Board than he or it would have had) if the Company had been a company in liquidation (as defined in the Policyholders Protection Act), the beginning of the liquidation (as so defined) had been the Record Date and the payment to be made by the Policyholders Protection Board had been reduced by the amounts referred to in clause 4.1.1(b); and if by virtue of the Company going into liquidation after the Record Date the Policyholders Protection Board would, or would but for this clause 4.2.5A, be required to pay any amount to or on behalf of a policyholder in respect of a liability of the Company which it would not have been required to pay if the beginning of the liquidation had been on the Record Date, the liability shall for all purposes be treated as not

being a liability under the terms of a policy, but as being a liability only under the Scheme (and admissible for proof in the liquidation as such).

4.2.6 The Policyholders Protection Board shall not have an obligation to make a payment in respect of an Established Scheme Liability if it appears to the Policyholders Protection Board that such a payment would result in a benefit being conferred on either:

- (a) any person who was a member of the Company at the Petition Date; or
- (b) any person who had any responsibility for or who may have profited from the circumstances giving rise to the financial difficulties of the Company;

provided that there shall be disregarded for the purposes of paragraphs (a) and (b) above any benefit which might accrue to such persons therein mentioned who are policyholders of the Company in their capacity as such.

4.3 Assignments to the Policyholders Protection Board

4.3.1 Immediately upon any payment being made by the Policyholders Protection Board to a Protected Policyholder pursuant to clause 4.1 in respect of a Protected Liability, there shall automatically be assigned to the Policyholders Protection Board absolutely, without any further act or document:

- (a) all rights of the Protected Policyholder in respect of that Protected Liability (including in respect of the debt or claim constituted by or arising out of or relating to that Protected Liability) under or in respect of the policy relating to that Protected Liability and the Scheme;
- (b) any rights and claims such Protected Policyholder may have in respect of payments made by him by way of premiums under the policy relating to that Protected Liability; and
- (c) any rights and claims such Protected Policyholder may have against any other persons in respect of any event giving rise to that Protected Liability (other than another insurer which has insured the Protected Policyholder in respect of the same event, but without prejudice to the application of this clause 4.3.1 in relation to any Protected Liability to which the event has also given rise) or by reference to or in connection with the policy relating to that Protected Liability, to the intent that the assignment in their entirety under this clause 4.3.1 of rights and claims to which this clause 4.3.1(c) refers will be by way of security for payment to the Policyholders Protection Board of the amount of the Protected Liability;

whether, in any such case, those rights or claims arise under or in respect of the policy relating to that Protected Liability, under or in respect of the Scheme, by virtue of any trust or legislation (primary or subordinate) or otherwise howsoever, and whatever the nature of those rights or claims. If, before making payment pursuant to clause 4.1 in any particular case, the Policyholders Protection Board in its absolute discretion determines that the terms of the assignment of rights and claims which would otherwise apply under clause 4.3.1(c) should be varied in that case, then subject to the consent of the Protected Policyholder concerned to the variation, clause 4.3.1(c) shall have effect as if those terms of assignment as so varied applied in that case. If any question arises as to the identification of any Protected Liability, and accordingly as to whether that liability is or is not the subject of an assignment to the Policyholders Protection Board under this clause 4.3.1, a certificate from the Policyholders Protection Board that it has made a payment in respect of that liability shall be binding and conclusive on all persons for all purposes. Without prejudice to the provisions of clause 4.3.5, the Policyholders Protection Board shall provide to the Company such information relating to the date and amount of payments it makes to Protected Policyholders in respect of Protected Liabilities and relating to the form of any variation of the assignment of rights and claims provided for by this clause 4.3.1 as the Company may from time to time reasonably request.

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4.3.2 Following an assignment pursuant to clause 4.3.1 and without prejudice to the generality of its terms, the Policyholders Protection Board shall have a right to payment by the Company, in accordance with the terms of the Scheme, of all sums subsequently due or payable in respect of the Protected Liability to which the assignment relates or in respect of any other of the rights and claims so assigned, whether those sums are due and payable under the Scheme or under or in respect of the policy to which the Protected Liability relates, and accordingly:

- (a) the Policyholders Protection Board shall (subject to clause 9.2) be admitted as a creditor in respect of such sums on any winding up of the Company; and
- (b) the receipt of the Policyholders Protection Board shall constitute a valid discharge of the Company in respect of such sums;

and so that the Company shall not remain under or incur any liability with respect to any Protected Policyholder by reason of having paid any such sums to the Policyholders Protection Board.

4.3.3 Without prejudice to clause 4.3.1, a Protected Policyholder to whom a payment is made pursuant to clause 4.1 shall do such acts and things and execute such deeds and documents, and in particular such forms of assignment, transfer or assurance, as the Policyholders Protection Board may from time to time request to vest in it fully and effectively all rights and claims of that Protected Policyholder against the Company or other persons under or in respect of the Protected Liability to which such payment relates, or to perfect or evidence the vesting in it of the same. Each Protected Policyholder hereby irrevocably and unconditionally appoints the chairman of the Policyholders Protection Board for the time being to be his attorney and agent and on his behalf and in his name or otherwise to do such acts and things and execute such deeds and documents as may be required to give effect to this clause 4.3.3, if such Protected Policyholder fails to comply promptly with his obligations hereunder. Without prejudice to clause 4.3.1, if and to the extent that any interest in any such right or claim of a Protected Policyholder as falls to be assigned to the Policyholders Protection Board under that clause upon any payment being made does not for any reason immediately vest fully and effectively in the Policyholders Protection Board, the same shall be held by the Protected Policyholder on trust absolutely for the Policyholders Protection Board until it does so vest (whether pursuant to that clause or the preceding provisions of this clause or otherwise).

4.3.4 Without prejudice to clause 4.3.1, any obligation of the Policyholders Protection Board to make a payment to a Protected Policyholder under clause 4.1 in respect of a Protected Liability shall, if the Policyholders Protection Board so elects, be conditional on there first being assigned to it, in such form as it may request, all such rights and claims as are mentioned in clause 4.3.1(a) to (c) (but as if the references there to Protected Policyholder or to Protected Liability were references to the Protected Policyholder or Protected Liability in respect of whom or which the election is made) or such of those rights and claims as the Policyholders Protection Board may determine. Where any such obligation is so conditional, clause 4.1.2 shall apply as if after clause 4.1.2(e) there were added: “; and (f) the date when the condition imposed under clause 4.3.4 is satisfied”; and the word “and” were deleted from the end of clause 4.1.2(d); and the reference to the later of the dates referred to in clause 4.1.2(a), (b), (d) or (e) were deleted and replaced by a reference to the later of the dates referred to in clause 4.1.2(a), (b), (d), (e) or (f).

4.3.5 Clause 4.3.1 shall be deemed to constitute for all purposes express notice in writing to the Company of all assignments effected pursuant to its provisions and relating to liabilities of the Company.

4.3.6 For the avoidance of doubt (and without prejudice to clause 2.6.1), rights and claims to which clause 4.3.1 applies include all rights and claims which a Protected Policyholder may have in respect of a Protected Liability to any payment out of, interest in, or recourse to or otherwise by virtue of, any such letter of credit, trust funds, guarantees, guarantee fund and deposits as are described in sections 5.1, 5.3, 5.4, 5.5 and 5.6 of the Explanatory Statement.

4.4 Information to be provided to the Policyholders Protection Board

4.4.1 The Company and the Scheme Administrators shall promptly provide the Policyholders Protection Board with all such information in their respective possession or under their respective control or the control of their respective agents as the Policyholders Protection Board may from time to time request in order to establish whether (or the extent to which) any Established Scheme Liability is a Protected Liability or whether (or the extent to which) a Scheme Creditor is a Protected Policyholder or otherwise for the purpose of enabling or assisting the Policyholders Protection Board to perform its obligations or exercise its rights under the Scheme or to carry out its functions or responsibilities under the Policyholders Protection Act as from time to time in force. The Company or as the case may be the Scheme Administrators shall, so far as it or they are able, authorise and instruct any third party with any such information to disclose it to the Policyholders Protection Board. The Company's and the Scheme Administrators' obligations set out in this clause 4.4.1 shall not extend to any information which the Company or as the case may be the Scheme Administrators are under a legal duty not to disclose, but neither the Company nor the Scheme Administrators shall, without the prior written consent of the Policyholders Protection Board, enter into any agreement or incur any obligation which precludes or restricts disclosure to the Policyholders Protection Board of any such information as is reasonably capable of being the subject matter of a request under this clause 4.4.1.

4.4.2 Subject to receiving reasonable notice in any case, the Company shall, for the purpose referred to in clause 4.4.1, permit (and, so far as it is able, authorise and instruct its agents to permit) any person authorised by the Policyholders Protection Board to have access to, and to be provided with copies of, all or any of the books and records of the Company and, in so far as they relate to the Company, of such agents, during normal business hours. Such obligation shall not extend to any such information which the Company or any such agent is under a legal duty not to disclose. The Policyholders Protection Board shall pay the reasonable photocopying costs of providing such copies.

4.4.3 Without limitation to clause 4.4.1, the Company shall, as soon as reasonably practicable after payment of any amount to a Scheme Creditor under clause 3.3.1, give notice of such payment to the Policyholders Protection Board to the extent required by the Policyholders Protection Board in order to fulfil its obligations under the Scheme.

4.5 Other provisions applicable to the Policyholders Protection Board

4.5.1 References in this part 4 to the Policyholders Protection Board paying or making payment of any sum include references to the Policyholders Protection Board securing the payment of that sum; and references to the securing of payment in sections 9, 13 and 14 of the Policyholders Protection Act, as they apply by virtue of clause 4.2.1 to the obligations of the Policyholders Protection Board under this part 4, shall be construed accordingly.

4.5.2 A payment by the Policyholders Protection Board under the Scheme shall not operate to reduce or discharge any liability of the Company or any part of such liability.

4.5.3 Without prejudice to any other rights and remedies which the Policyholders Protection Board may have, any person receiving a payment under clause 4.1.1 in respect of a liability who has knowingly provided false, misleading or incomplete information to the Policyholders Protection Board in support of an application for that payment shall be bound on demand to repay to the Policyholders Protection Board all such amounts as have been paid by the Policyholders Protection Board in respect of that liability, together with interest at fifteen per cent per annum (or such higher rate of interest as may be from time to time prescribed pursuant to section 17 of the Judgments Act 1838 (or such other rate as a court of competent jurisdiction may specify for the purpose of this clause 4.5.3)) calculated on a daily basis from the date of payment to the date of repayment.

4.5.4 Where, in relation to any policy, the Policyholders Protection Board would be required or entitled under the Policyholders Protection Act to make a payment to any person other than, or instead of, the policyholder, if the Company were in liquidation, the Policyholders Protection Board may similarly perform any obligation to make a payment under the Scheme in relation to that policy and references to a Protected Policyholder shall be construed accordingly.

PART 5 – THE SCHEME ADMINISTRATORS

5.1 Qualification, appointment and resignation

5.1.1 A Scheme Administrator shall be an individual qualified to act as an insolvency practitioner within the meaning of section 390 of the Insolvency Act. The initial Scheme Administrators shall be Anthony James McMahon and Roger Smith.

5.1.2 Subject to clause 6.9.2(b), a Scheme Administrator may resign his appointment at any time by giving not less than six months' notice in writing to the Company and to the Creditors Committee.

5.1.3 The Scheme Administrators shall, with effect from the Effective Date, ensure that there is in force in relation to the Company such bond as would have had to be in force if the Company had been wound up in England on such date and they had been appointed its liquidators.

5.2 Power to act jointly or severally

Where more than one person has been appointed as a Scheme Administrator, the functions and powers of the Scheme Administrators under the Scheme may be performed and exercised jointly or severally and any act required to be done by the Scheme Administrators pursuant to the Scheme may be done by all or any one or more of them.

5.3 Functions and powers

5.3.1 The Scheme Administrators shall:

- (a) manage the run-off of the Company's business;
- (b) realise the assets of the Company and apply them for the benefit of Scheme Creditors in accordance with the Scheme; and
- (c) supervise and ensure the carrying out of the Scheme,

and for these purposes shall:

- (i) have power in the name and on behalf of the Company to manage the affairs, business and property of the Company; and
- (ii) without prejudice to the generality of the foregoing, have the powers specified in clause 5.3.3.

5.3.2 Any function of or power conferred on the Company or its officers, whether by statute or by its memorandum or articles of association, which could be exercised in such a way as to interfere with the exercise by the Scheme Administrators of their functions and powers in relation to the Company shall not be exercisable except with the consent of the Scheme Administrators, which may be given either generally or in relation to particular cases (Provided however that nothing in this clause 5.3.2 shall relieve the Board from its duty to act in accordance with the Companies Act).

5.3.3 Without prejudice to the generality of clause 5.3.1, in carrying out their functions and powers under the Scheme, the Scheme Administrators shall be entitled:

- (a) to agree claims and process reinsurance recoveries as part of the run-off of the Company's business;
- (b) to take possession of, collect and get in all the property and assets (of whatever nature) to which the Company is or appears to be entitled and to do all such things as may be necessary for the realisation of any such property or assets;

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- (c) to have full access at all times to all books, papers and other documents of the Company, to receive all such information as they may require in relation to its affairs and to receive notice of and attend all meetings of the Board;
 - (d) to do all things which may be necessary or expedient for the protection of the Company's assets or of any assets that appear to belong to the Company;
 - (e) to bring or defend any action or other legal proceedings in the name and on behalf of the Company or otherwise;
 - (f) to be remunerated in accordance with clause 6.4.5 for the carrying out of such functions and powers and to be reimbursed for all expenses properly incurred by them in connection therewith;
 - (g) to employ and remunerate accountants, actuaries, lawyers and other professional advisers or agents in connection with the conduct of their functions and powers under the Scheme;
 - (h) to give directions to the Board and the shareholders of the Company in relation to the exercise by them of their rights and powers in connection with the Company;
 - (i) to do all acts and to execute in the name and on behalf of the Company any deed, receipt or other document and to use the Company's seal;
 - (j) to borrow and to make any payment which is necessary or incidental to the performance of their functions and to give a valid discharge for amounts received by the Company;
 - (k) to delegate to any person (being, other than in the case of delegation to the Scheme Conflicts Administrator, a partner in the same firm as a Scheme Administrator) qualified to act as an insolvency practitioner as mentioned in clause 5.1.1 and approved for the time being by the Creditors Committee for the purposes of this clause 5.3.3(k), all or any of the functions, powers, rights, authorities and discretions conferred upon the Scheme Administrators under the Scheme and from time to time to revoke any such delegation (other than in the case of delegation to the Scheme Conflicts Administrator which shall be, subject to the provisions of any such agreement as is referred to in clause 5.5, irrevocable), provided that (other than in the case of delegation to the Scheme Conflicts Administrator) the Scheme Administrators shall be personally responsible for any act or omission of any such delegate to the same extent as if they had expressly authorised it;
 - (l) to the extent that the Court has jurisdiction, to apply, or to cause the Company to apply, to the Court for directions in relation to any particular matter arising in the course of the Scheme but no such application shall be made for directions concerning the interpretation or construction of any provision of the Policyholders Protection Act (as in force at any time) whether as such or as it applies to the obligations of the Policyholders Protection Board under, or as otherwise incorporated into the Scheme, unless the Policyholders Protection Board, in its absolute discretion, consents;
 - (m) (subject to the agreement of the Creditors Committee) to propose, where they consider it to be in the interests of Scheme Creditors as a whole, in relation to one or more classes of Scheme Creditor a further scheme of arrangement, with a view either to amending the provisions of the Scheme or to implementing a new scheme of arrangement between the Company and the Scheme Creditors concerned. In the event that any such scheme is proposed in relation to one or more classes of Scheme Creditor which include Protected Policyholders, the implementation of any such scheme will require the agreement of the Policyholders Protection Board;
 - (n) to attend meetings of the Creditors Committee (subject to the provisions of clause 6.3.3); and

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(o) to do all other things incidental to the exercise of the functions and powers referred to in this clause 5.3.3 and in clause 5.3.1.

5.3.4 In carrying out their functions and exercising their powers under the Scheme, the Scheme Administrators shall consult with, and take account of the views expressed by, the Creditors Committee on any matter material to the Scheme, which for the avoidance of doubt shall include, without limitation, the setting of and revisions to a Payment Percentage pursuant to clause 3.2.

5.4 Responsibility and Indemnity

5.4.1 In carrying out their functions and exercising their powers under the Scheme, the Scheme Administrators shall act bona fide and with due care and diligence in the interests of Scheme Creditors as a whole and shall use their powers under the Scheme for the purpose of ensuring that the Scheme is operated in accordance with its terms.

5.4.2 No Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done in good faith and with due care by the Scheme Administrators in accordance with, and to implement the provisions of, the Scheme or the exercise by the Scheme Administrators in good faith and with due care of any power conferred upon them for the purposes of the Scheme if exercised in accordance with, and to implement the provisions of, the Scheme and the Scheme Administrators shall not be liable for any loss unless such loss is attributable to their own negligence, default, breach of duty, breach of trust, fraud or dishonesty (or to that of any Employee or Delegate other than the Scheme Conflicts Administrator).

5.4.3 No Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done in good faith and with due care by any Employee in accordance with and to implement the provisions of the Scheme if exercised in accordance with and to implement the provisions of the Scheme and no Employee shall be liable for any loss unless such loss is attributable to his own negligence, default, breach of duty, breach of trust, fraud or dishonesty.

5.4.4 No Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done in good faith and with due care by any Delegate in accordance with and to implement the provisions of the Scheme or the exercise by such Delegate in good faith and with due care of any power conferred upon the Scheme Administrators for the purposes of the Scheme if exercised in accordance with and to implement the provisions of the Scheme and no Delegate shall be liable for any loss unless such loss is attributable to his own negligence, default, breach of duty, breach of trust, fraud or dishonesty (or to that of any Employee).

5.4.5 Subject to the Companies Act, each Scheme Administrator (in his capacity as such) (and each Employee and Delegate) shall be entitled to an indemnity out of the assets of the Company against:

(a) all actions, claims, proceedings and demands brought or made against such Scheme Administrator (or Employee or Delegate) in respect of any act done or omitted to be done by such Scheme Administrator (or Employee or Delegate) in good faith without negligence, default, breach of duty, breach of trust, fraud or dishonesty in the course of implementing the Scheme in accordance with its terms; and

(b) all expenses and liabilities properly incurred by such Scheme Administrator (or Employee or Delegate) in carrying out his functions and powers (or the functions for which such Employee is employed by the Scheme Administrators or any Delegate) in the course of implementing the Scheme in accordance with its terms.

5.4.6 Without prejudice to the generality of clause 5.4.5, each such person as is expressed to be entitled to an indemnity in accordance with that clause (in the capacity in which he is entitled to such an indemnity) shall be entitled to an indemnity out of the assets of the Company:

- (a) against any liability incurred by him in defending any proceedings, whether civil or criminal, in respect of any negligence, default, breach of duty, breach of trust, fraud or dishonesty in which judgment is given in his favour or in which he is acquitted; or
- (b) in connection with any application in any such proceedings in which relief is granted to him by a court from liability for negligence, default, breach of duty, breach of trust, fraud or dishonesty in relation to the affairs of the Company.

5.4.7 The Company may, with the approval of the Creditors Committee (such approval not to be unreasonably withheld or delayed):

- (a) purchase and maintain for any such person as is referred to in clause 5.4.5 insurance against any liability in respect of which the Company would be obliged to indemnify that person in accordance with clauses 5.4.5 and 5.4.6; and
- (b) pay costs incurred by any such person as is referred to in clause 5.4.6 in defending proceedings of the nature described in clause 5.4.6 provided that the Company obtains from a Scheme Administrator an obligation to reimburse the Company (with interest) in respect of any sum which would not, in the event, have been payable by the Company under clause 5.4.6.

5.5 Procedure for the resolution of conflicts

The Company and the Scheme Administrators may from time to time, and after consultation with the Creditors Committee, enter into such agreement as they consider appropriate to deal with disputes or conflicts that arise or may arise during the course of the Scheme, whether between the Company and the Scheme Administrators or between the Scheme Administrators themselves (in their professional capacity, whether as insolvency practitioners or otherwise, or because a resolution concerning the Scheme Administrators is to be put before a meeting of Scheme Creditors pursuant to clause 6.4.4(a)), which agreement may provide for the delegation in relation to a particular dispute or conflict of the Scheme Administrators' functions, powers, rights, authorities and discretion pursuant to clause 5.3.3(k) to a Scheme Conflicts Administrator to represent one or more of the parties to the dispute or conflict in question.

PART 6 – THE CREDITORS COMMITTEE

6.1 Constitution of the Creditors Committee

- 6.1.1 There shall be a Creditors Committee under the Scheme.
- 6.1.2 The Creditors Committee shall consist of (a) not less than three nor more than seven of the Scheme Creditors (or their Designated Representatives), unless the Scheme Administrators in consultation with the Creditors Committee agree otherwise and (b) the Policyholders Protection Board.
- 6.1.3 Any individual, body corporate or partnership who or which is a Scheme Creditor shall be eligible for appointment as a member of the Creditors Committee. If a partnership is appointed as a member, the appointment shall be treated as though the partnership were a body corporate and no person shall be entitled to act as a member of the Creditors Committee on behalf of (or by reason of being a partner in) such partnership except a person appointed by such partnership to represent it in accordance with clause 6.1.6 or a person appointed as the alternate of such person in accordance with that clause.
- 6.1.4 Any body corporate or partnership (which may be but need not be a Scheme Creditor) designated by notice in writing to the Creditors Committee by any two or more Scheme Creditors to act as a member of the Creditors Committee as their Designated Representative shall be eligible for appointment as a member of the Creditors Committee.
- 6.1.5 The Policyholders Protection Board shall be entitled to appoint one person to represent it on the Creditors Committee and may from time to time remove such representative and appoint another person in his place by written notice to the Creditors Committee signed by the chairman of the Policyholders Protection Board. The chairman of the Policyholders Protection Board or such representative shall be entitled to appoint any person as an alternate to such representative to attend and vote at any meeting of the Creditors Committee in his place, or to revoke such appointment, by way of written notice to the Creditors Committee. Any such alternate shall have the same powers and be subject to the same duties and limitations as such representative.
- 6.1.6 Each member of the Creditors Committee which is a body corporate (other than the Policyholders Protection Board) or a partnership may, by notice in writing to the Creditors Committee, appoint a director, senior executive, partner or professional adviser as its Nominated Representative to represent that member at meetings of the Creditors Committee. Each Nominated Representative may, by notice in writing to the Creditors Committee, appoint any person qualified to act as a Nominated Representative as his alternate to attend and vote at any meeting of the Creditors Committee in his place. Any such alternate shall have the powers and shall be subject to the same duties and limitations as the Nominated Representative who has appointed him. Any person entitled to appoint a Nominated Representative or an alternate may from time to time revoke that appointment and appoint another person qualified to act as a Nominated Representative as a replacement by notice in writing to the Creditors Committee.

6.2 Membership of the Creditors Committee

- 6.2.1 The initial Creditors Committee shall consist of (a) the Policyholders Protection Board and (b) those persons established as members of the initial Creditors Committee in accordance with the procedure set out in appendix 1.
- 6.2.2 If, in accordance with the procedure set out in appendix 1, a vote is required on the initial Creditors Committee, the Informal Creditors Committee and the Policyholders Protection Board shall be the interim Creditors Committee and the provisions of clauses 3.2 and 6.4.4 shall be suspended until the result of the vote on the initial Creditors Committee is ascertained and the initial Creditors Committee is constituted.

- 6.2.3 The Creditors Committee may with the agreement of the Scheme Administrators resolve, by at least two-thirds of the members present, to appoint any eligible person to be a member, either to fill a vacancy or as an additional member, subject to (a) the maximum number of members provided for in clause 6.1.2 and (b) a resolution requiring ratification of such appointment being put before the next meeting of the Scheme Creditors, pending which the appointee shall have full power to act as a member of the Creditors Committee.
- 6.2.4 The Creditors Committee may with the agreement of the Scheme Administrators resolve, by at least two-thirds of the members present, to remove any member of the Creditors Committee (other than the Policyholders Protection Board) from office, subject to (a) the minimum number of members provided for in clause 6.1.2 and (b) a resolution requiring ratification of such removal being put before the next meeting of the Scheme Creditors, pending which the power of the removed member of the Creditors Committee to act as a member of the Creditors Committee shall be suspended.
- 6.2.5 An individual shall cease to be a member of the Creditors Committee upon the occurrence of any of the following events:
- (a) if he ceases to be, or is found never to have been, a Scheme Creditor;
 - (b) if he resigns by notice in writing addressed to the Creditors Committee;
 - (c) if he dies or becomes bankrupt or mentally disordered or becomes disqualified from acting as a director under the laws of England and Wales;
 - (d) if he fails to attend three consecutive meetings of the Creditors Committee and the Creditors Committee resolves, by a majority of two-thirds of the members present, that he be removed; or
 - (e) if he is removed from office pursuant to clause 6.2.4.
- 6.2.6 A body corporate (other than the Policyholders Protection Board) or partnership shall cease to be a member of the Creditors Committee upon the occurrence of any of the following events:
- (a) (other than in the case of a member which is a Designated Representative) if it ceases to be, or is found never to have been, a Scheme Creditor;
 - (b) if it is a Designated Representative of two or more Scheme Creditors, if it ceases to represent at least two Scheme Creditors as a result of persons it represents ceasing to be, or being found never to have been, Scheme Creditors and/or as a result of persons it represents notifying the Creditors Committee in writing that such member has ceased to be their Designated Representative;
 - (c) if it resigns by notice in writing addressed to the Creditors Committee;
 - (d) if it is dissolved;
 - (e) if it fails to attend (by its duly appointed Nominated Representative or his alternate) three consecutive meetings of the Creditors Committee and the Creditors Committee resolves, by a majority of two-thirds of the members present, that it be removed; or
 - (f) if it is removed from office pursuant to clause 6.2.4.
- 6.2.7 The Policyholders Protection Board shall cease to be a member of the Creditors Committee if it resigns by notice in writing to the Creditors Committee signed by its representative or by its chairman.
- 6.2.8 The appointment of a Nominated Representative or his alternate shall terminate automatically upon the occurrence of any of the following events:

- (a) if the person whom that Nominated Representative or alternate represents ceases to be a member of the Creditors Committee;
- (b) if he ceases to be a director, senior executive, partner or a professional adviser to the member of the Creditors Committee whom he represents;
- (c) if he dies or becomes bankrupt or mentally disordered or becomes disqualified from acting as a director under the laws of England and Wales;
- (d) in the case of an alternate, upon termination of the appointment of the Nominated Representative who appointed him;
- (e) if his appointment is revoked by his appointor; or
- (f) if the Creditors Committee resolves, by a majority of two-thirds of all the members of the Creditors Committee for the time being (excluding the member who has appointed such Nominated Representative or whose Nominated Representative has appointed such alternate), that such appointment shall terminate.

6.2.9 Whenever there is a proposed change in the composition of the Creditors Committee, the Creditors Committee in consultation with the Scheme Administrators shall endeavour to ensure that the composition of the Creditors Committee is such as to secure a proper balance of the interests of the Scheme Creditors in relation to the Company as between the members of the Creditors Committee.

6.3 Proceedings

6.3.1 Save as otherwise specifically provided in the Scheme, the Creditors Committee may convene, adjourn and otherwise regulate its meetings in such manner as it shall consider appropriate. The quorum at any meeting of the Creditors Committee shall be at least two-thirds of the members, provided that if a quorum is not present within half an hour from the time appointed for a meeting, or if during a meeting such a quorum ceases to be present, the meeting shall stand adjourned to such time and place as may be determined by the majority of the members present and the members present at any such adjourned meeting shall constitute a quorum. Each member of the Creditors Committee shall have one vote and, except as otherwise provided in the Scheme, matters arising at a meeting shall be decided by a majority of votes cast at the meeting.

6.3.2 The Creditors Committee shall meet once in each calendar year for the purpose of receiving a report from the Scheme Administrators on the progress of the Scheme. The Creditors Committee shall hold such further meetings as it shall consider desirable for the purpose of performing its functions under the Scheme. A meeting of the Creditors Committee shall be called as soon as reasonably practicable if so requested by at least three members of the Creditors Committee or if the Scheme Administrators otherwise consider it appropriate. Except with the consent of all members of the Creditors Committee and the Scheme Administrators, no meeting of the Creditors Committee may be called upon less than fourteen clear days' notice and, except with the consent of all members of the Creditors Committee, no business may be transacted at any such meeting other than that set out in the notice of that meeting.

6.3.3 Each member of the Creditors Committee and the Scheme Administrators (or their representative) shall be entitled to receive notice of all meetings of the Creditors Committee. The Scheme Administrators shall be entitled to attend and speak, but not to vote, at all meetings of the Creditors Committee. If so requested by the Creditors Committee, a Scheme Administrator (or his representative) shall absent himself from such part of a meeting of the Creditors Committee as the Creditors Committee may specify.

6.3.4 Proper minutes shall be kept of all proceedings of the Creditors Committee and such minutes shall at all reasonable times be open to inspection by (subject to clause 6.5.2) any member of the Creditors

Committee. Copies of such minutes shall be sent as soon as practicable after their preparation to the Scheme Administrators.

6.3.5 A member of the Creditors Committee and a Scheme Administrator may participate in a meeting of the Creditors Committee through the medium of conference telephone or similar form of communication equipment if all persons participating in the meeting are able to hear and speak to each other throughout the meeting. A person participating in this way is deemed to be present in person at the meeting and, in the case of a member of the Creditors Committee, is counted in a quorum and entitled to vote. All business transacted in this way by the Creditors Committee is deemed to be validly and effectively transacted at a meeting of the Creditors Committee although fewer than two-thirds of the members of the Creditors Committee are physically present at the same place.

6.3.6 Other than in relation to such a resolution as is referred to in clause 6.4.4(a), a resolution in writing signed by all members of the Creditors Committee for the time being (or their Nominated Representatives (or in the case of the Policyholders Protection Board its representative)) shall be as valid and effective as if passed at a meeting of the Creditors Committee duly convened and held.

6.4 Functions

6.4.1 Without prejudice to the specific provisions of this clause 6.4, the Creditors Committee shall monitor the carrying out of the Scheme and supervise the Scheme Administrators in the exercise of their functions under the Scheme.

6.4.2 Before each meeting of Scheme Creditors convened pursuant to clause 8.1.1(a), the Scheme Administrators shall submit to the Creditors Committee a report on the conduct of the affairs of the Company and the operation of the Scheme during the period since the last such report was prepared (or, in the case of the first such meeting, since the Effective Date) and shall (or shall appoint a representative to) attend at any meeting of the Creditors Committee at which that report is considered for the purpose of giving such explanations and information as the Creditors Committee may require. A copy of that report, incorporating such amendments (if any) as may be agreed by the Scheme Administrators and the Creditors Committee, shall be made available to Scheme Creditors in accordance with clauses 8.1.2 and 8.1.3.

6.4.3 The Creditors Committee may from time to time resolve what information it is desirable to seek from the Scheme Administrators concerning the affairs of the Company or the operation of the Scheme, and may depute any one member of the Creditors Committee to apply in writing to and receive from the Scheme Administrators all such information. The Scheme Administrators shall promptly give to the Creditors Committee all such information concerning the affairs of the Company or the operation of the Scheme as the Creditors Committee shall from time to time resolve to seek and in respect of which a written request shall have been received by the Scheme Administrators. Each member of the Creditors Committee shall be entitled at any time to raise questions or to request a meeting with the Scheme Administrators in connection with the performance of his responsibilities as a member of the Creditors Committee and, subject to their duties under the Scheme, the Scheme Administrators shall use reasonable endeavours to respond to such questions or to comply with any such request for a meeting. Notwithstanding the preceding provisions of this clause 6.4.3, the Scheme Administrators shall not be obliged to disclose any confidential information of the Company to a member of the Creditors Committee if the information relates to any matter where such member (and, where such member is a Designated Representative, its appointors) has an interest in conflict with the Company (other than a general conflict arising as a result of the status of the members of the Creditors Committee (or appointors) as creditors of the Company).

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6.4.4 The Creditors Committee shall be entitled:

- (a) by a resolution passed by at least three-quarters of all of the members of the Creditors Committee for the time being at any time to call upon a Scheme Administrator to resign, provided that such Scheme Administrator has been given at least twenty-eight days' notice of the proposed resolution and of the reasons why the resolution is to be put to the Creditors Committee and has been given a reasonable opportunity to make representations at the meeting at which the resolution is proposed (and if such Scheme Administrator declines to resign a resolution requiring his removal shall be put before the next meeting of Scheme Creditors); and
- (b) upon removal of a Scheme Administrator or if a Scheme Administrator ceases to hold office for any other reason, to appoint any person qualified to act under clause 5.1.1 to be a Scheme Administrator in his place (and a resolution requiring ratification of such appointment shall be put before the next meeting of Scheme Creditors pending which the appointee shall have full power to act as a Scheme Administrator) save that if a resolution is passed at a meeting of Scheme Creditors requiring the removal of a Scheme Administrator pursuant to clause 6.4.4(a) such appointment may be made by the Scheme Creditors at such meeting.

6.4.5 The Creditors Committee shall consider and, if thought fit, approve (such approval not to be unreasonably withheld or delayed), on behalf of the Company, the level and payment of the fees and expenses of the Scheme Administrators from time to time (and so that such function may, with the prior written consent of the Scheme Administrators, be delegated to one or more members of the Creditors Committee).

6.4.6 The Creditors Committee shall, so far as it is able, ensure that there is a Scheme Administrator in office at all times.

6.5 Duties

6.5.1 Each member of the Creditors Committee, each Nominated Representative, the representative of the Policyholders Protection Board and their respective alternates shall, in performing their functions as such in relation to the Company, act bona fide in the interests of the Scheme Creditors as a whole.

6.5.2 It shall be the duty of each member of the Creditors Committee who is in any way, whether directly or indirectly, interested or, where such member is a Designated Representative, any of whose appointors is, whether directly or indirectly, interested in a contract or proposed contract with the Company (other than any which arises as a result of the provisions of the Scheme) to declare (or procure that its Nominated Representative shall declare) the nature of his, its or such appointor's interest at a meeting of the Creditors Committee. For this purpose a general notice given to the Creditors Committee to the effect that a member or an appointor of a Designated Representative is associated (within the meaning of section 435 of the Insolvency Act) with a specified company or firm and is to be regarded as interested in any contract with that company or firm is deemed a sufficient declaration of interest in relation to any such contract. Such a member of the Creditors Committee shall not be counted in the quorum, shall not be entitled to vote in relation to any matter relating specifically to any such contract, shall retire from the meeting for so long as the matter is discussed and voted upon and shall not receive any information, nor be entitled to inspect any part of the minutes of a meeting of the Creditors Committee, relating thereto.

6.5.3 Each Nominated Representative shall be entitled to report to the member appointing him, and each Designated Representative shall be entitled to report to the Scheme Creditors appointing it, on the proceedings of the Creditors Committee and, so far as necessary for that purpose, to disclose confidential information of the Company to those officers, employees and professional advisers of that member or appointor who need to know it in connection with (where a Nominated Representative is disclosing information) the performance of its responsibilities as a member of the Creditors Committee or (where a Designated Representative is disclosing information) the performance of the Designated Representative's responsibilities as a member of the

Creditors Committee, provided that such information does not to his or its knowledge (after due enquiry) relate to any matter where any such appointor has an interest in conflict with the Company (other than a general conflict arising as the result of the status of the members of the Creditors Committee or the appointors of a Designated Representative as creditors of the Scheme Company). Each member of the Creditors Committee other than the Policyholders Protection Board shall, and shall procure that its Nominated Representative and its officers, employees and professional advisers shall, and where such member is a Designated Representative shall procure that its appointors and their officers, employees and professional advisers shall, preserve the confidentiality of such information and shall use such information only for the purposes of their performing their responsibilities and functions (or their Designated Representative's responsibilities and functions) in relation to the Creditors Committee.

6.5.4 Each representative of the Policyholders Protection Board shall be entitled to report to the Policyholders Protection Board on the proceedings of the Creditors Committee and, so far as necessary for that purpose, to disclose confidential information of the Company to the members of the Policyholders Protection Board, provided that such information does not to his knowledge (after due enquiry) relate to any matter where the Policyholders Protection Board has an interest in conflict with the Company (other than a general conflict arising as a result of the status of the Policyholders Protection Board as a creditor of the Company). Without prejudice to clauses 4.4.1 and 4.4.2, the Policyholders Protection Board shall, and shall procure that its representative and the individual members of the Policyholders Protection Board shall, preserve the confidentiality of such information and shall use such information only for the purposes of performing its responsibilities and functions in relation to the Creditors Committee.

6.6 Responsibilities and indemnity

6.6.1 No Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done in good faith and with due care by any member of the Creditors Committee (or Nominated Representative, representative of the Policyholders Protection Board or alternate) in accordance with and to implement the provisions of the Scheme or the exercise by any such person in good faith and with due care of any power conferred upon it or him for the purposes of the Scheme if exercised in accordance with and to implement the provisions of the Scheme and no such person shall be liable for any loss unless such loss is attributable to its or his own wilful default, fraud, dishonesty or wilful breach of duty or trust.

6.6.2 Subject to the Companies Act, each member of the Creditors Committee (and each Nominated Representative, representative of the Policyholders Protection Board and alternate) (in each case in their capacity as such) shall be entitled to an indemnity out of the assets of the Company against all actions, claims, proceedings and demands brought or made against it or him in respect of any act done or omitted to be done in relation to the Company in good faith and with due care by such person in the course of implementing the Scheme in accordance with its terms.

6.6.3 Without prejudice to the generality of clause 6.6.2, each such person as is expressed to be entitled to an indemnity in accordance with that clause (in the capacity in which it or he is entitled to such an indemnity) shall be entitled to an indemnity out of the assets of the Company:

- (a) against any liability incurred by it or him in defending any proceedings, whether civil or criminal, in respect of any wilful default, fraud, dishonesty or wilful breach of duty or trust in relation to the Company in which judgment is given in its or his favour or in which it or he is acquitted; or
- (b) in connection with any application in any such proceedings in which relief is granted to it or him by a court from liability for wilful default, fraud, dishonesty or wilful breach of duty or trust in relation to the affairs of the Company.

6.6.4 The Company may, with the approval of the Creditors Committee (such approval not to be unreasonably withheld or delayed):

- (a) purchase and maintain for any such person as is referred to in clause 6.6.2 insurance against any liability in respect of which the Company would be obliged to indemnify that person in accordance with clauses 6.6.2 and 6.6.3; and
- (b) pay costs incurred by any such person as is referred to in clause 6.6.2 in defending any actions, claims, proceedings and demands of the nature described in clauses 6.6.2 and 6.6.3 which relate to the Company provided that the Company obtains from such person (or, where such person is a Nominated Representative, representative of the Policyholders Protection Board or an alternate, the member of the Creditors Committee which such person represents) an obligation to reimburse the Company (with interest) in respect of any sum which would not, in the event, have been payable by the Company under those clauses.

6.7 Validation of acts

All acts done by the Creditors Committee or any meeting of the Creditors Committee or any person acting as a member of the Creditors Committee or as a Nominated Representative or alternate shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a member of the Creditors Committee or person acting as aforesaid, or that any of them were disqualified, be valid as if every such person had been duly appointed and qualified.

6.8 Expenses

Each member of the Creditors Committee, each Nominated Representative, the representative of the Policyholders Protection Board and their respective alternates shall be entitled to be reimbursed by the Company for their reasonable expenses of attending meetings of the Creditors Committee, provided that such meetings are held in London or New York or in such other place as the Scheme Administrators may from time to time agree.

6.9 No Creditors Committee

- 6.9.1 If at any time there are less than three members of the Creditors Committee then the Creditors Committee may continue to exercise all its functions under the Scheme (other than those provided for in clauses 6.4.4(a), 8.1.1(b) and 9.1.1(a) and 9.1.1(e)) for a period of twenty-eight days, during which time the remaining members of the Creditors Committee shall endeavour to fill the vacancies on the Creditors Committee. If they shall fail to do so within such period of twenty-eight days, the Scheme Administrators shall, within a further fourteen days, appoint such additional Scheme Creditors (Interim Appointees) as are required to fill such vacancies. In appointing any such Interim Appointees, the Scheme Administrators shall endeavour to ensure that the composition of the Creditors Committee including such Interim Appointees is such as to secure a proper balance of the interests of the Scheme Creditors as between themselves in relation to the Company. In the event of such vacancies being filled, whether by appointees of the Creditors Committee or by Interim Appointees, the full powers and functions of the Creditors Committee under the Scheme will be restored, provided that no Interim Appointee shall be entitled to vote in relation to any resolution to appoint an additional member of the Creditors Committee. Any Interim Appointee will be liable to be removed as a member of the Creditors Committee at any time without notice if the Creditors Committee (excluding any Interim Appointees) appoints a Scheme Creditor to fill the vacancy which had been filled by such Interim Appointee (and the members of the Creditors Committee (excluding any Interim Appointees) shall use their reasonable endeavours to fill any such vacancy accordingly as soon as possible).

6.9.2 If, following the procedure set out in clause 6.9.1, there are less than three members of the Creditors Committee (including Interim Appointees appointed under clause 6.9.1) then, for so long as that is the case, the Creditors Committee shall not exercise any functions or have any powers under the Scheme and the following provisions shall apply:

- (a) the Scheme Administrators shall use all reasonable endeavours to find additional members of the Creditors Committee to enable it to function;
- (b) a Scheme Administrator may resign under clause 5.1.2, and a new Scheme Administrator may be appointed in his place, only at a meeting of the Scheme Creditors pursuant to a resolution proposed by the Scheme Administrators;
- (c) a Scheme Administrator may be removed, and a new Scheme Administrator may be appointed in his place, only at a meeting of the Scheme Creditors pursuant to a resolution proposed by the Scheme Administrators or any twenty Scheme Creditors who have Scheme Claims of an aggregate value in excess of ten per cent of all Scheme Claims or any fifty Scheme Creditors;
- (d) the remuneration of the Scheme Administrators shall be payable at the same rate at which it had last been set by the Creditors Committee unless and until varied by the Scheme Creditors; and
- (e) the requirements for obtaining the consent, approval or agreement of and for consulting with or notifying the Creditors Committee contained in clauses 1.1.1, 3.2.73-2.8, 5.1.2, 5.3.3(k), 5.3.4, 5.4.7, 5.5, 6.6.4, 7.1.9, 7.2.3, 7.2.5, 8.1.1(a), 8.6.1, 9.1.1(a), and 9.1.1(e), the Special Resolution and for submitting a report to the Creditors Committee pursuant to clause 6.4.2 shall be suspended.

PART 7 - THE BOARD AND THE SHAREHOLDERS OF THE COMPANY

7.1 The Board

- 7.1.1 The Board shall consist of such directors as shall have been nominated from time to time by the Scheme Administrators.
- 7.1.2 The Scheme Administrators shall ensure that the composition of the Board complies with the Companies Act.
- 7.1.3 The Trustees shall when called upon to do so by the Scheme Administrators, forthwith take such steps as lie within its power to appoint or remove (as the Scheme Administrators may direct) any director of the Company who has been nominated (or is to be treated as having been nominated) by the Scheme Administrators.
- 7.1.4 The initial members of the Board shall be the persons whose names are set out in clause 1.3.6.
- 7.1.5 The powers of the Board shall be restricted in the manner described in clause 5.3.2.
- 7.1.6 No Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done in good faith and with due care by any member of the Board in accordance with and to implement the provisions of the Scheme or the exercise by any such person in good faith and with due care of any power conferred upon him for the purposes of the Scheme if exercised in accordance with and to implement those provisions and no such person shall be liable for any loss unless such loss is attributable to his negligence, default, breach of duty or breach of trust.
- 7.1.7 Subject to the Companies Act, each director (in his capacity as such) shall be entitled to an indemnity out of the assets of the Company against:
- (a) all actions, claims, proceedings and demands brought or made against him in respect of any act done or omitted to be done in good faith without negligence, default, breach of duty, breach of trust, fraud or dishonesty by such director in the course of implementing the Scheme in accordance with its terms; and
 - (b) all expenses and liabilities properly incurred by such director in carrying out his functions in the course of implementing the Scheme in accordance with its terms.
- 7.1.8 Without prejudice to the generality of clause 7.1.7, each director (in his capacity as such) shall be entitled to an indemnity out of the assets of the Company:
- (a) against any liability incurred by him in defending any proceedings, whether civil or criminal, in respect of any negligence, default, breach of duty, breach of trust, fraud or dishonesty in which judgment is given in his favour or in which he is acquitted; or
 - (b) in connection with any application in any such proceedings in which relief is granted to him by a court from liability for negligence, default, breach of duty, breach of trust, fraud or dishonesty in relation to the affairs of the Company.
- 7.1.9 The Company may, with the approval of the Creditors Committee (such approval not to be unreasonably withheld or delayed):
- (a) purchase and maintain for any director insurance against any liability in respect of which the Company would be obliged to indemnify him in accordance with clause 7.1.8; and
 - (b) pay costs incurred by a director in defending proceedings of the nature described in clause 7.1.8 which relate to the Company provided that the Company obtains from the director an obligation to reimburse the Company (with interest) in respect of any sum which would not, in the event, have been payable by the Company under clause 7.1.8.

7.2 The shareholders

7.2.1 Forthwith upon the Scheme becoming effective, the Company will enter into the Trust Deed.

7.2.2 Subject to the terms and provisions of the Trust Deed and subject to clauses 7.2.3, 7.2.4 and 7.2.5, the Trustee:

- (a) upon being called upon to do so, shall take such steps as lie within its power to exercise or to have exercised on its behalf all rights and powers to which it or any nominee is entitled in relation to the shares in the Company (including, without limitation, rights and powers to appoint and dismiss directors, to vote at general meetings and to present a petition asking for an order that the Company be wound up by the court) as the Scheme Administrators may direct; and
- (b) shall not exercise any of such rights and powers to which it is entitled, and shall direct any nominee not to exercise on its behalf such rights and powers, except at the direction of the Scheme Administrators.

7.2.3 Save with the consent of the Scheme Administrators and the Creditors Committee and (if and whilst each of them is a beneficiary under the Trust Deed) of English & American Group Plc (in administration) and English & American Insurance Holdings PLC (in administration), the Trustee shall not sell, transfer or otherwise dispose of, encumber or create any interest in or deal with any of the shares in the Company.

7.2.4 If either:

- (a) the Scheme Administrators give notice in accordance with clause 9.1.1(e); or
- (b) a resolution is passed by the Scheme Creditors of the Company in accordance with clause 9.1.1(f),

the Trustee shall (subject to the terms and provisions of the Trust Deed) forthwith take such steps as lie within its power to place the Company in voluntary liquidation pursuant to section 84 of the Insolvency Act.

7.2.5 The Trustee shall, until termination of the Scheme, in relation to shares in the Company which it holds ensure, and in relation to shares in the Company held on its behalf by a nominee direct the nominee to ensure, that no resolution for the voluntary winding up of the Company shall be passed without the prior written consent of, save for the purposes of complying with clause 7.2.4, the Creditors Committee and (if and whilst each of them is a beneficiary under the Trust Deed) of English & American Group Plc (in administration) and English & American Insurance Holdings PLC (in administration).

PART 8 - MEETINGS OF SCHEME CREDITORS

8.1 Convening of meetings

8.1.1 Meetings of Scheme Creditors are to be convened as follows:

- (a) The Scheme Administrators shall convene a meeting of the Scheme Creditors at least once in every year, the first such meeting being held in 1995 and thereafter not more than fifteen months elapsing between one meeting and the next, unless the Scheme Administrators and the Creditors Committee agree that any such meeting should not be held.
- (b) The Creditors Committee may at any time convene a meeting of the Scheme Creditors to consider a resolution:
 - (i) for the removal of a Scheme Administrator pursuant to clause 6.4.4(a);
 - (ii) for the appointment of a Scheme Administrator pursuant to clause 6.4.4(b); or
 - (iii) for such other purpose as it thinks fit.
- (c) The Scheme Administrators may at any time convene a meeting of the Scheme Creditors for such purpose as they think fit.
- (d) Any twenty Scheme Creditors who have Scheme Claims of an aggregate value in excess of ten per cent of all Scheme Claims or any fifty Scheme Creditors may by notice in writing signed by them or on their behalf and deposited at the registered office of the Company require the Scheme Administrators to convene a meeting of Scheme Creditors for such purpose as they think fit. The notice must specify the purpose for which the meeting is required and it shall be the duty of the Scheme Administrators forthwith to summon a meeting of Scheme Creditors for that purpose and to give such notice of the meeting as is necessary to enable such purpose to be carried out effectively in accordance with the provisions of the Scheme. The Policyholders Protection Board shall, for the purposes of convening a meeting of Scheme Creditors, be counted as a separate Scheme Creditor in respect of each Established Scheme Liability assigned to it (provided that where more than one Established Scheme Liability has been assigned to it by the same Protected Policyholder, such Established Scheme Liabilities shall be counted as one for such purposes).

8.1.2 There shall be laid before each meeting of Scheme Creditors convened pursuant to clause 8.1.1(a) the report referred to in clause 6.4.2 unless the Scheme Administrators and the Creditors Committee agree that any such meeting should not be held, in which case a copy of the report referred to in clause 6.4.2 shall be sent to Scheme Creditors free of charge.

8.1.3 At least twenty-eight days' notice shall be given of a meeting of Scheme Creditors. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall (in the case of a meeting convened pursuant to clause 8.1.1(a)) specify the place and time of the meeting and the place from which a copy of the report referred to in clause 6.4.2 can be obtained by Scheme Creditors free of charge prior to the meeting.

8.1.4 Notice of a meeting of Scheme Creditors shall be given:

- (a) to each Scheme Creditor to whom the Company owes an Established Scheme Liability, and to any other Scheme Creditor who has applied in writing to the Company to receive notice of such meeting, by sending notice by pre-paid post to such Scheme Creditor at his last known address; and
- (b) to all other Scheme Creditors by placing advertisements containing the requisite information in such newspaper or newspapers as the Scheme Administrators shall consider appropriate.

Any such notice shall be deemed to have been served on the date on which it is posted or, as the case may be, the latest date on which the advertisement appears.

- 8.1.5 The accidental omission to give notice of a meeting of Scheme Creditors to, or the non-receipt of a notice of such a meeting by, any Scheme Creditor entitled to receive notice shall not invalidate the proceedings at that meeting.

8.2 Resolutions

- 8.2.1 If a meeting of Scheme Creditors is convened at a time when a resolution is to be put to the next meeting of Scheme Creditors pursuant to clauses 6.2.3, 6.2.4 or 6.4.4(a), the business of the meeting shall include the resolution concerned, and in the case of a resolution to remove a Scheme Administrator pursuant to clause 6.4.4(a) which, if passed, would result in there being no Scheme Administrators in office, shall also include a resolution that a named person qualified to act under clause 5.1.1, and willing to be appointed, be appointed as a Scheme Administrator in his place.
- 8.2.2 No meeting shall be convened unless the notice of the meeting sets out the text of each resolution, or an adequate summary thereof, which is to be proposed at the meeting (or if no resolution is to be proposed at the meeting, the nature of the business to be discussed thereat) and (in the case of a notice which is sent by post) is accompanied by a letter explaining (in relation to each such resolution) why the meeting is being convened.

8.3 Voting

- 8.3.1 A resolution put to a meeting of Scheme Creditors shall be effective only if it is approved by a majority in number representing at least twenty-six Scheme Creditors and three-quarters in value of the Scheme Creditors present and voting either in person or by proxy at the meeting.
- 8.3.2 Every Scheme Creditor entitled to vote shall have the right to appoint any person as his proxy to attend and vote instead of him. The instrument appointing a proxy may be in any form which the Scheme Administrators may approve and must be lodged at the place specified in the notice of meeting for the lodging of proxies not less than forty-eight hours before the meeting (or adjourned meeting) at which it is to be used.
- 8.3.3 No business shall be transacted at any meeting of Scheme Creditors unless a quorum is present when the meeting proceeds to business. Fifty Scheme Creditors present in person or by proxy and having the right to vote at the meeting shall be a quorum, unless the Scheme Administrators and the Creditors Committee agree a smaller number. All resolutions put to the vote of any meeting shall be decided on a poll (rather than on a show of hands). The Policyholders Protection Board shall, for the purposes of calculating whether a quorum is present and for voting on a resolution of Scheme Creditors, be counted as a separate Scheme Creditor in respect of each Established Scheme Liability assigned to it (provided that where more than one Established Scheme Liability has been assigned to it by the same Protected Policyholder, such Established Scheme Liabilities shall be counted as one for such purposes).
- 8.3.4 A Scheme Administrator shall preside (or shall nominate a representative to preside) at each meeting of the Scheme Creditors (other than at a meeting at which a resolution to remove a Scheme Administrator is proposed, when the Scheme Conflicts Administrator shall preside), but if a Scheme Administrator (or his nominated representative) or, if relevant, the Scheme Conflicts Administrator is not present within thirty minutes after the time appointed for opening the meeting or is unwilling to preside, the Scheme Creditors present in person or by proxy shall choose some member of the Creditors Committee, or, if no such member is present or if all such members present decline to preside, one of themselves, to be chairman of the meeting. If no person is willing to preside as chairman of the meeting, the meeting shall be adjourned for seven days, and, if no person is willing to preside as chairman of the adjourned meeting, the meeting shall be dissolved.

8.4 Separate meetings

8.4.1 The Creditors Committee or the Scheme Administrators may at any time convene separate meetings of the Scheme Creditors who are Protected Policyholders, Scheme Creditors who are 3 July 1980 – 6 October 1983 ILU Policyholders and Scheme Creditors who are General Scheme Creditors for the purpose of considering a resolution that the Scheme be terminated and that the Company be wound up. Any twenty Scheme Creditors who have Scheme Claims of an aggregate value in excess of ten per cent of all Scheme Claims or any fifty Scheme Creditors may also by notice in writing signed by them or on their behalf and deposited at the registered office of the Company require the Scheme Administrators to convene such separate meetings of Scheme Creditors for such purpose. It shall be the duty of the Scheme Administrators forthwith to summon such separate meetings of Scheme Creditors for such purpose and to give such notice of the meetings as is necessary to enable such purpose to be carried out effectively in accordance with the provisions of the Scheme.

8.4.2 To every such separate meeting the provisions of clauses 8.1.3, 8.1.4, 8.1.5, 8.2.2 and 8.3 shall apply (*mutatis mutandis*) but so that the resolution shall only be effective if:

- (a) it is approved by a majority in number representing at least twenty six Scheme Creditors who are Protected Policyholders and three-quarters in value of the Scheme Creditors with Scheme Claims who are Protected Policyholders present and voting either in person or by proxy at the separate meeting (applying, for the avoidance of doubt, the last sentence of clause 8.3.3);
- (b) it is approved by a majority in number representing at least twenty six Scheme Creditors who are 3 July 1980 – 6 October 1983 ILU Policyholders and three-quarters in value of the Scheme Creditors with Scheme Claims who are 3 July 1980 – 6 October 1983 ILU Policyholders present and voting either in person or by proxy at the separate meeting; and
- (c) it is approved by a majority in number representing at least twenty six General Scheme Creditors and three-quarters in value of General Scheme Creditors present and voting either in person or by proxy at the separate meeting.

8.5 Valuation of Scheme Claims for the purposes of meetings

8.5.1 For the purposes of valuing any Scheme Claim for any of the purposes referred to in clauses 8.1.1 (d), 8.3.1 and 8.4.2, the value of the Scheme Claim shall, in the case of a Scheme Claim which has become an Established Scheme Liability, be the amount of the liability so established (less the amount of any payments paid, or treated as having been paid, by the Company under the Scheme in respect thereof), and, in the case of any other Scheme Claim, be such amount as may, for the purposes of such meeting only, be estimated as the value of such Scheme Claim by the Scheme Administrators.

8.5.2 In the event that a Scheme Creditor disputes the value which has been put on its Scheme Claim pursuant to clause 8.5.1 or otherwise the amount for which its vote should be counted, the dispute shall be referred to the president for the time being of the Society of Practitioners of Insolvency (or, if a Scheme Administrator or the Scheme Conflicts Administrator or any of their partners at such time occupies such office, the president at that time of the Institute of Chartered Accountants in England and Wales or, if a Scheme Administrator or the Scheme Conflicts Administrator or any of their partners at such time occupies both such offices, the president of the Law Society of England and Wales), or such other individual qualified to act as an insolvency practitioner within the meaning of section 390 of the Insolvency Act as he may nominate who shall consult with such relevant experts as he thinks appropriate and who shall act as an expert not an arbitrator and whose decision (including as to who should bear the costs of such referral) shall be final (but only as regards the convening of the meeting or the vote on that occasion).

8.5.3 For the purposes of ascertaining whether or not the requisite percentage for the convening of any meeting of Scheme Creditors or the requisite majority at any meeting of Scheme Creditors has been

obtained, the amount of each Scheme Claim which is denominated in a currency other than US dollars shall be converted into US dollars at the rate of exchange published in the *Financial Times* for the purchase of US dollars with such currency at close of business (London time) on the last business day preceding the date for which the meeting has been convened, or, in the case of an adjourned meeting, the date to which the meeting has been adjourned (or, if no such rate is published in the *Financial Times* on that date, the mid-market rate for US dollars on such date quoted by Lloyds TSB Plc, or, if no such rate is so published or quoted, such rate as may reasonably be determined by the Scheme Administrators).

8.6 Special Meetings

8.6.1 At any time, and subject as set out below, the Scheme Administrators may, with the agreement of the Creditors Committee, convene a Special Meeting of the Scheme Creditors.

8.6.2 The Scheme Administrators shall give notice of a Special Meeting in accordance with the provisions of clause 8.1.

8.6.3 Clauses 8.1, 5, 8.3, 8.4 and 8.5 shall apply *mutatis mutandis* to a Special Meeting.

8.6.4 The provisions of a Special Resolution shall take effect forthwith upon its being duly passed in accordance with the provisions of the Scheme.

RESTATED SCHEME
ARRANGEMENT

PART 9 – TERMINATION OF THE SCHEME

9.1 Termination Events

9.1.1 Subject to clauses 7.2.4 and 9.2 (which shall survive such termination), the Scheme shall terminate if:

- (a) over the period of five years from the Effective Date the aggregate payment made by the Company in respect of Established Scheme Liabilities is less than would have been made if the Payment Percentage had been set at the Effective Date and maintained for five years thereafter at a level of five per cent (unless prior to the expiration of the said period:
 - (i) the Scheme Administrators shall have agreed otherwise and given written notice of such agreement to the Company; and
 - (ii) the Creditors Committee shall have agreed otherwise by a resolution passed by a majority which includes the Policyholders Protection Board); or
- (b) all the liabilities of the Company (including liabilities arising pursuant to clause 3.3.2) have been discharged in full; or
- (c) the Company is wound up by order of the Court; or
- (d) there is an order made by the Court appointing an administrator in relation to the Company and the Policyholders Protection Board consents to the termination of the Scheme; or
- (e) the Scheme Administrators, with the agreement of the Creditors Committee, give notice in writing to the Company at its registered office that, after due enquiry, they have concluded that the Scheme is no longer in the interests of the Scheme Creditors and that the Company should be wound up (provided that, in reaching such conclusion, no account shall be taken of changes in currency exchange rates after the Record Date); or
- (f) a resolution that the Scheme should be terminated and that the Company should be wound up is passed at a meeting of the Scheme Creditors; or
- (g) the Company goes into liquidation by reason of a resolution of its members passed in accordance with section 84 of the Insolvency Act.

9.1.2 If the Scheme terminates the following provisions shall apply:

- (a) termination of the Scheme shall be without prejudice to any right or obligation which shall have arisen under the Scheme as a result of any act or omission which took place prior to the termination of the Scheme including, without limitation:
 - (i) any right to an indemnity out of the assets of the Company as a result of an act or omission which took place, or as a result of liabilities or expenses which were incurred, prior to the termination of the Scheme; and
 - (ii) any rights of the Policyholders Protection Board arising by reason of clauses 4.3.1, 4.3.2, 4.3.3 and 4.3.4 and the provisions of this clause and clauses 4.2.5A and 4.5.3 together with the provisions of paragraph 8 of the Special Resolution shall continue in full force and effect and the obligations of the Policyholders Protection Board under the Scheme shall cease; and
- (b) as soon as practicable following termination, the Scheme Administrators shall cause notices stating that the Scheme has terminated to be placed in such newspaper as the Scheme Administrators consider appropriate for one day a week for three consecutive weeks following such termination.

9.2 Effect of winding up

If the Company is wound up the following provisions shall apply:

- (a) the assets of the Company shall be applied in discharge of:
 - (i) all its liabilities that are given preference in its winding up by virtue of the statute pursuant to which the winding up is conducted;
 - (ii) all liabilities proved in its winding up in respect of all claims against it (which shall include, without limitation, Pre-Scheme Costs and Scheme Costs) other than Scheme Claims; and
 - (iii) Scheme Claims,

and to the extent that any such liabilities are in excess of the amount of the Company's assets, they shall be paid in the order set out in this clause 9.2(a) and rateably within each category of liabilities referred to in paragraphs (i), (ii) and (iii) above;

- (b) the entitlement to dividends in the winding up of the Company of each Scheme Creditor who has received a payment under the Scheme in respect of a Scheme Claim shall be determined as follows:
 - (i) such Scheme Creditor shall be treated as having proved in the winding up for the amount for which he actually proves in the winding up increased by the aggregate amount (the Scheme Amount) of payments, converted into sterling at the rate of exchange prevailing in the winding up, received by him in respect of the Scheme Claim under clause 3.3.1 (a) or (b) or treated as having been so received under clause 2.3.2 or otherwise; and
 - (ii) such Scheme Creditor shall be treated as having received by way of dividend in the winding up an amount equal to the Scheme Amount and shall not be entitled to any dividend in the winding up unless and until all the Scheme Creditors proving in the winding up have received an equivalent percentage dividend; but subject thereto
 - (iii) such Scheme Creditor shall be entitled to receive dividends in the winding up of the Company (calculated by reference to the amount for which he is treated as having proved as aforesaid) *pari passu* with all the Scheme Creditors of the Company; and
- (c) accordingly:
 - (i) for the purposes of any duty which the Policyholders Protection Board may owe under sections 6 to 8 of the Policyholders Protection Act (as then in force) in respect of any liability of the Company towards a policyholder or other person arising out of a Scheme Claim, the amount of that liability shall be the amount for which that person shall be treated as having proved in the winding-up in respect of such Scheme Claim, calculated in accordance with clause 9.2(b)(i); and
 - (ii) any amount treated as having been received by that person under clause 9.2(b)(ii) shall, for the purposes of section 14 of the Policyholders Protection Act, be treated as a payment referable to such liability towards that person and as reducing any sum payable by the Policyholders Protection Board under that Act by reference to such liability.

PART 10 – GENERAL SCHEME PROVISIONS

10.1 Effective Date

- 10.1.1 Subject to clause 10.1.2, the Scheme shall become effective as soon as a copy of the order of the Court sanctioning the Scheme shall have been delivered for registration to the registrar of companies in England and Wales as required by section 425(3) of the Companies Act.
- 10.1.2 The final step to make the Scheme effective shall not be taken unless the Winding up Petition shall have previously been dismissed.

10.2 Scheme costs

10.2.1 As soon as practicable after the Effective Date there shall be paid by the Company:

- (a) all costs, charges, expenses and disbursements reasonably incurred by the Company on or after the Provisional Liquidation Date, but prior to the Effective Date, in connection with the negotiation, preparation and implementation of the Scheme, including the costs of holding the meeting of its Scheme Creditors convened to consider the Scheme and the costs of obtaining the sanction of the Court;
- (b) insofar as they do not fall within clause 10.2.1.(a), all costs, charges, expenses and disbursements reasonably incurred by, and the remuneration of, the Provisional Liquidators (including, without limitation, all such expenses as are payable to the Provisional Liquidators out of the property of the Company pursuant to rule 4.30(3) of the Insolvency Rules 1986 made pursuant to the Insolvency Act) which are payable by the Company to the Provisional Liquidators as provisional liquidators of the Company; and
- (c) the costs incurred by the Trustee prior to the Effective Date in connection with the negotiation, preparation and implementation of the Scheme for the Company.

10.2.2 So long as the Scheme remains in force (but subject to clause 10.2.2(e)) there shall be paid in full out of the assets of the Company:

- (a) all costs, charges, expenses and disbursements incurred by the Company in the course of carrying out the Scheme and of complying with the provisions of the Companies Act;
- (b) insofar as they do not fall within clause 10.2.2 (a), and without prejudice to the provisions of clause 6.4.5, all costs, charges, expenses, and disbursements incurred by, and the remuneration of, the Scheme Administrators to the extent that such costs, charges, expenses, disbursements and remuneration are referable to the affairs of the Company;
- (c) the expenses payable under clause 6.8 and the costs, charges, expenses and disbursements incurred by, and the remuneration of, the Trustee in its capacity as trustee of the trusts constituted by the Trust Deed;
- (d) insofar as it does not fall within clauses 10.2.2 (a) or (b), any sum which the Company is obliged to pay by reason of the obligations imposed on it by clauses 5.4.5, 5.4.6, 5.4.7, 6.6.2, 6.6.3, 6.6.4, 7.1.7, 7.1.8 and 7.1.9; and
- (e) notwithstanding that the Scheme shall have terminated, the costs of placing the notices required by clause 9.1.2 (b).

10.3 Modification of the Scheme

10.3.1 Subject to clause 10.3.2, the Company may, at any hearing to sanction the Scheme, consent on behalf of all those concerned to any modification of the Scheme or any terms or conditions which the Court

may think fit to approve or impose and which would not directly or indirectly have a materially adverse effect on the interests of any Scheme Creditor under the Scheme.

- 10.3.2 Any modification, term or condition as is referred to in clause 10.3.1 which, in the opinion of the Policyholders Protection Board, would directly or indirectly adversely affect the interest of the Policyholders Protection Board in the Scheme shall not take effect unless approved by the Policyholders Protection Board.

10.4 Notice

Any notice to be given to the Company under or in relation to this Scheme shall be given in writing and shall be deemed to have been duly given if it is delivered by hand or sent by pre-paid first class post, and by air mail where it is addressed to a different country from that in which it is posted, to the Company at 20 Farringdon Street, London EC4A 4PP, United Kingdom (or at such other address as the Scheme Administrators may notify to Scheme Creditors for the purpose of this clause 10.4 in such newspaper as the Scheme Administrators consider appropriate for one day a week for three consecutive weeks), and any notice posted as aforesaid shall be given also by telefax to the Company at such address and shall be deemed to have been given on the seventh (or, if by airmail, the fourteenth) day following the date on which it is posted.

10.5 Governing law and jurisdiction

The Scheme shall be governed by, and construed in accordance with, English law and the Scheme Creditors hereby agree that the Court shall have exclusive jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of the Explanatory Statement or any provision of the Scheme, or out of any action taken or omitted to be taken under the Scheme or in connection with the administration of the Scheme, and, for such purposes, the Scheme Creditors irrevocably submit to the jurisdiction of the Court provided, however, that nothing in this clause 10.5 shall affect the validity of other provisions determining governing law and jurisdiction as between the Company and any of the Scheme Creditors, whether contained in any contract or otherwise.

Dated 28 October 1994.

EXECUTION TEXT

THE INSTITUTE OF LONDON UNDERWRITERS

AND

THOMAS ALEXANDER RIDDELL

AND

JOHN MITCHELL WARDROP

AND

MICHAEL STEVEN WALKER

DEED OF APPOINTMENT AND REMOVAL
RELATING TO
THE ILU TRUST FUND

THIS DEED is made the 21st day of December 2011

BETWEEN

- (1) **THE INSTITUTE OF LONDON UNDERWRITERS** (registered in England No. 00019900) whose registered office is at 3 Minister Court, Mincing Lane, London, EC3R, 7DD (the "**ILU**");
- (2) **THOMAS ALEXANDER RIDDELL** of KPMG LLP, 8 Salisbury Square, London, EC4Y 8BB (the "**Retiring Trustee**"); and
- (3) **JOHN MITCHELL WARDROP** of KPMG LLP, 8 Salisbury Square, London, EC4Y 8BB and **MICHAEL STEVEN WALKER** of KPMG LLP, 8 Salisbury Square, London, EC4Y 8BB (each a "**New Trustee**" and together the "**New Trustees**").

INTRODUCTION

- (A) This deed is supplemental to a deed dated 29 May 2003 titled 'ILU Trust Deed' between Anthony James McMahon, the Retiring Trustee and the ILU (the "**Definitive Deed**"), the ILU established a trust of sums receivable from English & American Group Plc and English & American Insurance Holdings Plc pursuant to guarantees of sums payable under policies issued by the ILU on behalf of English & American Insurance Company Limited on or after 1 September 1983 (the "**Trust**").
- (B) The Retiring Trustee is the sole present trustee of the Trust and wishes to retire.
- (C) By clause 3.1.3 of the Definitive Deed, the ILU is vested with the statutory power (subject as provided in the said clause 3.1.3) of appointing new trustees of the Trust.
- (D) On 5 December 2011, the Creditors' Committee (as defined in the scheme of arrangement of English & American Insurance Company Limited and its Scheme Creditors (as therein defined) dated 28 October 1994, as subsequently amended (the "**EAIC Scheme**")) passed a resolution to appoint John Mitchell Wardrop as a Scheme Administrator (as defined in the EAIC Scheme) with effect from 6 December 2011.
- (E) On 12 October 2006, the Creditors' Committee (as defined in the EAIC Scheme) passed a resolution to appoint Michael Steven Walker as a Scheme Administrator (as defined in the EAIC Scheme) with effect from 12 October 2006.
- (F) The New Trustees have consented to act as trustees of the Trust.

THIS DEED PROVIDES THAT

1. The ILU in exercise of the power given to it by the Definitive Deed and by the Trustee Act 1925 and of every other power enabling it hereby appoints the New Trustees as trustees of the Trust in place of the Retiring Trustee with effect on and from the date of this deed.
2. This deed is delivered on the date written at the start of the deed.

3. This deed may be executed in any number of counterparts, each of which is an original and all of which together evidence the same agreement. This deed shall not come into effect until each party has executed at least one counterpart.
4. This deed shall be governed by, and construed in accordance with, English law and that the English courts shall have exclusive jurisdiction to hear any dispute.

EXECUTED by the parties as a deed

Executed as a deed by)
THE INSTITUTE OF LONDON UNDERWRITERS)

[Handwritten Signature] Signature of director

D. MATCHAM Name of director

in the presence of:

[Handwritten Signature] Signature of witness

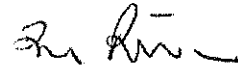
N. GUNNEY Name of witness

HOGAN LOVELL INTERNATIONAL LLP Address of witness

ATLANTIC HORSE HARBOUR VIADUCT,

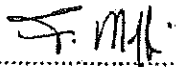
LONDON EC1A 2FG

Signed as a deed by
THOMAS ALEXANDER RIDDELL)
)



.....
THOMAS ALEXANDER RIDDELL

in the presence of:



.....
FABRIZIO MAFFI

Signature of witness

Name of witness

.....
c/o KPMG LLP

Address of witness

.....
8 SALISBURY SQUARE

.....
LONDON EC4Y 8BB

Signed as a deed by
JOHN MITCHELL WARDROP

)
)
)



.....
JOHN MITCHELL WARDROP

in the presence of:

F. Maffi
.....
FABRIZIO MAFFI
.....
% KING UP
.....
8 SAUSBURT SQUARE
.....
LONDON EC4Y 8BB
.....

Signature of witness

Name of witness

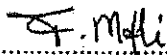
Address of witness

Signed as a deed by
MICHAEL STEVEN WALKER

)
)
)


.....
MICHAEL STEVEN WALKER

in the presence of:


.....
FABRIZIO MAFFI
.....
% KING UP
.....
8 SALISBURY SQUARE
.....
LONDON EC4Y 3BB
.....

Signature of witness

Name of witness

Address of witness

EAC - Aviation policies with inception date in Marsh and EAG overlap period

File Ref	File Desc	Cov. Type	Att Dt	Exp Dt	Stann. Code	Stann. Yr	Stann. Exp EAC %	Principal Desc	Assured Name	Broker Desc	Ult. Em. Line Post	SUI Cov.	SUI Amnt	Value on RL Act
008234	HULL/UBS	FAC	01-Sep-1983	31-Aug-1984	11	1983	111983	100	REUNION AERHENNE, LA, FRANCE - EX GROUPEMENT D'INT	MORGAN HEAD & SHARMAN LIMITED	USD	300,000,000	1	(4,451,231.22)
008239	LIAB	DIR	01-Sep-1983	31-Aug-1984	11	1983	111983	100	WESTERN A/L	WILLIS LTD (EX WILLIS FABER & DUMAS LTD)	USD	400,000,000	1	
008314	HULL/UBS	FAC	01-Oct-1983	30-Sep-1984	11	1983	111983	100	INS CORP OF IRELAND, EIRE - (IRISH BUSINESS ONLY)	MARSH LTD (EX CTB INS)	USD	100,000,000	1	
008372	HULL/UBS	DIR	01-Oct-1983	30-Sep-1984	11	1983	111983	100	DAVIES & NEWMAN HOLDINGS PLC	MARSH LTD (EX CTB INS)	GBP	100,000,000	1	
008422	HULL/UBS	DIR	01-Oct-1983	30-Sep-1984	11	1983	111983	100	TIGER INTERNATIONAL (FLYING TIGERS)	MARSH LTD (EX CTB INS)	USD	350,000,000	1	(9,274,061)
008433	HULL/UBS	DIR	01-Oct-1983	30-Sep-1984	11	1983	111983	100	ISSAF (KUM/SWISSAIR/SAS/AUSTRIAN/FINNAIR)	MARSH LTD (EX CTB INS)	USD	600,000,000	1	
008443	HULL/UBS	FAC	01-Oct-1983	30-Sep-1984	11	1983	111983	100	BANGKOK INS CO LTD, THAILAND	WILLIS LTD (EX WILLIS FABER & DUMAS LTD)	USD	600,000,000	1	
255680	HULL/UBS	FAC	01-Sep-1983	31-Aug-1984	11	1983	111983	100	REUNION AERHENNE, LA, FRANCE - EX GROUPEMENT D'INT	MORGAN HEAD & SHARMAN LIMITED	USD	300,000,000	1	(4,451,231.22)
255761	LIAB	DIR	01-Sep-1983	31-Aug-1984	11	1983	111983	100	WESTERN A/L	WILLIS LTD (EX WILLIS FABER & DUMAS LTD)	USD	500,000,000	1	
255798	HULL/UBS	FAC	01-Sep-1983	31-Aug-1984	11	1983	111983	100	REUNION AERHENNE, LA, FRANCE - EX GROUPEMENT D'INT	MORGAN HEAD & SHARMAN LIMITED	USD	500,000,000	1	
255820	HULL/UBS	FAC	01-Oct-1983	30-Sep-1984	11	1983	111983	100	INS CORP OF IRELAND, EIRE - (IRISH BUSINESS ONLY)	MARSH LTD (EX CTB INS)	USD	400,000,000	1	
255920	HULL/UBS	DIR	01-Oct-1983	30-Sep-1984	11	1983	111983	100	DAVIES & NEWMAN HOLDINGS PLC	MARSH LTD (EX CTB INS)	GBP	100,000,000	1	
255998	HULL/UBS	DIR	01-Oct-1983	30-Sep-1984	11	1983	111983	100	TIGER INTERNATIONAL (FLYING TIGERS)	ACON GROUP LTD (EX LESLIE & GODWIN)	USD	350,000,000	1	(9,274,061)
256014	HULL/UBS	DIR	01-Oct-1983	30-Sep-1984	11	1983	111983	100	ISSAF (KUM/SWISSAIR/SAS/AUSTRIAN/FINNAIR)	MARSH LTD (EX CTB INS)	USD	600,000,000	1	
256033	HULL/UBS	FAC	01-Oct-1983	30-Sep-1984	11	1983	111983	100	BANGKOK INS CO LTD, THAILAND	MARSH LTD (EX CTB INS)	USD	600,000,000	1	
256484	LIABILITY	FAC	01-Sep-1983	31-Aug-1984	11	1983	111983	100	ENGLISH & AMERICAN AVIATION POOL (AGENCY)	MARSH LTD (EX SEDGWICK LTD)	USD	300,000,000	0.75	(333,952,341)

36 Policies

Pro.

VALID POLICY	PRINCIPAL ORG	POOL	SLIP REF	BROKER MARKET MREF	COVER TYPE CODE	LEDGER CURRENCY CODE	CLAIM SEQ	PRINCIPAL SLIP STATUS MCODE	PARTICIPANT STWPCD	PARTICIPANT STMP YR	PARTICIPANT PRNT TYPE CODE	STAMP STATUS CODE	EAC Unpaid Orig Curr	EAC OSL	EAC IBWR
✓	1745	AV	008443	576	FAC	GBP		INU	11	1983	GRS	INU	(3.32)	0.00	0.00
✓	1745	AV	008443	576	FAC	USD		INU	11	1983	GRS	INU	(1.00)	0.00	0.00
✓	1745	AV	256033	509	FAC	GBP		INU	11	1983	GRS	INU	(41.02)	0.00	0.00
✓	1745	AV	256033	509	FAC	USD		INU	11	1983	GRS	INU	(332.10)	0.00	0.00
✓	7319	AV	008314	509	FAC	USD		INU	11	1983	GRS	INU	(86.96)	0.00	0.00
✓	7319	AV	255820	509	FAC	USD		INU	11	1983	GRS	INU	(1,049.87)	0.00	0.00
✓	10680	AV	255680	758	FAC	USD		CMU	11	1983	GRS	INU	0.00	0.00	0.00
✓	204440	AV	256014	509	DIR	USD		INU	11	1983	GRS	INU	0.00	0.00	0.00
✓	206446	AV	255998	707	DIR	USD		INU	11	1983	GRS	INU	0.01	0.00	0.00
✓	206446	AV	255998	707	DIR	USD	1	INU	11	1983	GRS	INU	0.00	(1,206.00)	0.00
✓	210256	AV	008372	509	DIR	GBP		INU	11	1983	GRS	INU	0.01	0.00	0.00
✓	210256	AV	255920	509	DIR	USD		INU	11	1983	GRS	INU	0.01	0.00	0.00
✓	210256	AV	255920	509	DIR	USD	1	INU	11	1983	GRS	INU	0.00	(1,253.00)	0.00

Total :

(1,514.24) (2,459.00) 0.00

Pro.

Details missing - Checked on Cephae for reg ref

EAC - Marine policies with inception date in March and EAG overlap period

Slip Ref	Slip Desc	Cur Type	Alt Dt	Exp Dt	Storno Code	Storno Yr	Storno Conc	EAC %	Periodical Desc	Assured Ref	Assured Name	Broker Desc	Utl Sm Line Pcnt	SUJ Ccy	SUJ Amnt	Value on ESI list
E3CP087283		Q/5	01-Oct-1983	30-Sep-1984	1	1983	11983	45	LATINBROKER/LATIN INS CO'S	36003	LATINBROKER / LATIN INS CO'S	PRENTIS DONEGAN & PARTNERS	0.263169	USD	1	
E3HP194083		DIR	01-Sep-1983	31-Aug-1984	1	1983	11983	45	COLONIAL PENN	287585	COLONIAL PENN	MARSH LTD (EX WILLCOX JOHNSON & HIGGINS)	4.241	USD	1	
E3HP194183		DIR	01-Sep-1983	31-Aug-1984	1	1983	11983	45	COLONIAL PENN	287585	COLONIAL PENN	MARSH LTD (EX WILLCOX JOHNSON & HIGGINS)	5	USD	1	
E3HP194283		DIR	01-Sep-1983	31-Aug-1984	1	1983	11983	45	COLONIAL PENN	287585	COLONIAL PENN	MARSH LTD (EX WILLCOX JOHNSON & HIGGINS)	5	USD	1	
E3HP215684	HULL/LIAB	DIR	07-Sep-1983	06-Sep-1984	1	1984	11984	45	BERSFORD MIDCATTAL/SLIP	287977	BERSFORD MIDCATTAL/SLIP	OROC (1998) (EX SQUARE MILE/EXALL WARREN)	1.14	USD	1	
E3LP0054F83	SOLV/INSOL ONLY *R*	DIR	01-Oct-1983	01-Oct-1984	1	1983	11983	45	SCHLUMBERGER OFFSHORE SERVICES	286245	SCHLUMBERGER OFFSHORE SERVICES	MARSH LTD (EX SEDGWICK LTD)	3.6606	USD	40,000,000	
E3LP0516F83	SOLVENT/INSOLVENT	DIR	01-Sep-1983	31-Aug-1984	1	1983	11983	45	TENNECO INC USA	287488	TENNECO INC USA	MARSH LTD (EX CTR INS)	2.881782	USD	50,000,000	
E3LP051783	SOLVENT/INSOLVENT	DIR	01-Sep-1983	01-Sep-1984	1	1983	11983	45	TENNECO INC USA	287488	TENNECO INC USA	MARSH LTD (EX CTR INS)	3.71	USD	50,000,000	
E3LP052183	INSURANCE SLIP	DIR	01-Sep-1983	01-Nov-1984	1	1983	11983	45	MIRO & ASSOCIATES	285780	MIRO & ASSOCIATES	E W PAYNE LTD	2.9268	USD	400,000	
E3LP052884	LIABILITY X/L	X/L	01-Oct-1983	30-Sep-1984	1	1983	11983	45	MUTUAL MARINE OFFICE INC, NEW YORK, NY	1392	MUTUAL MARINE OFFICE INC, NEW YORK, NY	KINSALE BROKERS LIMITED	2.66	USD	5,000,000	(9,287,750.00)
E3LP058584	X/MAR & GEN LIAB	DIR	01-Oct-1983	01-Oct-1984	1	1984	11984	45	BRAVO CORPORATION	285681	BRAVO CORPORATION	MARSH LTD (EX SEDGWICK LTD)	3.6364	USD	25,000,000	(58,400.58)
E3LP058684	X/MAR & GEN LIAB	DIR	01-Oct-1983	01-Oct-1984	1	1984	11984	45	BRAVO CORPORATION	285681	BRAVO CORPORATION	MARSH LTD (EX SEDGWICK LTD)	3.9762	USD	24,000,000	(58,400.58)
E3LP058784	X/MAR & GEN LIAB	DIR	01-Oct-1983	01-Oct-1984	1	1984	11984	45	BRAVO CORPORATION	285681	BRAVO CORPORATION	MARSH LTD (EX SEDGWICK LTD)	3.6893	USD	50,000,000	(58,400.58)
E3LP0620584	SOLVENT/INSOLVENT	DIR	01-Oct-1983	01-Oct-1984	1	1984	11984	45	CABOT CORPN	284687	CABOT CORPN	WILLIS LTD (EX WILLIS FABER & DUMAS LTD)	2.828	USD	16,000,000	
E3LP0621384	SOLVENT/INSOLVENT	DIR	01-Oct-1983	01-Oct-1984	1	1984	11984	45	CABOT CORPN	284687	CABOT CORPN	WILLIS LTD (EX WILLIS FABER & DUMAS LTD)	4.22	USD	25,000,000	
68HP215486	HULL	DIR	01-Oct-1983	30-Sep-1984	29	1986	291986	50	DELTA SHIPPING & TRADING AMSTERDAM B V	284915	DELTA SHIPPING & TRADING AMSTERDAM B V	MARSH LTD (EX SEDGWICK LTD)	0	USD	1	
52MH003932	HULL/AND MACHINERY	DIR	01-Oct-1983	30-Sep-1984	45	1992	451992	50	DELTA SHIPPING & TRADING AMSTERDAM B V	284915	DELTA SHIPPING & TRADING AMSTERDAM B V	TYSER & CO LTD	1.18	USD	1	

Pro.

VALID POLICY	PRINCIPAL ORG	POOL	SLIP REF	BROKER MARKET MREF	COVER TYPE CODE	LEDGER CURRENCY CODE	CLAIM SEQ	PRINCIPAL SLIP STATUS MCODE	PARTICIPANT STMPCD	PARTICIPANT STMP YR	PARTICIPANT PNTY TYPE CODE	STAMP STATUS CODE	EMIC Unpairs	EMIC OSL	EMIC IBRR
✓	36003	MA	83CP087883	711	O/S	USD		INU	01	1983	GRS	INU	(891.11)	0.00	(7.26)
✓	284687	MA	83LP0620584	576	DIR	USD		INU	Z1A	1984	GRS	INU	(122.69)	0.00	0.00
✓	284687	MA	83LP0621584	576	DIR	USD		INU	Z1A	1984	GRS	INU	(19,364.39)	0.00	0.00
✓	284915	MA	92MH003392	572	DIR	USD		INU	45	1992	GRS	INU	(12.81)	0.00	0.00
✓	284915	MA	92MH003392	572	DIR	USD	1	INU	45	1992	GRS	INU	0.00	(922.91)	0.00
✓	287488	MA	83LP0516F83	509	DIR	USD		INU	Z1	1983	GRS	INU	(199.72)	0.00	0.00
✓	287488	MA	83LP0516F83	509	DIR	USD		INU	Z1A	1983	GRS	INU	(486.51)	0.00	0.00
✓	287488	MA	83LP051783	509	DIR	USD		INU	Z1	1983	GRS	INU	(257.12)	0.00	0.00
✓	287585	MA	83HP194083	452	DIR	USD		INU	01	1983	GRS	INU	(144.37)	0.00	0.00
✓	287585	MA	83HP194183	452	DIR	USD		INU	01	1983	GRS	INU	(146.83)	0.00	0.00
✓	287585	MA	83HP194283	452	DIR	USD		INU	01	1983	GRS	INU	(190.84)	0.00	0.00
✓	287927	MA	83HP219684	639	DIR	GBP		INU	01	1984	GRS	INU	(5.45)	0.00	0.00
✓	295681	MA	83LP058584	551	DIR	USD		INU	01	1984	GRS	INU	0.00	0.00	0.00
✓	295681	MA	83LP058584	551	DIR	USD	1	INU	Z1A	1984	GRS	INU	0.00	(4,909.17)	0.00
✓	295681	MA	83LP058684	551	DIR	USD		INU	01	1984	GRS	INU	0.00	0.00	0.00
✓	295681	MA	83LP058684	551	DIR	USD	1	INU	Z1A	1984	GRS	INU	0.00	(16,998.35)	0.00

(21,821.84) (22,230.43) (7.26)



cutting through complexity™

English and American Insurance Company Limited

Actuarial Review of Outstanding Claim Liabilities
for Marsh ILU Guaranteed Policies

As at 31 July 2011

6 February 2013



KPMG
Financial Risk Management
15 Canada Square
London E14 5GL
United Kingdom

Tel +44 (0) 20 769 42048
Fax +44 (0) 20 731 16411

Private and confidential
John Wardrop
English & American Insurance Company Limited
8 Salisbury Square
London
EC4Y 8BB

6 February 2013

Dear John

Actuarial Review of Outstanding Claim Liabilities for Marsh ILU Guaranteed Policies As at 31 July 2011

Please find attached our final report for the actuarial review of reserves of business relating to English and American Insurance Company Limited ("EAIC"), written under guarantees provided by Marsh, as at 31 July 2011. KPMG LLP ("KPMG") has carried out this review in accordance with the instructions as set out in the engagement letter dated 9 May 2012. The relevant extract from the engagement letter is shown in Appendix 1.

This report has been prepared in accordance with the relevant Technical Actuarial Standards. It has been released to EAIC on the basis that it shall not be copied or referred to, in whole (except for EAIC's own internal purposes) or in part without our prior written consent.

We have enjoyed working with you on this project, and look forward to the opportunity to do so again in the future.

If you have any queries, please do not hesitate to contact me.

Yours sincerely

Phillip Tippin,
Partner, KPMG LLP

References and Limitations

In making our projections, we have relied on the data, spreadsheets and other information supplied by PRQ Insurance Solutions ("PRQ") and the Scheme Administrators on behalf of EAIC. Although we have reviewed the data and other information on which we have relied for reasonableness and internal consistency, we have not audited the data nor subjected it to independent verification. The accuracy of our results is dependent upon the accuracy and completeness of the underlying data, spreadsheets and other information supplied to us.

The process of estimating future claim payments on a portfolio of insurance business is an inherently uncertain exercise due to the random nature of claim occurrences. When projecting future liabilities based on past experience, an element of subjectivity is inevitably introduced.

As with any process dependent on projection based techniques, the arising results rely critically on the integrity of the current data, the integrity of recent claims progressions and on the applicability of these claims progressions to likely future developments.

We also note that where we have relied on market based benchmarks to assess the level of ultimate losses, such an approach is dependent on EAIC claims processes being consistent with the rest of the market. We caution therefore that the eventual outcome is likely to vary, perhaps materially, from our projected outcome.

The nature of the business written by EAIC is such that its future development could be adversely affected by the emergence of new classes of loss or by as yet unknown types of claims. In forming our opinions we have made no allowance for the risk of adverse development of these new types of claims due to their unquantifiable nature.

Projections of future ultimate losses and loss expenses are also dependent on future contingent events and are affected by many additional factors, including:

- Claim reserving procedures and settlement philosophy;
- Social and economic inflation;
- Changing court and jury awards;
- New sources of claims;
- New latent claims emergence;
- Improvements in medical technology;
- Other economic, legal, political and social trends; and
- Random fluctuations on small accounts.

In forming our opinions we have made no allowance for the impact that changes in these factors will have on future ultimate losses and loss expenses due to their unquantifiable nature.

This report is delivered subject to the agreed written terms of KPMG's engagement. Our report was designed to meet the agreed requirements of EAIC determined by EAIC's needs at the time. Our report should not therefore be regarded as suitable to be used or relied on by any party wishing to acquire rights against us other than EAIC for any purpose or in any context. Any party other than EAIC who obtains access to our report or a copy and chooses to rely on our report (or any part of it) will do so at its own risk. To the fullest extent permitted by law, KPMG will accept no responsibility or liability in respect of our report to any other party.

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Reliances and Limitations

In making our projections, we have relied on the data, spreadsheets and other information supplied by PRO Insurance Solutions ("PRO") and the Scheme Administrators on behalf of EAIC. Although we have reviewed the data and other information on which we have relied for reasonableness and internal consistency, we have not audited the data nor subjected it to independent verification. The accuracy of our results is dependent upon the accuracy and completeness of the underlying data, spreadsheets and other information supplied to us.

The process of estimating future claim payments on a portfolio of insurance business is an inherently uncertain exercise due to the random nature of claim occurrences. When projecting future liabilities, an element of subjectivity is inevitably introduced.

As with any process dependent on projection based techniques, the arising results rely critically on the integrity of the current data, the integrity of recent claims progressions and on the applicability of these claims progressions to likely future developments.

We caution therefore that the eventual outcome is likely to vary, perhaps materially, from our projected outcome.

The nature of the business written, by EAIC is such that its future development could be adversely affected by the emergence of new classes of loss or by as yet unknown types of claims. In forming our opinions we have made no allowance for the risk of adverse development of these new types of claims due to their unquantifiable nature.

Projections of future ultimate losses and loss expenses are also dependent on future contingent events and are affected by many additional factors, including:

- claim reserving procedures and settlement philosophy;
- social and economic inflation;
- changing court and jury awards;
- new sources of claims;
- new latent claims emergence;
- improvements in medical technology;

- other economic, legal, political and social trends; and
- random fluctuations on small accounts.

In forming our opinions we have made no allowance for the impact that changes in these factors will have on future ultimate losses and loss expenses due to their unquantifiable nature.

This report is delivered subject to the agreed written terms of KPMG's engagement. Our report was designed to meet the agreed requirements of EAIC determined by EAIC's needs at the time. Our report should not therefore be regarded as suitable to be used or relied on by any party wishing to acquire rights against us other than EAIC for any purpose or in any context. Any party other than EAIC who obtains access to our report or a copy and chooses to rely on our report (or any part of it) will do so at its own risk. To the fullest extent permitted by law, KPMG will accept no responsibility or liability in respect of our report to any other party.

Our report has been prepared solely for EAIC and has been released to EAIC on the basis that it will not be copied or referred to, in whole (except for EAIC's own internal purposes) or in part without our prior written consent.

This report should be read in full, as any part read in isolation may be misleading. Third parties reading this report may not have the background information necessary for a full understanding of the report.

TAS Compliance

This report is compliant with, and reflects the principles contained within the Technical Actuarial Standards (TAS) guidance notes TAS R and TAS D as well as the Insurance TAS as adopted/issued by the Board of Actuarial Standards.

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We have reviewed a selection of policies from English & American's Aviation and Marine Pools. These policies have been identified by PRO Insurance Solutions as being covered by guarantees written by Marsh during the 1980 to 1983 underwriting years.

We have split our analysis into the three main claim types: Asbestos claims, Pollution and Health Hazard claims, and Other claims. This split reflects the differing latencies associated with the emergence of each of these claim types. Our overall estimate for the undiscounted reserves for the Marsh ILU policies is USD 9.1 million. This includes a projected IBNR and IBNER reserve of USD 4.7 million. We have not explicitly projected separate IBNR and IBNER reserves.

We have also split out the reserves that fall within the overlap period between the Marsh ILU and EAIH guarantees as detailed in the Company Background section of this report.

The eventual outcome of these liabilities is still uncertain and may be materially different from what we believe is a best estimate of the liabilities given the available information. We highlight this uncertainty to the reader with the aid of high and low estimates to show the potential variation around our central estimate.

We have also projected a discounted reserve based on the mean terms and discount factors shown below. We discuss the discounting methodology further in the methodology and assumptions section on page 20.

Total by claim type	USD			
	Paid to date	Outstanding	Estimated Ultimate	High IBNR
Asbestos	26,245,242	3,668,313	33,372,773	4,778,290
Pollution & Health Hazard	442,899	104,793	1,393,400	896,970
Other	15,024,869	704,520	16,074,619	690,459
Total	41,713,010	4,477,616	50,840,791	6,365,719

Total by Guarantor	USD			
	Paid to date	Outstanding	Estimated Ultimate	High IBNR
Marsh	41,692,580	4,477,616	50,805,409	6,342,709
Marsh & English & American	20,430	-	35,382	23,010
Total	41,713,010	4,477,616	50,840,791	6,365,719

Discounted Reserve Summary				USD
Type	Undiscounted reserve	Mean Discount Factor	Discounted Reserve	
Asbestos	7,127,531	8.00	5,722,116	
Pollution	950,500	7.10	787,240	
Other	1,049,749	3.73	933,157	
Total	9,127,781		7,442,513	

The current outstanding claims in respect of asbestos claims total USD 3.7 million. Of these outstanding claims, USD 3.6 million relates to the Honeywell (formerly Allied Signal) asbestos losses, which are subject to an instalment settlement. We have been advised by PRO that the outstanding claims reserve on these losses is expected to be sufficient to extinguish the remaining liability. In addition, the policies will be fully released upon payment of the current outstanding amount as agreed in the settlement. As such, we project no IBNR reserve for these policies.

Our best estimate of the undiscounted IBNR and IBNER claims liabilities in respect of asbestos claims is USD 3.5 million. The vast majority (USD2.8 million) of this reserve is in respect of the Ashland Oil/Riley Stoker policies. We believe this figure recognises the latency of asbestos related disease claims, and the fact that the policies in this

review were written before 1986, when asbestos exclusions became more widespread in insurance policies. We have considered the extent of EAIC's exposure to particular cedants who are known to have varying levels of exposure to claims of this type as well as the extent of exhaustion of the coverages. As shown in the tables below the bulk of the exposure and reserves sit within the Marine Pool and in underwriting years 1981 to 1983.

We have split out a number of policies that are subject to policy buybacks or participation in the scheme of arrangement. No further liability is expected to EIAC from these policies. Finally, we have also split out the reserves that fall within the overlap period between the Marsh ILU and EAIH guarantees as detailed in the Company Background section of this report.

English & American Asbestos Projection Summary by Pool							USD
Pool	Exposure	Paid to date	Outstanding	Low IBNR	Medium IBNR	High IBNR	
Aviation	2,250,000	-	-	-	-	-	-
Marine	88,646,225	14,278,763	-	1,559,098	3,459,218	4,778,290	
Sub - Total	90,896,225	14,278,763	-	1,559,098	3,459,218	4,778,290	
Settled Policies	115,085,441	11,966,478	3,668,313	-	-	-	
Total	205,981,666	26,245,242	3,668,313	1,559,098	3,459,218	4,778,290	

English & American Asbestos Projection Summary by UWY							USD
UWY	Exposure	Paid to date	Outstanding	Low IBNR	Medium IBNR	High IBNR	
1980	19,041,645	5,081,486	-	60,380	187,598	188,841	
1981	63,913,393	9,006,974	245,088	306,613	1,207,871	1,893,688	
1982	80,625,769	7,249,890	1,843,039	1,109,432	1,908,886	2,463,348	
1983	42,400,858	4,906,892	1,580,186	82,673	154,864	232,414	
Total	205,981,666	26,245,242	3,668,313	1,559,098	3,459,218	4,778,290	

English & American Asbestos Projection Summary by Guarantor							USD
Pool	Exposure	Paid to date	Outstanding	Low IBNR	Medium IBNR	High IBNR	
Marsh	200,435,775	26,224,812	3,668,313	1,551,772	3,444,266	4,755,280	
Marsh & EAIH	5,545,891	20,430	-	7,326	14,952	23,010	
Total	205,981,666	26,245,242	3,668,313	1,559,098	3,459,218	4,778,290	

The current outstanding claims in respect of pollution claims total USD 0.1 million. Our best estimate of the undiscounted IBNR and IBNER claims liabilities in respect of these claims is USD 0.8 million. The bulk of this reserve relates to a claim submission from the Port of Portland resulting from environmental claims brought against it by government agencies at two sites in the port. The claims have been presented together to EAIC, but it is EAIC's view that these claims are two separate events and therefore subject to two retentions. We have reflected these two scenarios in our high and medium IBNR estimates respectively for this claim.

We have estimated the remainder of the reserve using assumptions derived from our previous work on these liabilities. The assumptions reflect the maturity of the business and the extent to which claims activity continues to present day – as indicated by the level of current outstanding claims. We project a lower IBNR reserve when compared to the asbestos losses due to the much shorter latency period of the pollution related claims. As is the case with the asbestos related claims, the bulk of the liabilities sit within the marine pool and are spread across the underwriting years 1981 to 1983.

Pollution (Including Health Hazard) Summary Results by UWY						USD
UWY	Paid to date	Outstandings	KPMG estimated			High IBNR
			Ultimate	Low IBNR	Medium IBNR	
1980	4,788	-	4,788	-	-	-
1981	323,830	67,090	1,173,285	748,820	782,365	815,517
1982	63,720	9,696	87,774	10,255	14,357	18,459
1983	50,561	27,997	127,553	34,996	48,995	62,993
Total	442,899	104,783	1,393,400	794,071	845,717	896,970

English & American Pollution (Including Health Hazards) Projection Summary by Pool						USD
Pool	Paid to date	Outstanding	Estimated Ultimate	Low IBNR	Medium IBNR	High IBNR
Aviation	11,725	1,746	13,915	318	445	572
Marine	431,175	103,037	1,379,485	793,754	845,272	896,398
Total	442,899	104,783	1,393,400	794,071	845,717	896,970

The rest of the EAIC liabilities relate to non-asbestos and non-pollution claims. These claims generally relate to many small claims of less than USD50,000 in size. The current outstanding claims in respect of these claims totals USD 0.7 million. Our best estimate of the undiscounted IBNR and IBNER claims liabilities in respect of these claims is USD 0.35 million.

We note that the vast majority of the outstanding claims relates to policies written in the 1981 and 1982 underwriting years.

Summary by UWY							USD
UWY	Paid to date	Outstanding	Estimated ultimate	Low IBNR	Medium IBNR	High IBNR	
1980	1,615,812	102,031	1,764,326	-	46,483	92,966	
1981	10,359,730	199,378	10,658,753	-	99,645	199,290	
1982	638,108	312,238	1,106,464	-	156,119	312,238	
1983	1,477,641	90,874	1,611,498	-	42,983	85,966	
Sub-Total	14,091,291	704,520	15,141,040	-	345,230	690,459	
Other UWYs	933,579	-	933,579	-	-	-	
Total	15,024,869	704,520	16,074,619	-	345,230	690,459	

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ILU

The Institute of London Underwriters (ILU) was a body which issued policies of insurance/reinsurance to insureds / reinsureds on behalf of its member companies who subscribed to the insureds / reinsureds risk. As with Lloyds of London, the ILU represented that the policies it issued were of the highest security. As such the ILU required that the performance of its member companies was guaranteed.

Marsh

The Marsh & McLennan Companies and Bowring Services Limited, collectively referred to as Marsh, as owners of EAIC prior to October 1983 guaranteed EAIC's liabilities arising from policies it issued should EAIC become unable to pay.

Marsh ILU Guarantees

EAIC was a member of the ILU for a number of years and Marsh guaranteed the "policies signed and issued" by the ILU, on behalf of EAIC, with inception dates between 3rd July 1980 and 6th October 1983, both days inclusive. In summary the Marsh guarantee is deemed to be effective for policies written through the ILU with inception dates from the 3rd July 1980 to 6th October 1983 inclusive.

The EAIG/EAIH guarantees

Following EAIC's management buy out in late 1983 the ILU policies were guaranteed by EAIC's parent company London & Gloucester, subsequently English & American Insurance Holdings, and the English & American Insurance Group.

The London & Gloucester (subsequently EAIH) and the English & American Insurance Group ILU guarantees, both signed on behalf of EAIC by Philip Evans (CEO) on 5th June 1987, are qualified by an

addendum dated 4th January 1988. The qualification only refers to "policies signed and issued" by the ILU from 1 September 1983" and does not mention any inception dates.

This created an issue as the EAIG/EAIH guarantees' appearing to operate on a different basis to the Marsh guarantee meant there was a duplication of guarantee of 36 days, from 1st September 1983 to 6th October 1983, for "policies signed and issued". These policies are referred to as being in the "overlap period".

Scope

We have been engaged to perform an actuarial valuation of the outstanding liabilities (including incurred but not reported ("IBNR") claims) of English & American Insurance Company Limited ("EAIC") that are protected by the Marsh ILU guarantees. We have provided a separate estimate of outstanding liabilities for the subset of policies that incept between 1st September 1983 and 6th October 1983 and therefore fall within the overlap period described earlier in this section.

We have also produced estimates of the uncertainty surrounding our projections. In performing this work we have used generally accepted actuarial techniques that we deemed appropriate. An extract from the engagement letter pursuant to this work and dated 9th May 2012 can be found in Appendix 1 of this report.

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All data provided by EAIC and PRO was received in electronic format, unless otherwise stated. This data can be provided on request on a compact disc.

We received the following data from EAIC:

Claims and Policies download (Cephas data)

We received a download of the policies that fall under the Marsh ILU guarantee extracted on 26th April 2012, and a download of the claims that fall under the Marsh ILU guarantee extracted on 9th May 2012. This data was split across the marine and aviation pools.

Key information provided included:

- Policy details including: name of policyholder, type of policy, underwriting year, excess attachment point, limit and EAIC's signed share for inwards policies.
- Claim details showing the paid claim transactions and case reserve positions for each were also provided.
- An update to the paid and incurred claims positions for the policies in the overlap period

LMCS download

In our last review we were also provided with a separate policy download from the London Market Claims Service ("LMCS") containing both the EAIC Non-Pool and EAUA Pool exposures. LMCS only covers direct insurance and the reinsurance of the direct exposures of US carriers. It is a database of those written policies where the attorneys appointed by the market are aware of, or at least the potential of, an asbestos, pollution or health hazard claim.

As the data provided by PRO insurance does not include claim type, we have used the LMCS data to identify those insureds or cedants that have asbestos, pollution or health hazard exposures. We have checked these cedants against those in our previous review.

We understand that LMCS limit and signed line data is generally more reliable than the corresponding Cephas data. However, it provides no

financial data which reduced its usefulness in determining outstanding liabilities. LMCS data also lacks Cephas stamp allocation, slip and event references which are all useful in summarising the data and used in netting down for reinsurance.

We have attempted to map financial data summarised by slip reference to the policy data so as to enable the use of exposure and experience based methods on the combined data.

Duplicate Policies

We note that there are several duplicate policy entries in the data download provided by PRO. We have excluded these from our calculations so as to avoid overstating the exposures.

Settled / Schemed Policies excluded from analysis

We have excluded several policies due to their inclusion in the Scheme of Arrangement or due to their being subject to policy buybacks. As such the future liability to EAIC in respect of these is zero. PRO have provided a list of these policies to us. However, we understand that this list has been produced on a best efforts basis and it may be the case that other policies are subject to full and final policy buybacks.

In as far as the policy records that we have been provided with may be incomplete, it is possible that there are policies and exposure that have not been captured in this analysis. As such, this work's projections may not capture the true extent of the true total ultimate liability to English and American.

Data Accuracy

Since the policies received were written a number of years ago and were initially recorded on paper rather than electronically, the data requires extensive cleaning before it can be used. We do not believe that the data is as complete or as accurate as would be ideal for projecting outstanding liabilities. As such we must bring to the reader's attention the inherent uncertainty in our projections. The adjustments we have made to the data provided have been made in accordance with the Technical Actuarial Standard on Data (TAS D).

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High-Level Summary of Methodology

Due to the age of the liabilities, it has been difficult to obtain development experience for the claims to which the ILU Marsh guarantee applies. As such we have relied on a mixture of exposure and experience based approaches that are anchored on the current level of exposure and paid and outstanding claims.

We carried out our analysis in converted US Dollars. Using LMCS data and work from our prior reviews we split out the claims and policy data by claim type. The three types of policies that we have considered, in decreasing order of latency period are asbestos, pollution (including health hazards) and other.

Asbestos

Our standard approach has been to map each of the assureds / cedants (principals) to a tier that reflects the relative severity of their historical asbestos exposure and hence their propensity for further IBNR claim development. For each tier we have assumed a tier value loss consistent with our 2008 review. We have thus calculated a crude ultimate loss for each principal as their tier value subject to their maximum exposure as dictated by their signed line.

We have further adjusted this ultimate loss to allow for the writing of different layers on the same risk in a particular year, how high the layers of cover are as well as the extent of exhaustion of the available insurance cover by layer for each principal. These adjustments mean that where a principal has more than one layer of cover but losses have only been paid on the lowest layer, with substantial cover remaining in that layer, we have assumed no further losses on the higher layers.

Whilst this approach may be subjective, we believe it reflects the reality that the losses will burn through successive layers of cover in turn and is therefore not unreasonable.

We have also taken account of the fact that the losses in question were incurred prior to 1986, after which asbestos exclusions became more widespread in insurance policies.

Pollution and health hazards

Our standard approach has been to apply benchmark IBNR to outstanding claims ratio assumptions by year and assured /cedant to the current outstanding claims. As the latency period for the pollution type claims is generally shorter than that for the longer tailed asbestosis variety, we believe it is appropriate to place greater reliance on an experience based approach. We have refined the results to allow for those principals where we have specific information about the development of the claims.

Other

The bulk of the remaining claims relates to numerous outstanding claims of less than USD 50,000 each. These are split between the marine and aviation pools and tend to be property damage type claims.

Tiering model and projection of ultimate claims

This forms the key part of our asbestos modelling. The premise is to set the IBNR claims based on EAIC's underlying exposure to asbestos claims for different assureds. This estimated exposure profile is reviewed continually in light of new information about claims made and court cases.

The model treats the business as follows.

Each insured (i.e. source of asbestos claim) is given a tier. Tier 1 insureds, are associated with the greatest potential asbestos exposure and are likely to be associated with the most significant insurance losses. They form the group of primary asbestos defendants. Subsequent tiers reflect the more limited nature of those insured's asbestos exposures. All insureds within a particular tier are assumed to have a certain ultimate claim cost per year of coverage.

Having assigned tiers to each underlying insured (again, the source of asbestos claims), but not the insurer (whom EAIC reinsure) we estimate tiered reinsurance losses. However, the ultimate cost per year of coverage assumed is lower than for direct business. This is a result of the possibility that the underlying insured's exposure does not burn completely through the EAIC policy (because of the limits on the direct insurer's policy).

Exhaustion/Availability of cover

We have studied the structure of the layers written for each principal and risk combination. This exercise has been useful in helping to filter out overlapping coverages due to double counting of exposure data.

We have adjusted the raw tier value calculation to allow for the writing and exhaustion of different layers on the same risk. Where the lower layers of cover have not been exhausted, we have assumed the tier value as the ultimate for those layers, and then projected no further IBNR on the higher layers.

We have considered the extent of the available cover in carrying this exercise out and believe it is reasonable as the tier value encapsulates a view on the likely severity of the original exposure to harmful

asbestos materials.

Specific Policies

We have used our knowledge of particular cedants whose losses we have analysed in the past and those for which specific information has been provided by EAIC, to support settlement discussions.

We have been advised by EAIC that the following assureds' policies are subject to policy buy backs at the time of writing:

- Avondale Shipyards / Northrop Corp / Newport News Shipbuilding
- Babcock & Wilcox / McDermott
- Boeing Company / McDonnell Douglas
- Coastal Corporation
- Conoco Inc
- CSX Transportation Inc
- Flintkote Co
- Honeywell (formerly Allied Signal)
- Hopeman Brothers Inc
- Shell Oil Co
- Standard Oil / Amoco Corp
- Sunoco Inc / Sun Oil Co
- Tenneco Inc / El Paso

As such, we project no IBNR reserves for these policies.

Ashland Oil Policies

In respect of the Ashland Oil/Riley Stoker policies, we have been advised that the ILU policies were carved out of the settlement with EAIC. Therefore we have included these policies in our analysis and have projected IBNR reserves on them. We have also been advised by PRO of the existence of policies in respect of Riley Stoker providing cover up to an excess of \$50 million in the 1980 underwriting year. These policies are separate to the policies being considered in this review and act before the policies that EAIC participated in. We have thus allowed for the remaining cover on these policies to be used up before the losses reach EAIC's layers.

Of the underlying cover below EAIC's layers, the excess of \$25 million layer has not been burned through as yet. We have considered the total estimated market ultimate losses to the entire Riley Stoker programme in arriving at an allocation of losses across the various years and policies. We believe that the 1980 year EAIC exposures have a small chance of being breached given the remaining cover on the underlying policies. We have reflected this view in our estimates for the 1980 underwriting year.

Adjustments made after initial tier level projections

The following adjustments were then made to the ultimate.

Where commuted policies were identified (with no further exposure) we set IBNR to zero.

Due to the nature of the estimation process when using the tiering model, it is possible for a particular claim to receive a negative IBNR. When this occurs, we review the tier assumed for the relevant assured. If we feel it should be changed, it is adjusted, though since estimated IBNR can be highly sensitive to our choice of tier, this is sometimes not appropriate. In these cases, we consider whether it would be more appropriate to set IBNR to zero, or to make an alternative adjustment.

The largest asbestos losses have been associated with product class actions. Therefore an assumption is made to account for the likely lower risk associated with non-products contracts where these can be identified.

It is expected that there are a number of policies that do not yet have claims notified against them and do not appear in the Cephas or LMCS downloads. We have added estimates for pure IBNR, which is the future claims costs from these policies. This estimate is based on assuming the lowest severity tier value as the ultimate loss for these policies, subject to a maximum of English and American's exposure on each policy.

We have modelled Pollution and Health Hazard exposures using IBNR to Outstanding ratios.

Pollution

We have derived our IBNR reserve by applying an IBNR to outstanding ratio of 175% to notified case reserves (ignoring any case reserves below zero for particular slips and events).

Port of Portland

We have made a specific allowance for a claim brought to EAIC by the Port of Portland relating to two sites in the port. The claims relate to removal of sediment and abatement measures in the terminals, and dredging and abatement costs in the harbour due to sediment contamination. The claim costs at these two sites have been added together before being allocated to the relevant EAIC policies. However it is EAIC's view that these claims constitute two separate events and are therefore subject to two retentions. We have reviewed documentation relating to the claim submissions and believe the claim is reasonable. We have adopted the scenario in which the claim is viewed as a single event as our high estimate, and that in which the claims relate to two events as our medium or best estimate. It should be noted that the difference between these two scenarios is relatively small and of the order of \$5,000 to EAIC.

Health hazard

Health hazard claims include DES, Agent Orange, breast implants and lead paint.

We have derived our IBNR reserve by applying an IBNR to outstanding ratio of 175% to notified case reserves (ignoring any case reserves below zero for particular slips and events).

It should be noted that our IBNR reserve only covers the development of currently notified claim types to EAIC or claim types that are currently reasonably quantifiable. We have therefore made no allowance in our estimates for liability accruing to EAIC from, amongst others, electro-magnetic field related claims.

Lead Paint

There remains some uncertainty in the market surrounding lead paint claims. However, there is currently little exposure to lead paint showing in Cephas. For example, exposures to Sherwin Williams and NL Industries are less than \$5m in aggregate. In addition, there is no specific exposure to Atlantic Richfield identified. Furthermore, outstanding claims across all stamps are extremely small.

As a result we believe that our aggregate health hazard model is not inappropriate and no further specific modelling of lead paint exposure has been conducted.

Tobacco

The actions against tobacco companies from asbestos insureds claiming that smoking was the cause of cancers suffered by people exposed to tobacco and asbestos, have failed so far and the prospect of significant liabilities being switched from the asbestos industry and its insurers to the tobacco industry is no closer.

Other

Claim types under this classification include:

- Product liability claims, including some asbestos product related claims.
- General liability claims such as Motor, Workers' Compensation and Medical Malpractice.
- Other claims such as property damage

We have modelled these claim types with an IBNR to OS ratio of 50%. We believe this reflects the short tail nature of the liabilities, as evidenced by the low level of currently outstanding claims, and their maturity, which is approaching 30 years of development.

Introduction

The inherent uncertainty of the insurance process makes it almost certain that actual developments will vary from the best estimate projections and it is also possible that the result will ultimately fall outside of the estimated range. As such, the range is provided to ensure that it is understood that there is significant uncertainty surrounding any best estimate of reserves for this business and that alternative outcomes should be considered.

In particular estimates of APH liabilities are necessarily subject to a high degree of uncertainty since they relate to events occurring over a long period stretching back over 50 years and are subject to the outcome of legal disputes between the insured and third parties, the insured and its insurers, and the insurers and their reinsurers. In EAIC's case the uncertainty is compounded by the reliance on brokers and LMCS for details of the policies on which it has outstanding liabilities and on brokers alone for the amount of those liabilities. Our analysis is therefore subject to additional uncertainty to that for a company represented by London Market attorneys. As part of the reserving process it has been necessary to estimate the extent of the claims arrears in terms of both new notifications and case reserve development.

Notwithstanding, the above uncertainties we have estimated ranges for asbestos, pollution, health hazard and other liabilities as detailed below.

Asbestos

As mentioned above there is significant uncertainty in the estimation of the outstanding liabilities. To determine a range of estimates our methodology recognises that the greater the unused exposure, the greater the opportunity for adverse development. It also recognises that the greater the IBNR, the greater the potential, on an optimistic basis, for some of this IBNR to be unnecessary. Nevertheless, the selection of the range around our best (mid) estimate is necessarily a matter of judgement.

High range

Our best estimate plus 5% of the unused exposure (on a per policy basis) plus an additional loading of 5% of ultimate for non-products claims is used as our high estimate.

Low range

Recognising that, on an optimistic basis, some of the IBNR may not be required we use 90% of our best estimate ultimate loss as our low estimate.

Pollution (Including Health Hazards)

Our high and low estimates have been estimated subjectively by considering the variation in the total industry pollution costs and by benchmarking to ratios used in the industry. The IBNR to outstanding ratios used are 125% and 225% for low and high estimates respectively.

'Other'

The IBNR to outstanding ratios used are 0%- for low estimates and 100% for high estimates depending on the category of claim.

Other sources of uncertainty

As mentioned elsewhere in this report there are other sources of uncertainty that we have not allowed for in assessing the high and low ranges. The major sources of uncertainty arise from:

- Data: This is discussed on page 13
- Asbestos claims presented on a premises basis
- Changes in filing rates - in certain States there has been a tightening in the medical criteria that must be met before a case can go to court. Reports published by Johns Manville and anecdotal evidence suggest that this is driving the filing rates downwards. We have left our assumptions unchanged as we feel it is too early to make a prediction based on this limited information. However, there remains uncertainty as to the full impact of the rulings and the permanence of any change in filing rates.

The following gives further general details to the methodology and assumptions:

"Paid" information provided by the Scheme Administrator is the cumulative paid amount to date and the Scheme Administrator confirmed that "Agreed but unpaid" reserves are included in the "Paid" totals. (Our methodology relies on this as we project estimated ultimate losses and deduct cumulative paid and O/S when estimating IBNR reserves).

Case reserves are shown as "O/S" reserves. Agreed liabilities, as provided by the Scheme Administrator, are shown as "Agreed but unpaid". Estimates of the additional reserves not captured above are shown as "IBNR". Our best estimates are derived from an expected value of a range of possible outcomes for total liabilities.

No explicit provision exists for the impact of any currency exchange rate movements since the data was supplied.

No provision is included for the internal costs of handling future claim settlements.

Our estimates rely on publicly available information sources, the accuracy of which cannot be guaranteed.

Our estimates for both asbestos and pollution make no allowance for any change to the current market practice of claims aggregation. In particular, for asbestos claims we have made no allowance for per premise claims presentation. The effect of this could be significant.

No explicit allowance has been made for the benefit which may result from any successful negotiations concerning commutations or settlements.

We have made no allowance in our estimates for the impact of tort reform. For pollution we have assumed there will be no future reform in legislation, particularly with regard to Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or for the potential impact of "All sums" legislation being passed into law.

We have made no allowance for the potential adoption in Europe of the type of legislation enacted in the US for the clean up of polluted sites; we are not aware that EAIC has any significant European exposure.

Exchange rates

We have used the Scheme exchange rates as at 30 September 2009 for our review. These exchange rates are 1 USD = 0.6250 GBP = 1.0750 CAD.

Discounting Methodology

Our data has been taken from the reserving data provided by PRO Insurance Solutions for the reserving exercise as at 31 July 2011. As the Pools have been in run-off for a considerable number of years now, the remaining claims activity comes from two main sources – claims that have been heavily litigated and have settled slowly as a result, and claims with long latency periods, such as asbestos-related diseases.

In deriving discounted best estimate reserves we have assumed the discount rates to be consistent with prevailing US AA rated corporate bonds. This approach is consistent with that used for previous reviews we have performed on these liabilities.

However we believe this is a reasonable assumption in the absence of any specific information about the assets backing the reserves for these policies and how these might differ from those backing the Scheme's reserves.

- Introduction
- Executive Summary
- Company Background and Scope
- Data
- Methodology and Assumptions
- Appendices
 - Appendix 1 - Scope – Engagement Letter Extract
 - Appendix 2 – Asbestos reserves by cedant
 - Appendix 3 – Pollution reserves by cedant
 - Appendix 4 – Other reserves by cedant
 - Appendix 5 – Description of Standard Actuarial Techniques
 - Appendix 6 – Glossary of Terms Used



KPMG LLP
Actuarial Services – Reserve review of Marsh LLI guaranteed policies
3 July 2012

Appendix 1: Scope of services

We will perform an actuarial valuation of the outstanding liabilities (including incurred but not reported (“IBNR”) claims) of English & American Insurance Company Limited (“EAIC”) that are protected by the Marsh LLI guarantees. These are a selection of policies identified by PEO Insurance Solutions that incept between 3 July 1980 and 6 October 1983 (other criteria also have to have been met to qualify). The estimates will be gross of any outwards reinsurance.

You have told us that there is a potential overlap of guarantees provided, and that as a result you also need a separate estimate of outstanding liabilities for the subset of policies that incept between 1 September 1984 and 6 October 1984.

In performing this work we will use any generally accepted actuarial techniques that we deem appropriate, although we are most likely to use exposure-based reserving techniques to estimate the outstanding liabilities. We will provide both undiscounted and discounted estimates of the outstanding liabilities, and will provide a range of estimates around our best estimate to indicate the uncertainty in our projections.

Our deliverable will be in the form of a formal actuarial report, complying with all of the relevant standards issued by the Board for Actuarial Standards in force at the date of this letter.

Appendix 1 – Scope of Work (cont..)

Data requirements

Insofar as it is possible, we require the following data items by policy identified by PRO Insurance Solutions as within the scope of this review (additional data items are also welcome if available):

- Inception date
- Expiry date
- Policy description (policy type, lines of business etc)
- Assured (and cedant if applicable)
- Limit
- Excess
- Any aggregate features
- Currency of policy
- Descriptions of reported claims
- Previously paid and reported outstanding amounts of reported claims

12/11/2016

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Appendix 2 – Asbestos reserves by cedant

English & American Asbestos Protection Summary by Principal										USD		
Pool	Principal	Tier	Exposure	Paid to date	Outstanding	Low IBNR	Medium IBNR	High IBNR				
Marine	ASHLAND OIL INC, USA	2	13,954,065	2,302	-	1,230,929	2,763,183	3,789,124				
Marine	A TLANTIC RICHFIELD (ARCO)	5	16,388,725	4,510	-	131,431	238,992	334,952				
Marine	BETHLEHEM STEEL CORPORATION	6	0	-	-	0	0	0				
Marine	CASTLE & COOKE	-	7,376,500	-	-	-	-	-				
Marine	DRAVO CORPORATION	-	7,160,495	19,513	-	-	-	-				
Marine	DRESSER INDUSTRIES, USA	1	19,694,700	12,204,269	-	-	-	-				
Marine	ERIE SAND & GRAVEL, USA	-	52,690	-	-	-	-	-				
Aviation	ENGLISH & AMERICAN AVIATION POOL (AGENCY)	1	2,250,000	-	-	-	-	-				
Marine	FAR EAST LEVINGSTON S/B	-	0	-	-	-	-	-				
Marine	J H MINNET - LINESLIP	6	3,366,000	-	-	27,453	61,700	89,602				
Marine	KERR MCGEE CORPN	5	1,880,613	3,415	-	6,240	15,391	22,154				
Marine	LG SUN COMPANY INC/SUN OIL CO	4	239,520	-	-	6,080	23,952	37,552				
Marine	Multi	6	3,683,542	2,044,755	-	-	-	-				
Marine	OCCIDENTAL PETROLEUM CORPN, USA	4	5,247,752	-	-	34,786	84,640	121,430				
Marine	PENNZOIL	5	209,200	-	-	842	2,615	3,858				
Marine	RJ REYNOLDS TOBACCO CO	-	3,267,553	-	-	-	-	-				
Marine	SANTA FE INTL	-	4,914,800	-	-	-	-	-				
Marine	STEWART WRIGHTSON	6	113,000	-	-	3,192	6,900	9,598				
Marine	TRANSOCEANIC CABLE SHIP CO	5	495,600	-	-	16,325	35,400	51,495				
Marine	TRIPLE A MACHINE SHOP, USA	3	165,600	-	-	76,212	165,600	230,673				
Marine	TWO R DRILLING	5	61,445	-	-	25,608	61,445	87,852				
Marine	W H MCGEE & CO INC (AGENCY)	-	374,425	-	-	-	-	-				
Sub - Total**			90,896,225	14,278,763	0	1,559,098	3,459,218	4,778,290				
Scheme/Settled Policies:												
Marine	AVONDALE SHIPYARDS INC	3	7,400,000	-	-	-	-	-				
Aviation	BOEING COMPANY	4	2,264,900	1,087	3,149	-	-	-				
Marine	COASTAL CORPORATION	5	8,855,800	2,813	-	-	-	-				
Marine	CONOCO INC., USA	5	4,580,136	71,839	-	-	-	-				
Marine	CSX TRANSPORTATION INC, USA	1	11,756,225	207	-	-	-	-				
Marine	FLINTKOTE COMPANY/GENSTAR CORPORATION, USA	1	424,600	-	-	-	-	-				
Marine	HONEYWELL INTERNATIONAL INC (EX ALLIED SIGNAL)	1	11,825,545	8,250,159	3,575,262	-	-	-				
Marine	HOPEMAN BROTHERS INC	3	841,500	-	-	-	-	-				
Marine	MCDERMOTT INC/BABCOCK & WILCOX, USA	1	7,708,233	3,597,216	-	-	-	-				
Aviation	MCDONNELL DOUGLAS CORP	4	7,014,014	1,337	1,709	-	-	-				
Marine	NEWPORT NEWS SHIPBUILDING & DRY DOCK CORP	4	2,000,000	-	-	-	-	-				
Aviation	NORTHROP CORPORATION	N/A	42,423	0	-	-	-	-				
Marine	SHELL OIL CO, USA	4	12,621,245	17,410	-	-	-	-				
Marine	STANDARD OIL COMPANY INDIANA (AMOCO CORP)	3	4,775,176	2,802	-	-	-	-				
Marine	STANDARD OIL COMPANY (OHIO)	3	150,000	-	-	-	-	-				
Marine	SUNOCO INC, USA (EX SUN CO INC)	4	9,584,653	6,642	-	-	-	-				
Marine	TENNECO INC, USA	5	11,189,591	2,905	-	-	-	-				
Aviation	UNITED A/L	6	3,351,400	12,046	2,808	-	-	-				
Marine	US STEEL CORPORATION	6	8,700,000	16	85,395	-	-	-				
Total			205,981,666	26,245,242	3,668,313	1,559,098	3,459,218	4,778,290				

Appendix 3 – Pollution and Health Hazard reserves by cedant

Appendices

Pollution (including Health Hazards) Summary Results by Principal										USD
Pool	Principal	Paid to date	Outstanding	KPMG estimated Ultimate	Low IBNR	Medium IBNR	High IBNR			
Aviation	AIR CALIFORNIA	7,510	-	7,510	-	-	-	-	-	-
Marine	ALCOA (FKA)/ALUMINUM CO OF AM	274	-	274	-	-	-	-	-	-
Marine	AMERICAN NATURAL RESOURCES	1,278	-	1,278	-	-	-	-	-	-
Marine	BAYONNE INDUSTRIES	-	-	-	-	-	-	-	-	-
Marine	CABOT CORP	74,147	-	74,147	-	-	-	-	-	-
Marine	COASTAL CORPORATION..	234	-	234	-	-	-	-	-	-
Marine	COLUMBIA GAS SYSTEM	1,759	-	1,759	-	-	-	-	-	-
Marine	COLUMBIA GAS, USA	2,875	-	2,875	-	-	-	-	-	-
Marine	CONSOLIDATED NATURAL GAS	-	-	-	-	-	-	-	-	-
Aviation	DELTA A/L	3,971	1,492	5,463	-	-	-	-	-	-
Marine	DELTA COMMODITIES COMBUSTION	-	-	-	-	-	-	-	-	-
Marine	DRAVO CORPORATION.	259	-	259	-	-	-	-	-	-
Marine	EXXON CORPORATION, USA	106,728	-	106,728	-	-	-	-	-	-
Marine	GULF OIL CORP	12,130	-	12,130	-	-	-	-	-	-
Marine	KERR MCGEE CORP	172,278	-	172,278	-	-	-	-	-	-
Marine	LOCKHEED SHIFBUILDING	-	-	-	-	-	-	-	-	-
Marine	MARATHON OIL	39	-	39	-	-	-	-	-	-
Marine	NATIONAL STEEL AND SHIFBUILDING	-	-	-	-	-	-	-	-	-
Aviation	NORTHWEST A/L	80	254	778	318	445	572	-	-	-
Marine	NORTHWEST MARINE TERMINAL	-	-	-	-	-	-	-	-	-
Marine	PITTSBURGH CO, USA	53,968	42,732	171,480	53,415	74,780	96,146	-	-	-
Aviation	POLYGON INS CO LTD, GUERNSEY	-	-	-	-	-	-	-	-	-
Marine	PORT OF OAKLAND	159	-	159	-	-	-	-	-	-
Marine	PORTLAND, PORT OF	-	44,050	786,096	720,020	742,045	763,678	-	-	-
Marine	QUINTANA PETROLEUM CORP	-	-	-	-	-	-	-	-	-
Marine	SCHLUMBERGER OFFSHORE SERVICE	-	-	-	-	-	-	-	-	-
Marine	SEDGWICK GROUP	-	-	-	-	-	-	-	-	-
Marine	TAYLOR ENERGY COMPANY INC, US	-	-	-	-	-	-	-	-	-
Marine	TELEDYNE INC	-	-	-	-	-	-	-	-	-
Marine	TEXACO INC, USA	5,045	-	5,045	-	-	-	-	-	-
Marine	TEXAS GAS RESOURCES CORPORA	-	-	-	-	-	-	-	-	-
Marine	TODD SHIPYARDS CORPORATION	-	16,255	44,702	20,319	28,447	36,574	-	-	-
Aviation	TRANS WORLD A/L (TWA)	159	-	159	-	-	-	-	-	-
Aviation	WESTERN A/L	4	-	4	-	-	-	-	-	-
Marine	ZIDELL MARINE CORPORATION	-	-	-	-	-	-	-	-	-
Total		442,899	104,763	1,393,400	794,071	845,717	896,970			

Appendix 4 – Other reserves by cedant

Other summary by Principal Description		KPMG estimated ultimate			USD		
Principal Description	Paid to date	Outstanding	Low IBNR	Medium IBNR	High IBNR		
4 GROUPS OF INDIAN CO'S	970	1,495	-	747	1,495		
A F A T	-	-	-	-	-		
A G I P	236	-	-	-	-		
A I C A GROUP	3	-	-	-	-		
ABU DHABI HELIC	132	-	-	-	-		
AFRICAN INS CO LTD, THE, SUDAN	-	1,559	-	780	1,559		
AGRICOLA COMERCIAL SA, EL SALVADOR	4,611	-	-	-	-		
AIR CALIFORNIA	0	1,166	-	583	1,166		
AIR CANADA	2,666	-	-	-	-		
AIR FLORIDA	1,741	-	-	-	-		
AIR MALTA	2,092	-	-	-	-		
AL AHLEA INS CO SAK, KUWAIT	79	-	-	-	-		
AL AHLIA INS CO (JORDAN) LTD	183	-	-	-	-		
AL CHARK INS CO, CAIRO, EGYPT	221	-	-	-	-		
AL NISR INS CO SAL BEYROUTH	2,635	-	-	-	-		
AL SAUDIA INS & REINS CO, SAUDI ARABIA	-	-	-	-	-		
ALBION INS CO (GERMANY)	2,357	-	-	-	-		
ALEXANDER HOWDEN REIN BROKERS LIMITED PR	2	596	-	298	596		
ALIA ROYAL JORDANIAN	5,075	-	-	-	-		
ALIANCA SEGURADORA, PORTUGAL	155	-	-	-	-		
ALSTHOM-ATLANTIQUE	574	-	-	-	-		
AMALGAMATED METAL CORPN	1,979	-	-	-	-		
AMERICAN HOME ASSURANCE CO, NEW YORK, I	4,546	-	-	-	-		
AMERICAN INTERNATIONAL GROUP, NEW YORK, I	-	-	-	-	-		
AMERICAN INTERNATIONAL GRP (AIG)	-	-	-	-	-		
AMERICAN STEAMSHIP OWNERS MUTUAL P&I AS	-	7,568	-	3,784	7,568		
ANSETT TRANSPORT INDUSTRIES	9	16,657	-	8,329	16,657		
AONI (EX HOGG ROBINSON) - LINESLIP	8,982	-	-	-	-		
APEX OIL	53	-	-	-	-		
ARAB UNION REINS CO, SYRIA	1,173	-	-	-	-		
ARROW AIR	324	-	-	-	-		
ASEGURADORA MEXICANA SA - (ASEMEX), MEX -	66	-	-	-	-		
ASS DU GROUPE DE PARIS - (AGP), FRANCE	955	-	-	-	-		
ASSITALIA - LE ASSICURAZIONI D'ITALIA, ITALY	82	-	-	-	-		
ASSURANCEFORENINGEN GARD	18,865	13,915	-	6,958	13,915		
ATLANTIC MUTUAL INS CO, NEW YORK, NY	39	618	-	309	618		
ATOFINA PETROCHEMICALS	194	-	-	-	-		
AUSTIN ROVER GROUP	3,367	-	-	-	-		
B I C C	29	-	-	-	-		
B T R	740	-	-	-	-		
BAGGERMAATSCHAPPIJ HOLLAND B.V	70	-	-	-	-		
BAIN CLARKSON	7,157	1	-	1	1		
BALLAST NEDAM	120	-	-	-	-		
BANGKOK INS CO LTD, THAILAND	404	-	-	-	-		
BANKERS INS CORP, CHICAGO	736	-	-	-	-		
BELL GEORGE	42	-	-	-	-		
BENDIX CORP	970,499	-	-	-	-		
BERISFORD MOCA TTA & CO	3,060	-	-	-	-		

Appendix 4 – Other reserves by cedant (cont...)

Principal Description	Paid to date	Outstanding	KPMG estimated			High IBNR
			ultimate	Low IBNR	Medium IBNR	
BENSFORD MOCATTA L/SLIP	9	-	9	-	-	-
BF GOODRICH INC	608	87	-	-	-	-
BOEING COMPANY	8	-	696	-	-	-
BR AIRWAYS BRD ETC	14,107	-	8	-	-	-
BRINKS MAT	20,225	1,780	14,107	-	-	-
BRITISH MARINE MUTUAL INS ASSOC	569	-	22,895	-	890	1,780
BRITISH SHIPBUILDERS	54	-	569	-	-	-
CMB	4,242	-	54	-	-	-
C T BOWRING LINESLIP - USE CEDANT 000450	152,529	6,199	13,540	-	3,099	6,199
C T BOWRING LINESLIP FACILITY	66	14,063	173,623	-	7,031	14,063
CABLE & WIRELESS	-	-	66	-	-	-
CALEDONIAN A/W	-	3,819	5,729	-	1,910	3,819
CANADIAN NATIONAL RAILWAYS	134	-	134	-	-	-
CANADIAN PACIFIC RAILROAD	15	-	15	-	-	-
CARRIERS INS CO, DES MOINES, IA	646	-	646	-	-	-
CASTLE & COOKE	779,840	-	779,840	-	-	-
CENTRAL AGENCY FOR JOINT FINANCING DEVEL	3	-	3	-	-	-
CENTRAL NATIONAL INS CO OF OMAHA, OMAHA	-	7,931	11,897	-	3,966	7,931
CENTRAL REINSURANCE CORPORATION	381	-	381	-	-	-
CESSNA ACFT CORP	-	-	-	-	-	-
CHINA A/L	1	-	1	-	-	-
CHRISTIE MANSON & WOODS	237	-	237	-	-	-
CHROMALLOY AMERICAN CORPN	224	-	224	-	-	-
CIE CENTRALE DE REASS- (ALGERIA RE), ALGER	551	-	551	-	-	-
CIE D'ASS MAITIMES AERIENNES ET TERRESTRE	349	-	349	-	-	-
COLOMBIANA HULL TREATY - USE CEDANT 0019	78	-	78	-	-	-
COLONIA BALTICA INSURANCE LTD (UK) (CHEVA	76	-	76	-	-	-
COLONIAL PENN	482	-	482	-	-	-
CONTINENTAL A/L	20,702	-	20,702	-	-	-
CONVEST ENERGY CORPORATION	268	-	268	-	-	-
CORREDURIA TECNICA ASEGURADORA	243	40	183	-	20	40
CORREDURIA TECNICA ASSEG SB CEDANT? 359€	4	-	4	-	-	-
CREDITO HIPOTECARIO NACIONAL DE GUATEMAL	-	-	-	-	-	-
CROWLEY MARITIME CORPN	10,837	-	10,837	-	-	-
CRUM & FORSTER GRP	2,392	330	2,888	-	165	330
DAMMERS & VAN DER HEIDE	82	-	82	-	-	-
DAVIES & NEWMAN HOLDINGS PLC	0	1,253	1,879	-	627	1,253
DE HAVILLAND CANADA	-	-	-	-	-	-
DEMINEK	62	-	62	-	-	-
DENHOLM	3,276	101	3,124	-	51	101
DENIZ SURVEY BUREAU	678	-	678	-	-	-
DEUTSCHER LUFTPOOL, GERMANY	24,105	5,423	32,240	-	2,712	5,423
DHIPAYA INS CO LTD, THAILAND	0	2,166	3,249	-	1,083	2,166
DOME PETROLEUM	1,236	-	1,236	-	-	-
DRAVO CORPORATION	65,505	-	65,505	-	-	-
DUNWAY	12,352	-	12,352	-	-	-
DUNAV REINSURANCE COMMUNITY	408	59	496	-	29	59
EGYPTIAN RENS CO, EGYPT	70	-	70	-	-	-
EMPLOYERS INS OF WA USAU A MUTUAL CO.	2,586	7,350	13,611	-	3,675	7,350
ENFIELD ROLLING MILLS	40	-	40	-	-	-

Appendix 4 – Other reserves by cedant (cont....)

Principal Description	KPMG estimated				High IBNR
	Paid to date	Outstanding	ultimate	Low IBNR Medium IBNR	
ERIE SAND & GRAVEL, USA	102	-	102	-	-
BRP/N MULTIMAR	899	-	899	-	-
ESMARK	0	2,613	3,919	1,307	2,613
ETHNIKI HELLENIC GENERAL INSURANCE COMPAN	2,000	-	2,000	-	-
EUROPEAN FERRIES	7,502	-	7,502	-	-
EVEREST OIL GROUP	201	-	201	-	-
EXALL WARREN DARBY	-	-	-	-	-
EXXON CORPORATION, USA	92,101	-	92,101	-	-
EXXON GRP	11,142	-	11,142	-	-
F I A T	134	-	134	-	-
FAIRCHILD INDUSTRIES	-	1,410	2,115	705	1,410
FEDERAL EXPRESS CORP	-	1,330	1,995	665	1,330
FERRYMASTERS LTD	783	-	783	-	-
FINCANTIERI GROUP	3,531	49	3,605	25	49
FIRST STATE INS CO, WILMINGTON, DE	2	-	2	-	-
FLINTKOTE COMPANY/GENSTAR CORPORATION,	7,687,032	-	7,687,032	-	-
FRONTIER A/L	933	-	933	-	-
G & C TOWING (BOSWORTH)	83	-	83	-	-
GALAXY A/L	0	2,737	4,105	1,369	2,737
GALT ARMSTRONG & KEMBLE	70	-	70	-	-
GENERAL INS CORP OF INDIA	6,707	4,403	13,311	2,201	4,403
GENERAL METALS OF TACOMA INC, USA	-	-	-	-	-
GENERALI FRANCE ASSURANCES (EX CONCORD -	219	-	219	-	-
GERLING-KONZERN ALLGEMEINE VERSICHERUNG -	0	4,269	6,403	2,134	4,269
GETTY OIL CO	3,981	-	3,981	-	-
GHANA REINS ORGANISATION, GHANA	-	-	-	-	-
GIBBS HARTLEY COOPER - LINESLIP	2,136	-	2,136	-	-
GIBBS SAGE	35	-	35	-	-
GILMAN INS BKRS	802	-	802	-	-
GULF COAST INSURANCE CO,	34,370	-	34,370	-	-
HALFORD SHEAR LINESLIP	43,949	-	43,949	-	-
HAWKER DE HAVILLAND LTD	-	9,142	13,714	4,571	9,142
HEATH C E	329	-	329	-	-
HELLENIC SHIP & AIRCRAFT INS CO, GREECE	285	-	285	-	-
HELLENIC SHIPYARDS	24,795	-	24,795	-	-
HIGHLANDS INS CO, HOUSTON, TX	-	1,593	2,390	797	1,593
HINTON HILL & COLES, UK	888	-	888	-	-
HOLLANDE SIGNA LAPARATEN	936	-	936	-	-
HOLMES/HULBERT AND COMPANY LTD	1,360	-	1,360	-	-
HOME INSURANCE COMPANY, NEW HAMPSHIRE	8,328	-	8,328	-	-
HONG KONG BANK GROUP	122	-	122	-	-
HONG KONG UNITED DOCKYARD	41,274	312	41,742	156	312
IBERIA (LINEAS AEREAS DE ESPANA)	-	19,710	29,565	9,855	19,710
IGI INS CO LTD - (EX INCOFR GENERAL INS), S A F T	65	-	65	-	-
INEX ADRIA (SEE ADRIA A/M)	0	6,555	9,832	3,278	6,555
INS CO OF NORTH AMERICA, PHIL., PA (EX ORMLUJ	121,077	45,401	189,178	22,700	45,401
INS CORP OF IRELAND, IRE - (IRISH BUSINESS OI	1,137	-	1,137	-	-
INSTITUTO DE REASEGUROS DO BRASIL (IR B), E	3,419	2,933	7,818	1,467	2,933
INSTITUTO NACIONAL DE REASEGUROS-(INDER),	470	-	470	-	-
INSURANCE CO. OF THE WEST INDIES, JAMAICA	193	-	193	-	-

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Appendix 4 – Other reserves by cedant (cont...)

Principal Description	Paid to date	Outstanding	KPMG estimated				High IBNR
			ultimate	Low IBNR	Medium IBNR	High IBNR	
INTERNATIONAL GROUP OF P & I ASSOC.	6,690	-	6,690	-	-	-	
IRANIAN INSURANCE POOL	330	-	330	-	-	-	
IRANIAN NATIONAL REINS POOL	83	-	83	-	-	-	
ISRAEL DISCOUNT BANK	145	-	145	-	-	-	
ISRAEL SHIPYARDS	163	-	163	-	-	-	
ITT CORP (INTERNATIONAL TELEPHONE & TELEGR)	-	-	-	-	-	-	
J H MINNET - LINESLIP	27,720	-	27,720	-	-	-	
J H MINNET LINESLIP	12	-	12	-	-	-	
JALIP (JOINT A/L INSURANCE PROGRAMME)	0	1,461	2,192	731	1,461	1,461	
JAPAN A/L	-	1,352	2,028	676	1,352	1,352	
JARDINE GLANVILL	328	-	328	-	-	-	
JAUCH & HUEBNER GMBH (A ON) - LINESLIP	41	-	41	-	-	-	
JENNER FENTON SLADE INSURANCE - L/SLIP, USE	-	2,796	4,194	1,398	2,796	2,796	
JLT COLBURN, FRENCH & KNEEN	9	-	9	-	-	-	
JOHNSON MATTHEY	399	-	399	-	-	-	
JORDAN FRENCH INS CO LTD, JORDAN	3,192	12,517	21,967	6,258	12,517	12,517	
KAUSLER G S	1,106	-	1,106	-	-	-	
KSSA (KLM/SWISSAIR/SAS/AUSTRIAN)	-	2,100	3,150	1,050	2,100	2,100	
KSSAF (KLM/SWISSAIR/SAS/AUSTRIAN/FINNAIR)	180	377	745	188	377	377	
KUWAIT INS CO SAK, KUWAIT	5,650	-	5,650	-	-	-	
L S O M	-	6,120	9,181	3,060	6,120	6,120	
LA PATERVAL	352	-	352	-	-	-	
LA SUIZA GENERAL BARCELONA	14	-	14	-	-	-	
LASMO (ULT) FLC	-	-	-	-	-	-	
LATINBROKER/LATIN INS CO'S	1,789	-	1,789	-	-	-	
LESLE & GODWIN	186,450	-	186,450	-	-	-	
LIBYA INS CO, LIBYA	565	-	565	-	-	-	
LION OF AFRICA INSURANCE CO, (NIGERIA)	2	-	2	-	-	-	
LONDON MARKET CLAIMS SERVICES (LMCS)	-	-	-	-	-	-	
LOWNDES LAMBERT	4,208	-	4,208	-	-	-	
LTV CORP	-	9,065	9,065	-	-	-	
LUFTHANSA	1,205	1,689	3,739	845	1,689	1,689	
LUMSDEN ANTHONY	20	-	20	-	-	-	
L'UNION NATIONALE	115	3,286	5,045	1,643	3,286	3,286	
M.T.S.A MADRID.	6	-	6	-	-	-	
MACANDREWS & CO	2,077	-	2,077	-	-	-	
MACMILLAN BLOEDEL	122	-	122	-	-	-	
MALASIN A/L	217	-	217	-	-	-	
MALAYAN OVERSEAS INS CORP, TA I WAN	0	-	0	-	-	-	
MALAYSIA NATIONAL INS SDN BHD, MALAYSIA	615	2,401	4,217	1,201	2,401	2,401	
MALAYSIAN INTERNATIONAL SHPG CORPN (MISC)	985	1,778	3,652	889	1,778	1,778	
MANKOADZE FISHERIES	16	-	16	-	-	-	
MARCO RICH & CO LTD	32	-	32	-	-	-	
MAREB YEMEN INS CO	1	-	1	-	-	-	
MARINE INS CO LTD (NEW ZEALAND)	29	-	29	-	-	-	
MARINE OFFICE OF AMERICA CORP (MOA C)	102,913	278,199	520,211	139,099	278,199	278,199	
MARITIME OVERSEAS CORPN	2,068	-	2,068	-	-	-	
MARLBOROUGH FINE ART (LONDON)	384	-	384	-	-	-	
MARSH & MCLENNAN	26	-	26	-	-	-	
MODERMOTT INC/BABCOCK & WILCOX, USA	788,584	-	788,584	-	-	-	

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Appendix 4 – Other reserves by cedant (cont....)

Appendices

Principal Description	Paid to date	Outstanding	KPMG estimated			High IBNR
			ultimate	Low IBNR	Medium IBNR	
MCDONNELL DOUGLAS CORP	1,152	4,908	6,060	-	-	-
MCO (MIDDLE EAST A/L AIR LIBAN SAL)	160	-	160	-	-	-
MEDITERRANEAN INS & REINS CL LTD	69	17	43	-	9	17
MEDITERRANEAN RE	3	-	3	-	-	-
MERZARIO ANDREA	188	-	188	-	-	-
METROPOLITAN STEVEDORE CO	6,120	-	6,120	-	-	-
METROPOLITAN MARINE & GENERAL INS CO.	324	-	324	-	-	-
MIDDLE SEA INS CO LTD, MALTA	168	5	177	-	3	5
MIDWAY A/L	411	-	411	-	-	-
MILLER TR, USA	96,076	-	96,076	-	-	-
MIRO & ASSOCIATES	12,610	-	12,610	-	-	-
MISR INSURANCE CO SAE, EGYPT	151	8,350	12,676	-	4,175	8,350
MOBIL, USA	292,742	-	292,742	-	-	-
MOLLER A. P. DENMARK	3,441	263	5,682	-	147	293
Mutiua Nacional de Previsión de Riesgo MAI	1,422,528	71,489	1,529,762	-	35,745	71,489
MUTUAL MARINE OFFICE INC, NEW YORK, NY	1,665	402	2,268	-	201	402
MUTUALIDAD DE SEGUROS DEL INSTITUTO NAOK	534	-	534	0	-	-
MUTUELLE PARISIENNE DE GARANTIE, FRANCE	0	-	0	-	-	-
N C R CORPN	3,316	-	3,316	-	-	-
NACIONAL DE SEGUROS Y REASEGUROS SA, BC	3,458	-	3,458	-	-	-
NACIONAL HISPANICA SA, SPAIN	39,606	9,388	53,688	-	4,694	9,388
NAVIGA CIE INVERSOISE D'ASSURANCE (BELGI)	72	-	72	-	-	-
NEW JUBILEE INSURANCE CO LTD	82	-	82	-	-	-
NIGERIA REINSURANCE CORPORATION OF NIGER	46	-	46	-	-	-
NISSAN FIRE TREATY PARTICIPANTS	66	1,655	2,548	-	823	1,655
NORDISKA FLYGTRAFORSKRING	2	-	2	-	-	-
NORTHEASTERN MARINE INS CO LTD, JAPAN	381	30	427	-	15	30
NORTHERN ENGINEERING INDUSTRIES	305	1,520	2,280	-	760	1,520
NORTHERN INTERNATIONAL A/W	0	-	0	-	-	-
NORTHROP CORPORATION	2,391	5,494	8,241	-	2,747	5,494
NORTHUMBERLAND GEN INS CO, TORONTO	0	-	0	-	-	-
NORTHWEST A/L	1,570	607	2,460	-	304	607
NORTHWEST MARINE TERMINAL	417	-	417	-	-	-
NORWICH UNION GRP	331	-	331	-	-	-
OCEAN MARINE INDEMNITY COMPANY	-	-	-	-	-	-
OCEANUS MUTUAL UWMTG ASSOON	52,301	-	52,301	-	-	-
OHAIMA INDEMNITY COMPANY	37,240	-	37,240	-	-	-
OIC RUN-OFF LTD	-	-	-	-	-	-
OIL INS LTD, USA	65,417	-	65,417	-	-	-
OMAN SULTANATE	106	-	106	-	-	-
ORIENT LEASING	105	-	105	-	-	-
ORIENTAL FIRE & MARINE INS CO LTD, SOUTH KC	1,211,163	-	1,211,163	-	-	-
ORION UNDERWRITING GROUP	-	-	-	-	-	-
PACIFIC NAV'GN CO	3	-	3	-	-	-
PAKISTAN INS CORP, PAKISTAN	2,795	-	2,795	-	-	-
PAN AMERICAN WORLD A/W (PAN AM LIQUIDATI)	1,845	10,757	14,290	-	5,378	10,757
PANAMA MARINE	0	-	0	-	-	-
PEPSI-MARAVEN	0	-	0	-	-	-
PHIBRO CORPN	2,712	-	2,712	-	-	-
PIEDMONT AVIATION INC	1,178	2,995	4,498	-	1,498	2,965
PITTSBURY CO, USA	201	-	201	-	-	-
PLESSEY PLC	215	-	215	-	-	-
PLUMIER JOHN	518	457	1,677	-	228	457
POLARIS MARINE AGENCY	215	-	215	-	-	-
POLYSAR	0	-	0	-	-	-
PONTIKOS SHFG AGENCIES	87	-	87	-	-	-
PORTLAND, PORT OF	2,112	834	3,364	-	417	834
PRECAMANTWERP	109	-	109	-	-	-
PRESTIGE ASSURANCE CO NIGERIA	3	-	3	-	-	-
PROTEA ASS CO LTD, S AFRICA	1,577	-	1,577	-	-	-
PROTEUS INSURANCE CO, LTD	453	-	453	-	-	-
QANTAS A/W LTD	1,892	-	1,892	-	-	-
QATAR INSURANCE CO, DOHA	625	4,679	7,644	-	2,340	4,679
R C A CORPN	45	-	45	-	-	-
R.I.C. CO, TURKEY (RAY SIGORTA AS)	75	469	704	-	235	469
REALSEGURADORA NACIONAL DE VENEZUELA, V	0	-	0	-	-	-
REED STEINHOUSE - LINESLIP FACILITY	201	-	201	-	-	-
REEFER EXPRESS LINES	343	-	343	-	-	-

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Appendix 4 – Other reserves by cedant (cont...)

Appendices

Principal Description	Paid to date	Outstanding	KPMG estimated			High IBNR
			Low IBNR	Medium IBNR	High IBNR	
REPUBLIC A/L	-	-	-	-	-	-
RELUNIONAERIENNE L.A. FRANCE - EX GROUPEME	40	-	-	-	-	-
ROELOFS H J ASSURADEURENS	18,967	-	40	-	-	-
ROYAL AIR MAROC	91	84	18,967	42	84	-
S N C INC	5,380	-	5,380	-	-	-
SADHARAN BMA CORPORATION	598	1,663	3,093	832	1,663	-
SAN SIGORTA	-	7,089	10,634	3,545	7,089	-
SAUDI ARABIAN A/L (SAUDIA)	1,635	-	1,635	-	-	-
SCANDUTCH	905	-	905	-	-	-
SCOTTIA SAFARI	361	-	361	-	-	-
SEA-LAND SERVICE INC, USA	606	-	606	-	-	-
SEA SCOPE INS SERVICES	-	-	-	-	-	-
SEDCO INC	12,227	306	12,227	153	306	-
SEDGWICK FORBES LINESLP	3,177	-	3,177	-	-	-
SEDGWICK GRP (ON BEHALF OF CLIENTS)	123,804	-	123,804	-	-	-
SEGUROS CARACAS CA VENEZOLANA, VENEZU	0	-	0	-	-	-
SEINE ET RHONE, (INC OCEANIDE REUNIES)	238	-	238	-	-	-
SHELL OIL CO, USA	28,768	-	28,768	-	-	-
SHINDONGAH FIRE AND MARINE INSURANCE CO I	14	-	14	-	-	-
SHIPPING & TRADING AGENCIES	4,523	15,728	28,114	7,864	15,728	-
SIGNAL COMPANIES	839	1,061	2,430	530	1,061	-
SINGAPORE AVIATION & GENERAL INS CO PTE L	91	-	91	-	-	-
SOC D'ASS MUTUELLE DE L'ARMEMENT A LA PEC	47	-	47	-	-	-
SOCIETA IMPORTAZIONE BESTAIME ALLEVAIMEN	90	-	90	-	-	-
SOCIETA ITALIANA DI ASSICURAZIONI - (SIDA), I	103	-	103	-	-	-
SOCIETE CENTRALE DE REASS SA, MOROCCO	77	-	77	-	-	-
SOCIETE NATIONALE D'ASS - (SONAS), ZAIRE	37	-	37	-	-	-
SOCIETE TUNISIENNE D'ASS ET DE REASS, TUNIS	178	2,347	3,698	1,173	2,347	-
SOTHEY & CO	2	-	2	-	-	-
SOUTHERN OIL INS LTD (SOIL)	63,670	-	63,670	-	-	-
SSA (SWISSAIR/SCANDINAVIA/AUSTRIAN)	-	-	-	-	-	-
ST PAUL FIRE & MARINE INSURANCE CO.	309	-	309	-	-	-
ST PAUL REINSURANCE CO LTD (UK) (EX MERCUJ	421	-	421	-	-	-
STANDARD COMPENSATION ACT LIABILITY ASSY	21,781	2,276	25,195	1,138	2,276	-
STANDARD MARINE INS. BERMUDA	25	-	25	-	-	-
STANDARD OIL COMPANY INDIA NA (AIMOCO COF	8,575	-	8,575	-	-	-
STATE OF ALASKA MASTER INS PROGRAMME	1,787	-	1,787	-	-	-
STEAMSHIP MANAGEMENT CORPN	341	-	341	-	-	-
STEWART WRIGHTSON	44	-	44	-	-	-
SUNDERLAND STEAMSHIP P & I ASSOC	9,214	18,711	37,281	9,356	18,711	-
SUNOCO INC, USA (EX SUN CO INC)	3,058	-	3,058	-	-	-
SWISS RE AMERICA INS CORP	1,204	1,006	305	503	1,006	-
SWISS RE ITALIA SPA	137	-	137	-	-	-
TAIPEING INS CO LTD, TAIWAN	23	-	23	-	-	-
TAISHO MARINE & FIRE INS CO OF AMERICA, NY	360	-	360	-	-	-
TAIWAN FIRE & MARINE INS CO LTD, TAIWAN	-	4,692	7,038	2,346	4,692	-
TALBOT, BIRD & CO INC, NEW YORK, NY (AGENT	3,087	1,863	5,882	932	1,863	-
TAMFIMEX OIL	38	-	38	-	-	-
TELEDYNE INC	-	-	-	-	-	-

Other summary by Principal Description

USD

Appendix 4 – Other reserves by cedant (cont...)

Appendices

Principal Description	Paid to date	Outstanding	KPMG estimated			High IBNR
			ultimate	Low IBNR	Medium IBNR	
TEXAS AIR CORP	7,934	-	7,934	-	-	-
THROUGH TRANSPORT MUTUAL INS ASSN LTD, £	171	-	171	-	-	-
TIGER INTERNATIONAL (FLYING TIGERS)	-	4,016	6,024	-	2,008	4,016
TOBACCO INS CO LTD	0	-	0	-	-	-
TOURNAIR AIR TRANSPORT	36	-	36	-	-	-
TOWER INSURANCE LTD	605	-	605	-	-	-
TRANS AUSTRALIA A/L (TAA) (SEE AUSTRALIAN)	195	-	195	-	-	-
TRANS WORLD A/L (TWA)	1,224	22	1,257	-	11	22
TRANSARABIAN SHPG	162	-	162	-	-	-
TRANSIT CASUALTY CO, LOS ANGELES, CA	84	-	84	-	-	-
TRANSCOCEANIC CABLE SHIP CO	187	-	187	-	-	-
TRANSPORT INDUSTRIES INS CO LTD, AUSTRALIA	176	290	610	-	145	290
TRANSPORTVERZEKERINGS MAATS	3,934	-	3,934	-	-	-
TRIPLE A MACHINE SHOP, USA	8,566	822	7,334	-	411	822
TRYGG HANSA INS CO LTD (SWEDEN)	216	-	216	-	-	-
TUNIS REINS (SOC TUNISIENNE DE REAS)	23	-	23	-	-	-
TURECAIMO COASTAL & HARBOUR TOWING COR	426	-	426	-	-	-
U.M.S. GENERALI MARINE	208	-	208	-	-	-
UBEMIN.V.	595	-	595	-	-	-
UNDERWRITERS MARINE SERVICES	6,068	-	6,068	-	-	-
UNION OF ANTWERP STEVEDORES	10,154	-	10,154	-	-	-
UNITAS CLUB OSLO	7	-	7	-	-	-
UNITED A/L	17,661	62	17,753	-	31	62
UNITED MIZRAHI BANK	6,318	-	6,318	-	-	-
UNITED STATES FIRE INS CO.	3	-	3	-	-	-
UPALI (USA) INC	34,440	-	34,440	-	-	-
UPPER LAKES SHPG, CANADA	946	-	946	-	-	-
VANOL INTERNATIONAL	225	-	225	-	-	-
VESTA SKADFORSKIRINGSSEL-SKAFET A/S, INC	81	-	81	-	-	-
W.H.MCGEE & CO INC (AGENCY)	480	-	480	-	-	-
WARBA INS CO SAK, KUWAIT	50	-	50	-	-	-
WESTERN A/L	429	-	429	-	-	-
WFD COVER (WILLIS FABER)	39,487	-	39,487	-	-	-
WIEN AIR ALASKA	1	-	1	-	-	-
WILDENSTEN & CO LTD	513	-	513	-	-	-
WILLIS FABER AND DUNAS LTD	11,104	-	11,104	-	-	-
WILLIS FABER GRP	19	-	19	-	-	-
WILTON-FUENCOORD	670	-	670	-	-	-
WINDWARD SHPG	30	-	30	-	-	-
WIM H MCGEE & CO INC (AGENCY)	45	-	45	-	-	-
YEMEN A/W (YEMENIA)	-	-	-	-	-	-
Total	15,024,869	704,520	16,074,619	-	345,230	690,459

USD

Exposure based reserving

In a standard reserving exercise claims are arranged in cohorts of accident or underwriting year and are projected to their ultimate values for each cohort, based on the past pattern of how claims are paid or incurred. This methodology works well when there is a fairly stable and predictable claim payment/settlement pattern. However, for some claim types this is not the case because the pattern of claim payment or reporting does not depend on the development delay from the underwriting year but is more dependent on other issues e.g. current legal issues. In this case an alternative approach is to project the ultimate claims by investigating the exposure of the policies in the portfolio being projected.

In particular, when modelling US asbestos, the underlying insureds (for direct insurance and reinsurance but not retrocession business) are tiered according to the amount of claims made or expected to be made on these organisations. For example, an auto-parts manufacturer, Federal Mogul has significant asbestos related exposure and is classed as a Tier 1 insured. With each tier we have assigned an average amount of loss size expected from the companies that are allocated to that tier, for example, for Tier 1 we expect the claims to exhaust all insurance coverage hence the loss size is infinite. Finally, to determine the insurer's expected ultimate claims the tier values are applied to the policy terms i.e. excess, limit and signed line.

Benchmarking

KPMG have access to a wide variety of market data, and have developed views of the likely developments and performance of various lines of business with reference to our experience across the insurance market. We make use of this proprietary data to obtain benchmarks for lines of business which are relatively immature and where there is insufficient historical information to form an appropriate judgement based on the data alone.

Appendix 6 – Glossary of Terms Used

Proprietary abbreviations

Cephas - the name of the system which records underwriting and claims information, replacing the previous system known as Slipstream London Market Claim Services ("LMCS") - an administrative body who, among other responsibilities, collect and process claims information from attorneys representing subscribing members from the London Market

Actuarial terminology

Agreed but unpaid - those liabilities for which payment has been agreed as provided by the Scheme Administrator. The term 'Agreed liabilities' is also used to describe this term

Paid - the claim amounts actually paid together with agreed but unpaid claims as shown on EAIC's systems (including Cephas and financial ledger paid information provided by the Scheme Administrator)

O/S (Outstanding or case reserves) - notified case reserves recorded on EAIC's systems

Incurred But Not Enough Reported ("IBNER") - the future deterioration in claims already reported to EAIC beyond that allowed for in the O/S case reserves

Pure IBNR - the amount of claims incurred on policies that is not known to EAIC

Incurred But Not Reported ("IBNR") - pure IBNR plus IBNER

Our best estimate should be interpreted as the expected value of a range of possible outcomes for total liabilities.

**IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION**

Before the Honourable Mr[s] Justice [•]

Dated this [•] day of [•] 2013

**IN THE MATTER OF
ENGLISH & AMERICAN INSURANCE COMPANY LIMITED**

AND

IN THE MATTER OF THE TRUSTEE ACT 1925

BETWEEN

(1) JOHN MITCHELL WARDROP

(2) MICHAEL STEVEN WALKER

**(in their capacity as trustees of a trust declared on 29th May 2003
by Anthony James McMahon, Thomas Alexander Riddell
and the Institute of London Underwriters)**

Claimants

DRAFT ORDER

UPON the application of the Claimants (the "Trustees") by Part 8 Claim Form dated [•]
pursuant to section 57 of the Trustee Act 1925

AND UPON hearing counsel for the Claimants

AND UPON reading the Witness Statement of the First Claimant

AND UPON the Court being satisfied that the transaction referred to hereunder is expedient but cannot be effected without the assistance of the Court by reason of the wording of clause 2.2 of the relevant trust instrument

IT IS ORDERED that:

1. The Trustees shall hereby have conferred on them the power to apportion the trust fund held by the Trustees on the terms of the trust declared on 29th May 2003 by Anthony James McMahon, Thomas Alexander Riddell and the Institute of London Underwriters (the "**Trust Fund**" and the "**Trust Deed**") so that from the whole of the present Trust Fund:

- (1) assets [to the value of [x] percentage of the Trust Fund / from the Trust Fund to the value of £[x] and US\$[x]] as at the date of this Order ("**Apportioned Fund A**") may be apportioned by the Trustees so as to be held on the trusts set out in the Trust Deed subject to this Order for the benefit of those Beneficiaries (as defined in the Trust Deed) whose claims are as at the date hereof subject to the Scheme of Arrangement sanctioned by the High Court and with an effective date of 12 October 2010 which is annexed hereto at Annex 1 (the "**Apportioned Fund A Beneficiaries**" and the "**Closing Scheme**" respectively) and
- (2) the balance of the assets of the Trust Fund (the "**Reserve Fund**") may be apportioned by the Trustees so as to be held on the trusts set out in the Trust Deed subject to this Order for the benefit of those Beneficiaries whose claims are as at the date hereof not subject to the Closing Scheme because their claims are excluded from it by reason of their being entitled under an irrevocable letter of credit issued in their favour by Marsh & McLennan Companies Inc as described in the First Claimant's Witness Statement (the "**Reserve Beneficiaries**").

2. Upon and following such apportionment taking place:

- (1) Payments shall be made from Apportioned Fund A to the Apportioned Fund A Beneficiaries only after the Trustees are satisfied that all liabilities of EAIC to the Apportioned Fund A Beneficiaries have become Established Liabilities, as defined by the Trust Deed, (or the equivalent in the event of the winding up of EAIC) or have ceased to be liabilities of EAIC to Apportioned Fund A Beneficiaries, whereupon Apportioned Fund A shall, after payment of or allowance for all costs, charges, expenses and disbursements, be distributed amongst the Apportioned Fund A Beneficiaries *pari passu*.
- (2) Payments shall be made from Reserve Fund to the Reserve Fund Beneficiaries only after the Trustees are satisfied that all liabilities of EAIC to the Reserve Fund Beneficiaries have become Established Liabilities, as defined by the Trust Deed, (or the equivalent in the event of the winding up of EAIC) or have ceased to be liabilities of EAIC to Reserve Fund Beneficiaries, whereupon the Reserve Fund shall, after payment of or allowance for all costs, charges, expenses and disbursements, be distributed amongst the Reserve Fund Beneficiaries *pari passu*.

Alternatively:

1. The Trustees shall hereby have conferred on them power in relation to the trust fund held by the Trustees on the terms of the trust declared on 29th May 2003 by Anthony James McMahon, Thomas Alexander Riddell and the Institute of London Underwriters (the "**Trust Fund**" and the "**Trust Deed**") to make interim payments from the Trust Fund to those Beneficiaries whose claims are as at the date hereof subject to the Scheme of Arrangement sanctioned by the High Court and with an effective date of 12 October 2010 which is annexed hereto at Annex 1 (the "**Closing Scheme Beneficiaries**" and the "**Closing Scheme**" respectively) notwithstanding that certain Relevant Liabilities have not either become Established Liabilities or ceased to be Relevant Liabilities (in each case as defined in the Trust Deed), subject to the following:

(1) The Trustees shall make such payments only once they are satisfied that all liabilities of EAIC to the Closing Scheme Beneficiaries have become Established Liabilities as defined by the Trust Deed (or the equivalent in the event of the winding up of EAIC) or have ceased to be liabilities of EAIC to such Beneficiaries; and

(2) The Trustees shall retain a sum of £[x] and US\$[x] to meet the claims of any other Beneficiaries who are found hereafter to have Established Liabilities as defined by the Trust Deed. In the event that such claims do not arise or do not exhaust such retained fund, the balance thereof shall be distributed amongst all Beneficiaries with valid claims *pari passu* pursuant to the terms of the Trust Deed, subject to any further order of the Court.

Re English & American Insurance Company Limited

OPINION

1. I am asked to provide this Opinion to the two trustees of a trust which has arisen in the course of the administration under Schemes of Arrangement of an insolvent insurance company, English & American Insurance Company Limited ("EAIC").
2. It is intended that this Opinion will assist the trustees in determining whether to make an application to the High Court pursuant to section 57 of the Trustee Act 1925 and, if the trustees do determine to bring such an application, it is also intended that this Opinion will be placed before the Court as part of the materials in support of the application.

The factual background

3. The relevant factual background is well known to the trustees, who are also administrators of the Schemes of Arrangement. In addition, I understand that if an application is made to the Court in due course, a detailed factual affidavit will be presented, most likely from Mr John Mitchell Wardrop, one of the trustees and a partner in KPMG LLP ("KPMG"). I shall not, therefore, reiterate the full factual background in this Opinion. The key elements of the background for the purposes of the legal analysis contained herein are as follows.

The Schemes of Arrangement

4. On 19 March 1993, EAIC acting by its directors presented a petition for its insolvent winding up and provisional liquidators, being two partners in KPMG, were appointed.
5. On 8 February 1995, a Scheme of Arrangement under s. 425 of the Companies Act 1985 became effective, whereby EAIC continued in run-off and was to make payments to creditors pro rata to their agreed claims, which were labelled "Established Scheme Liabilities" (the "Original Scheme"). It was later amended with an effective date of 31 August 2000 (from when it was labelled the "Run-Off Scheme"). It was further adjusted

with an effective date of 12 October 2010, when a "Closing Scheme" took effect. By the Closing Scheme (1) a bar date of 11 April 2011 for the submission of claims and (2) a "once and for all" valuation of all EAIC's remaining liabilities (including contingent and prospective liabilities) were imposed on all potential policy-holders' claims, with the exception of one specific category of policies, which is discussed below.

6. The administrators of the schemes are now working towards the payment of a final dividend to all eligible creditors and hence the conclusion of EAIC's passage through the insolvency process. Very considerable sums have been involved in that process: I am instructed that as at January 2013, for instance, around US\$322m had been paid out to creditors under the Schemes.

The Trust

7. EAIC was a member of the Institute of London Underwriters ("the ILU") for a number of years. In that period, EAIC's holding companies or former holding companies, including Marsh & McLennan Companies, Inc ("**Marsh Mac**"), English & American Group Plc ("**Group**") and English & American Insurance Holdings Plc ("**Holdings**"), issued guarantees addressed to the ILU in relation to policies signed and issued on EAIC's behalf by the ILU.
8. Group and Holdings also became insolvent in 1993. Under their schemes of arrangement, they paid £9,783,906 to the then scheme administrators of EAIC, which, on the terms of a trust instrument executed on 29 May 2003 between the then scheme administrators and the ILU (the "**Trust Instrument**"), the scheme administrators were required to hold (together with accrued income) on trust for the beneficiaries of the guarantees given to the ILU by Group and Holdings (the "**Trust**").
9. The intent behind the establishment of the Trust was obviously to ensure that those policy holders intended to benefit from the guarantees obtained a material benefit from them notwithstanding Group's and Holdings' insolvency. The ILU in effect extracted that benefit from the scheme administrators of Group and Holdings by obtaining the payment of £9,783,906 as the price for the release of the guarantees issued by those companies. That cash benefit was then to be sheltered, until it could be paid out, in a segregated trust fund just for them. Hence they would receive their appropriate dividend from the EAIC estate along with all other policy holders but would also receive an additional payment from the trust fund on top.

10. On the terms of clause 2.2 of the trust instrument:

"... payments shall be made to Beneficiaries only after the Trustees are satisfied that all Relevant Liabilities have become Established Liabilities (or the equivalent in the event of the winding up of EAIC) or ceased to be Relevant Liabilities, whereupon the Trust Fund shall, after payment of or allowance for all costs, charges, expenses and disbursements, be distributed amongst the Beneficiaries pari passu".

11. The difficulty faced by the trustees, and which gives rise to the potential application to Court, is that a very small pool of "Relevant Liabilities" have not become "Established Liabilities" and are unlikely to within any reasonable period. The consequence of the wording of clause 2.2 is that the administration of the Trust will remain paralysed such that none of the beneficiaries will receive their proper share from the trust fund for an indefinite and potentially lengthy period. The factual reasons for this, which will, I understand, be set out in full in the evidence in support of any application made to the Court, are in brief summary:

- (1) The beneficiaries of the Trust are defined as any "*creditor of EAIC... who has (or potentially has) a valid and enforceable claim properly due and payable by EAIC under a policy signed and issued by the ILU on EAIC's behalf ... on or after 1 September 1983*".
- (2) Amongst the universe of policy holders with such policies issued on or after 1 September 1983 are a small number who also have the benefit of a Letter of Credit issued in favour of the ILU by Marsh Mac which is available to satisfy EAIC's proportion of any valid claim under policies issued by EAIC through the ILU in the period from 3 July 1980 to 6 October 1983 (both dates inclusive). These are those policy holders with policies issued through the ILU between 1 September 1983 and 6 October 1983 (again, both dates inclusive) (the "**Overlapping Beneficiaries**"). These policy holders fall within the definition of "Beneficiary" within the Trust Instrument but, if they ever make a claim, may well make it under the Letter of Credit (which ought to give them a complete recovery), rather than making a claim in the Schemes or to the trust fund. (Assuming they did, Marsh Mac would then be subrogated to their claims under the relevant policies, however, and hence might itself then claim through such policy holders to the trust fund.)

- (3) The terms of the Trust Instrument itself contain no "bar date" by which a claim has to be submitted to the trustees in order for a beneficial interest to arise or to continue. For the vast majority of beneficiaries, this does not matter because their claims are subject to the Closing Scheme such that:
- (a) if they submitted claims before the bar date, they will, if valid, become Established Scheme Liabilities under the Scheme and thus Established Liabilities under clause 2.2 of the Trust Instrument; or
 - (b) if they failed to submit claims before the bar date or do so but their claim is rejected (and not upheld in proceedings thereafter), EAIC will cease to be liable to them and hence they will cease to hold Relevant Liabilities under clause 2.2 of the Trust Instrument.
- (4) The scheme administrators have elected, however, to exclude the claims of policy holders who have rights under the Marsh Mac Letter of Credit from the Closing Scheme: clause 4.1.2. Hence they are not subject to the bar date set under that Scheme, but will continue to be administered by the Scheme Administrators under the Run-Off Scheme. (I am instructed that the Scheme Administrators will, with actuarial assistance, create a reserve to satisfy such claims before making the final distribution to all other creditors under the Closing Scheme.)
- (5) An effect of the exclusion of the claims of policy holders with the benefit of the Marsh Mac Letter of Credit from the Closing Scheme is that the claims of the Overlapping Beneficiaries, being a sub-set of those policy holders, will, therefore, not become Established Liabilities within clause 2.2 of the Trust Instrument or cease to be Relevant Liabilities within the administration of that Scheme, whereas the claims of the vast majority of policy holders who had the benefit of Holdings' and Group's guarantees to the ILU will have done so.
- (6) Instead, they will continue to be administered under the Run-Off Scheme, under which no bar date is in place or is likely to be in the foreseeable future.
- (7) This, moreover, effectively freezes the trust fund for an indefinite and potentially very lengthy period because, on the terms of clause 2.2, it will not be the case that, as the Closing Scheme reaches its conclusion with a final dividend to all policy holders who are not

beneficiaries of the Trust, "*all Relevant Liabilities have become Established Liabilities*" (emphasis added) within clause 2.2 of the Trust Instrument.

12. I am instructed that there are just 19 policy holders (one of which is a dissolved company) who fall within the class of Overlapping Beneficiaries, out of 831 beneficiaries in total. Their likely entitlement to the trust fund is even more modest as a proportion of it. The trustees have obtained an actuarial report from KPMG which provides information (as at 31 July 2011) in relation to the scale of the Overlapping Beneficiaries' potential claims against the Trust as compared to the overall claims of the 831 beneficiaries (the "**Report**"). Significant aspects of that Report are the following:

- (1) The relevant claims on policies issued by EAIC are largely ones arising from asbestos exposure and pollution claims.
- (2) The Report seeks to calculate the likely level of 'incurred but not reported' ("**IBNR**") claims on policies underwritten by EAIC which have the benefit of ILU Guarantees granted by Marsh Mac on a gross basis (i.e. without taking account of reinsurance to which EAIC may be entitled).
- (3) The Report also seeks to calculate the likely level of IBNR claims on policies whose holders also have the guarantees from Group or Holdings (i.e. the potential claims of Overlapping Beneficiaries).
- (4) As set out on page 7 of the Report, the current level of claims 'paid' (which, I am instructed, means in the case of the relevant policies here, agreed as due for payment¹) on policies subject to the Marsh Mac Letter of Credit overall is US\$41,693,524 of which just US\$943 were in relation to policies held by Overlapping Beneficiaries, with US\$4,499,524 of 'outstanding' claims (i.e. claims still under negotiation or subject to legal proceedings), of which just US\$24,367 were in relation to policies held by Overlapping Beneficiaries.
- (5) The Report's medium estimation of IBNR claims is then US\$4,209,651 overall and US\$14,952 in respect of Overlapping Beneficiaries' claims.

¹ The Report states that "*paid*" means "*the cumulative paid amount to date + the agreed but unpaid amount*" (p. 21 of the Report). In the case of these claims, they have not in fact been, and cannot be, paid out, due to the wording of the trust instrument, but their validity has been accepted by the scheme administrators.

(6) The actuarial estimations contained in the report are not certain: *"The eventual outcome of these liabilities [of EAIC] is still uncertain and may be materially different from what we believe is a best estimate of the liabilities given the available information. We highlight this uncertainty to the reader with the aid of high and low estimates to show the potential variation around our central estimate"* (p. 7).

(7) Moreover:

(a) *"We do not believe that the data is as complete or as accurate as would be ideal for projecting outstanding liabilities. As such we must bring to the reader's attention the inherent uncertainty in our projections"* (p. 14); and

(b) *"The inherent uncertainty of the insurance process makes it almost certain that actual developments will vary from the best estimate projections and it is also possible that the result will ultimately fall outside the estimated range. As such, the range is provided to ensure that it is understood that there is significant uncertainty surrounding any best estimate of reserves for this business and that alternative outcome should be considered"* (p. 20).

13. The upshot, bearing in mind the caveats to the Report, is that the entire trust fund of around £1.1m and US\$19.7m will remain, effectively, frozen in the hands of the trustees even after the final distribution to the vast majority of policy holders under the Closing Scheme due to the potential interest in it of claims likely (albeit with a degree of uncertainty attaching to the estimation) to amount to only about US\$40,262.

Legal principles

14. In light of the above, there is, in my opinion, clearly real and material prejudice to the vast majority of beneficiaries if funds to which they are entitled remain tied up within the trust for, potentially, many years after the final distribution has been made from the Closing Scheme.

15. This is clearly not what was intended by the ILU or anyone else in establishing the Trust and securing the trust fund for their benefit. The Trust arises, of course, in an insolvency context

and indeed within the overall architecture of the Schemes of Arrangement which are intended to achieve the orderly and efficient dispersal of EAIC's assets to its creditors, in particular policy holders, utilising the usual tools (including cut-off dates and the like) by which to achieve practical justice in the complex situation to which an insolvency of substantial insurance business gives rise. The prejudice arises, moreover, due to the unforeseen interplay of factors which arise from the factual complexity involved in the development of the regime intended to deal with the insolvency, and approved by the Court, as outlined above. If an appropriate resolution to the issue is legally available, it would, in my opinion, be something the trustees can quite properly undertake acting in the best interests of the beneficiaries as a whole and something that, if it is necessary to obtain court sanction, the Court would wish to sanction.

16. In my opinion, moreover, the issue is not one the trustees can reasonably be expected to resolve of their own motion, without the Courts' assistance, if such assistance is properly available to them. The Trust Instrument confers on the trustees no power to amend its terms and the effect of clause 2.2 is quite clear and cannot, in my opinion, be overridden by principles of construction, even given the wide ambit of modern construction principles. It is not, that is, possible, in my opinion, to identify a mistake in the drafting of clause 2.2 or elsewhere in the trust instrument which could be said to lead properly to such "rectification by construction" of that clause as to permit a distribution absent the claims of the Overlapping Beneficiaries having become Established Liabilities.
17. Clause 2.2 does raise the possibility of a distribution to beneficiaries taking place following the winding up of EAIC if all the Relevant Liabilities have, on that event, become "*the equivalent*" of Established Liabilities. It is not at all clear, however, that even were the trustees to take steps to cause EAIC to be wound up the effect would be that "*the equivalent*" of Established Scheme Liabilities would arise in the case of the Overlapping Beneficiaries' claims. As set out above, by clause 2.6.1 of the Original Scheme, Established Liabilities are defined as arising "*when there has been established (whether (i) by agreement or (ii) by Proceedings which are not subject to any appeal) in relation thereto a present obligation of [EAIC] to pay an ascertained sum of money after account ...*".
18. That is not apt to describe the position of the claims of Overlapping Beneficiaries on a winding up if they fail to prove in it. On the other hand, their claims might then perhaps properly be treated as having "*ceased to be Relevant Liabilities*", as clause 2.2 also provides,

in the event that they do not prove in the liquidation. Hence one option might be for the trustees to seek the liquidation of EAIC simply in order to extinguish the claims of Overlapping Beneficiaries and hence remove the issue their existence causes. It is not, however, in my opinion clear that this would be an appropriate or potentially even a possible course of conduct for the following reasons:

- (1) To seek to procure or bring about EAIC's liquidation is something the trustees, both as trustees and as scheme administrators, can properly do only if it is consistent with their offices and the duties they owe under them. It is not at all obvious that engineering the increased costs of a liquidation process would be in the best interests of beneficiaries of the Trust or of the creditors of EAIC as a whole, in particular if some other option is available. And it is far from clear that, acting as scheme administrators, it would be proper for them so to seek exclusion of the Overlapping Beneficiaries' claims when their motivation for doing so would arise from their office as trustees and their desire, contrary to the interests of those beneficiaries, to overcome an administrative issue faced by them.
- (2) Yet further, it may well be that the Run-Off Scheme, like the Closing Scheme, would not in any event terminate on a liquidation of EAIC unless it was such a liquidation as fell within the "Termination Events" specified in clause 15.3 of the Closing Scheme². This is because, in the event of inconsistencies between the two Schemes, the terms of the Closing Scheme are to prevail. And the terms of clause 15.3 of that scheme are narrower than the equivalent within the Run-Off Scheme. The relevant sub-clauses in the Closing Scheme, clauses 15.3.1 (b) and (c), would require, under the first, that the scheme administrators conclude that that scheme is no longer in the interests of the Scheme Creditors generally, which would seem difficult, or, under the second, that a winding up resolution be passed by the Scheme Creditors generally, which may be difficult to achieve. Absent satisfaction of those provisions, however, the Closing Scheme will be unaffected by any liquidation of EAIC and the fate of the Run-Off Scheme in that event is uncertain. If, however, the Run-Off Scheme also does not terminate on EAIC's liquidation, it would presumably remain the case that the policy claims of all

² Due to the ambiguity in the wording of clause 10.2.1 of the Closing Scheme (in particular, the parenthetical "(but subject to the terms thereof)" and the cross-reference in clause 15.3.1 of the Closing Scheme back to clause 7.2.4 of the Run-Off Scheme.

holders of policies with the benefit of the ILU guarantees would continue to be administered under that scheme, including therefore those of the Overlapping Beneficiaries. In consequence, they would not have to prove in EAIC's liquidation and their claims would remain "Relevant Liabilities" within the meaning of the Trust Instrument.

19. In addition, and more generally, the trustees (who are of course also the scheme administrators) are concerned that using a winding up process to try to resolve the present issue would involve significant additional costs, both from the liquidation process itself and as a result of there being two differently timed sets of sizeable payments to be administered (i.e. one under the Closing Scheme and another, later on, under the winding up process). This would obviously be undesirable and contrary to the interests of all creditors if it is also unnecessary.
20. Furthermore, whilst this is ultimately a matter for the trustees and has been discussed with them, as I understand it, it is not, in my opinion, a situation in which the trustees can reasonably be expected (by the courts or anyone else) to engage in what is sometimes styled a 'judicious breach of trust', by ignoring the terms of clause 2.2 and making distributions to most beneficiaries as though there were no bar on them doing so. The trustees come to be trustees by reason of their role as administrators of the court-sanctioned Schemes of Arrangement that are intended to deal, within the envelope of court sanction and supervision, with the whole universe of claims arising from EAIC's insolvency. If it is possible for them to resolve the issues they face with the assistance of the Court, it is, in my view, appropriate that they should do so.

The prospective application under section 57 of the Trustee Act 1925

21. The issue then is what assistance the Court might be able to offer. A number of possibilities were canvassed in my original Instructions and these have been discussed in conference. The only one which, in my opinion, does provide an avenue by which properly to seek to engage the Court's aid is section 57 of the Trustee Act 1925, which provides:

"57.— Power of court to authorise dealings with trust property.

(1) Where in the management or administration of any property vested in trustees, any sale, lease, mortgage, surrender, release, or other disposition, or any purchase, investment, acquisition, expenditure or other transaction, is in the opinion of the court expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument, if any, or by law, the court may by order confer upon the trustees, either generally or in any particular instance, the necessary power for the purpose, on such terms, and subject to such provisions and conditions, if any, as the court may think fit and may direct in what manner any money authorised to be expended, and the costs of any transaction, are to be paid or borne as between capital and income.

(2) The court may, from time to time, rescind or vary any order made under this section, or may make any new or further order.

(3) An application to the court under this section may be made by the trustees, or by any of them, or by any person beneficially interested under the trust.

(4) This section does not apply to trustees of a settlement for the purposes of the Settled Land Act 1925."

22. It might at first sight appear difficult to fit the sort of power the trustees would be seeking here – to put it non-technically, to advance the timing of the payment of monies to most beneficiaries – within the language used by section 57 which, on its face, might appear to be limited to the grant of additional powers of administration in relation to the on-going management of a trust fund, not its distribution or appointment to or for the benefit of beneficiaries. However, it is clear from the authorities that in fact it can be used to achieve such purposes because, as Mummery LJ put it in *Southgate v Sutton* [2011] EWCA Civ 637 “The expressions ‘other transaction’ and ‘expedient’ in s. 57(1) are very broad” (at [6]) so that, for instance and in that case, the Court of Appeal was prepared to confer on the trustees powers of “appropriation and partition of the trust property vested in them” such that it thereafter was to be held in separate trust funds for discrete classes of beneficiary (at [10] and [41] per Mummery LJ).

23. As Mummery LJ went on to articulate, however, broad as “other transaction” and “expedient” are within s. 57(1):

“they are confined by the context of the ‘management or administration’ of the trust property. Thus it has been held that there is no jurisdiction under s. 57(1) to confer a power to depart from the beneficial interests under the trusts by re-writing, remoulding or re-arranging them. Variations of the beneficial interests under the trusts are not, as such, matters of ‘the management or administration’ of the trust property and ‘trust property’ cannot be equated with beneficial interests in the trust property...

It has been held, on the other hand, that an application under s. 57(1) to confer powers for the purpose of a proposed transaction is within the jurisdiction of the court, if the exercise of the powers conferred by the court under s. 57(1) might only incidentally affect the beneficial interests in the trust property...”³.

24. In that case, the trustees’ application was to obtain a power to apportion the trust fund so as, in the first place, to create a sub-trust for the benefit of US resident beneficiaries who were likely otherwise to suffer double-taxation on eventual capital distributions from the trust. (The issue is described in the judgment of Mann J at first instance [2009] EWHC 3270 (Ch) at [9] and [23] to [26].) The effect of the apportionment was to alter all beneficiaries’ interests from being ones to a share in an undivided universal trust fund of assets to being an entitlement to the whole of a divided part of the trust fund. Previous authority (specifically *dicta* of Goff LJ in *Re Freeston’s Charity* [1978] 1 WLR 741 (CA)) led Mann J at first instance to determine that this affected the beneficial interests in the trust in such a manner as meant the Court lacked jurisdiction under s. 57(1) to grant the powers sought by the trustees (see [40] to [43] of his judgment).

25. The Court of Appeal overturned his decision. It noted (at [37]) that Goff LJ in *Freeston* had not considered the ambit of the “incidental” exception to the principle that beneficial interests must not be varied (i.e. that a variation of beneficial interests which was merely an “incidental” effect of the grant of powers under s. 57(1) was permissible) and that the case which first articulated that exception, *Re Downshire* [1953] Ch 218 (at 248 per Evershed MR), was not cited to him.

³ See also, e.g., *Royal Melbourne Hospital v Equity Trustees Ltd* [2007] VSCA 162 at [171] – [172]; [178] – [186] per Bell AJA.

26. It went on to distinguish *Freeston*, with Mummery LJ holding at [38] that:

"It is not authority for an unqualified proposition that the partition of a trust fund is always a variation or re-arrangement of the beneficial interests in it, or always has more than an incidental impact on the beneficial interests in it. Freeston was a case of altering the nature of the beneficial interests by the division of the fund, but in circumstances where there were no difficulties 'in the management or administration of the trust property.' Nor was there any suggestion of expediency which would have justified the conferral by the court of a power to partition the trust fund. There was no difficulty of the kind present here of the Trustees having to act even-handedly and having to reconcile the different interests of the different beneficiaries under the Settlement."

27. On this basis, and also because it was clear in the Court of Appeal, as it had not been at first instance, that:

(1) Chief Justice Smellie of the Grand Court of the Cayman Islands, in *MEP v Rothschild Trust Cayman Limited* [2009] CILR 593, had been prepared to grant powers of apportionment on facts which were "almost identical to the present case in relevant respects" (at [25] and [39]); and

(2) There was no other basis on which the serious prejudice that was likely to be suffered by the US resident beneficiaries could be addressed (specifically, that an application could not be made under the Variation of Trusts Act 1958) (at [40]);

the Court of Appeal was willing to exercise the jurisdiction under s. 57(1) to grant the power of apportionment sought (at [41]).

28. Two other recent authorities are, in my opinion, relevant to the trustees' decision whether to make an application under s. 57(1) and to the Court's consideration of that application.

29. The first is a decision of Floyd J, *NBPF Pension Trustees Ltd v Warnock Smith* [2008] EWHC 455 (Ch). The central issue before the Court in that case was whether it was proper to bless a proposed scheme by pension trustees for the distribution of residual sums held within the former pension schemes of the National Bus Company, which had been privatised between about 1986 and 1989. In considering that matter, however, an issue arose as to whether it

was proper for the court to exercise its jurisdiction under s. 57(1) so as to permit the trustees to make payments to or for the benefit of beneficiaries in a form prohibited by the trust instrument because, at the time it was drawn up, adverse tax consequences would have ensued had they taken that form. Those tax consequences would no longer ensue and the bar on payments being made in the relevant manner to certain beneficiaries was contrary to their interests and would result in them receiving less than the trustees –and the Court – considered they ought to receive.

30. In these circumstances, the Judge determined that it would be proper for the Court to exercise its s. 57(1) jurisdiction, holding that:

“The Trustees’ proposals are practical ones aimed at getting some money to particular classes of recipient who are otherwise fully entitled to receive benefits under the scheme. The power is not general, but limited to the specific cases set out in the proposals. I am wholly satisfied that what is proposed is merely a variation in the mechanism for getting that money to its intended recipients and does not disturb the underlying interests. I therefore decided to make the order sought on this ground” (at [28]).

31. Finally, in *Alexander v Alexander*, Morgan J was faced with the issue as to whether it was proper to vary a will trust by the exercise of the s. 57(1) jurisdiction so as to sell a cottage held in trust, which the testator had assumed his step-granddaughter would want to live in for her life, and in which she was therefore granted a life interest, with her two children taking after her death. In the event neither she nor her children did want to live in or retain the cottage and the trustees therefore sought a power to sell it and reinvest the proceeds of sale.

32. The facts are, therefore, some way from being analogous to the present case. Morgan J, however, helpfully identified the conceptual task faced by the Court on an application under s. 57(1) as follows:

“Under s. 57(1) of the 1925 Act, there are three matters to be considered in turn. The first is whether the court has jurisdiction to act under that subsection. The second is whether it is expedient to confer the power which is sought. The third is whether the court should, in the exercise of its discretion, confer that power...” (at [12]).

33. He went on, also helpfully, to note that, when considering the issue of expediency:

"This requires me to look at the interests of the trust as a whole, that is, the interests of the beneficiaries collectively. Where beneficial interests may be affected in different ways by what is proposed, all interests must still be considered. I should attempt to hold the scales fairly between the various interests" (at [23])⁴.

34. Finally, in relation to the Court's ultimate discretion, he noted that:

"Normally, where a transaction is expedient within the subsection, the court would exercise its discretion to confer power on the trustees to effect the transaction. However... the court can take into account the wishes of the settlor when deciding whether, in the exercise of its discretion, to confer the relevant power on the trustees" (at [33]).

The powers the Court might grant under s. 57(1)

35. Given the state of the authorities, as set out above, there are, in my opinion, two potential means by which the Court might be persuaded to grant the trustees powers to remedy the position arising from the wording of clause 2.2 of the Trust Instrument.

The first approach: apportionment of the trust fund

36. The first would be to apportion the trust fund so as to create a principal sub-trust for the vast majority of beneficiaries and a residual sub-trust for the Overlapping Beneficiaries. This would need to be drafted so as to ensure that, in relation to the majority of beneficiaries, clause 2.2 would continue to operate as it presently does but, since the Overlapping Beneficiaries would no longer be amongst the participating or potentially participating class of beneficiaries, distributions could be made to all other beneficiaries as at the same time as final dividends were made to them under the Closing Scheme.

37. The claims of the Overlapping Beneficiaries would continue to be dealt with under the Run-Off Scheme, as presently, along with all other policy-holders with the benefit of the Marsh Mac Letter of Credit. On the eventual conclusion of that Scheme, a payment out of the

⁴ See also *Re Dawson* [1959] NZLR 1360 at 1362, 1.40 – 1363, 1.23 per F.B. Adams J and *Royal Melbourne Hospital v Equity Trustees* op cit at [166].

Overlapping Beneficiaries' sub-trust would then be made to such of their number as had been found to have Established Scheme Liabilities under that Scheme.

38. There is, however, one possible difficulty with this approach. This is that, as set out above, s. 57(1) does not permit the court to grant a power where its effect would be to affect the beneficial interests in the trust, otherwise than incidentally.

39. In the present case, the beneficiaries who are ultimately to benefit from the trust fund are all those whose claims are subject to the Closing Scheme and who are found to hold Established Scheme Liabilities under that scheme together with all those Overlapping Beneficiaries who are found to have Established Scheme Liabilities under the Run-Off Scheme. Each will then take a share *pari passu* with all others of the trust fund. In effect, therefore, each will have a fixed interest in the trust fund, and the trustees have no discretion as to what share each shall receive.

40. An apportionment of the trust fund so as to create a sub-fund for the Overlapping Beneficiaries cannot with certainty ensure that each of them who is ultimately found to be entitled to a payment from the fund – or indeed each of the other beneficiaries found to have a good claim to the main fund – will receive exactly what he would have received had the fund remained undivided. This is because the amount placed into the sub-fund can only be based on the estimations undertaken by the actuaries as to what the value of the valid claims of the Overlapping Beneficiaries is likely to be. As set out above:

(1) The level of "Outstanding" claims reported by the actuaries in relation the Overlapping beneficiaries only records claims made but not yet determined. Some of those claims may be rejected wholly or in part in due course.

(2) Moreover, the estimation of IBNR liability to Overlapping Beneficiaries is necessarily uncertain, as the Report sets out and as summarised above.

41. Given this, it is almost certain that, if such apportionment takes place, each beneficiary who is ultimately entitled to a payment from the trust fund will receive more or less than he would have done had no apportionment taken place. It is also the case, however, that:

(1) the actual marginal difference between what he does receive and what he would otherwise have received ought to be very modest. The variation between the low and

high estimates of IBNR in relation to the Overlapping Beneficiaries as calculated within the Report amounts to just US\$15,684 (against a trust fund with a value of about £1.1 and US\$19.7m, i.e. less than one tenth of one percent of the fund).

- (2) Moreover, undertaking what in effect is a reserving exercise on the basis of actuarial calculation for the claims of Overlapping Beneficiaries is of a piece with the general reserving exercise in relation to the claims of policy holders with the benefit of the Marsh Mac Letter of Credit: their claims are not within the Closing Scheme and the scheme administrators will create a reserve to meet their anticipated valid claims before making a final dividend from the EAIC estate to all those policy holders who are within the Closing Scheme. This will likewise be based on actuarial calculations. It is, in essence, the only practical way in an insolvency of an insurance business in which the decision to separate out the administration of the claims of those with the benefit of Marsh Mac Letter of Credit from the administration of the rest of the EAIC estate can be managed.

- (3) Yet further, there is, in my opinion, a real sense analytically in which *any* apportionment of a fund will almost certainly alter the value of beneficiaries' entitlements from those they had previously. This is really, in my opinion, what Goff LJ was concerned about in the *Freeston* case: indeed, it is clear from his judgment that the effect of a *de facto* division of the fund which had taken place in that case had led to very different investment returns as between its divided parts and thus, if it were upheld, as between the beneficial interests to it (see [1978] 1 WLR 741 at 748A-D and 749A-D). The point is that, even if:
 - (a) the respective shares of all beneficiaries of a trust to its trust fund are certain at the point of apportionment, and

 - (b) the value of all assets within the fund can be valued with absolute certainty at the point of apportionment (which will be doubtful unless they are cash or its equivalent),

the investment performance of a sub-trust will inevitably depart from that which would have applied to the whole fund prior to division, unless (a) the assets in each are the same, (b) they are held in the same proportions and (c) all perform no differently

regardless of the scale of investment in them. Unless all those conditions are met, which may be very unlikely indeed, the value of the interest of, and the amount of any ultimate distribution to, the beneficiaries of each part of the divided trust fund thereafter will inevitably be in a different amount – it may be less or more – than would have been the case had the fund not been divided.

(4) This, however, did not trouble the Court of Appeal in *Sutton v England*, which was content that such a variation of beneficial entitlement was no more than “incidental” in the context of the expedient grant of the power to apportion.

(5) In my opinion, although the issue is plainly arguable both ways, the sort of actuarially guided determination of the appropriate respective interests of the sub-fund for Overlapping Beneficiaries and the general fund for other beneficiaries as would take place on apportionment here would have, on any reasonable approach to the level of uncertainty in that determination, what can properly be categorised as an incidental effect only on the beneficial interests of all beneficiaries.

42. If the Court does have jurisdiction to grant a power of apportionment, then in my opinion it is very likely indeed to determine that it would be expedient to grant that power and that it would be a proper exercise of its discretion to do so, for all the reasons canvassed already.

The second approach: power to make interim payments

43. It may be that, however, having considered the issues raised by the prospective apportionment of the trust fund, the Court is concerned that such an exercise of its discretionary jurisdiction would not be appropriate, for the reasons canvassed above or otherwise.

44. If that were to be the case, as an alternative, the Court may instead be willing to grant a power to make interim payments to beneficiaries with Established Liabilities on the basis of actuarial advice and leaving sufficient within the trust fund to secure the due payment of sums to Overlapping Beneficiaries who come to have Established Liabilities thereafter. That reserve could be made more substantial than the sub-fund which would naturally arise on apportionment (e.g. it could be based on the “high IBNR” estimation of the Overlapping

Beneficiaries' claims or an even greater cushion, rather than the "medium IBNR" estimation which would seem the most logical figure to include in an apportionment exercise). By this means, the Court might consider there was greater – and sufficient – certainty that the Overlapping Beneficiaries would not ultimately be left short-changed by the exercise.

45. It does also, however, have disadvantages as compared to the apportionment approach:

(1) It would be less conceptually elegant than apportionment since it would fail to reflect within the trust the division between classes of policy holder which the scheme administrators have developed more generally (i.e. between those with the benefit of the Marsh Mac Letter of Credit, who remain subject to the Run-Off Scheme, and all others, who are subject to the Closing Scheme).

(2) And it would as a result be less practically efficient, since it would mean that all beneficiaries with valid claims would remain interested in the residual reserve. Hence, if the claims of Overlapping Beneficiaries which ultimately emerged and were accepted or proven fell below the level at which the division of the residue between them would provide each with a distribution *pari passu* to all other beneficiaries with valid claims, there would remain an ultimate residual sum which ought to be subject to a further distribution *pari passu* to all beneficiaries with valid claims – i.e. all such Overlapping Beneficiaries plus all beneficiaries with claims subject to the Closing Scheme. This could well mean that, long after the closure of the Closing Scheme, the trustees were faced with having to locate all such beneficiaries, with whom they may have had no contact for years, in order to distribute what would almost certainly be negligible sums to them. It would indeed be administratively impossible for the trustees to undertake that exercise (leaving orphaned assets in their hands), unless a sufficiently substantial reserve for its cost is created now to ensure that it can be done, which reserve might well exceed the residual amount requiring distribution. In other words, the cost (to all beneficiaries) of distributing a negligible sum to each might well exceed the overall residual sum being distributed to them collectively.

46. Given this, whilst, in my opinion, both approaches should be presented to the Court, it is the former – apportionment – that the trustees should contend was the more expedient solution and that which was more in the interests of the beneficiaries as a whole, with the latter presented as an alternative open to the Court.

The role of the ILU in an application under section 57(1)

47. A further issue which I should address is the following. The court may be concerned that it should hear all such arguments as can be put against its exercise of its discretionary jurisdiction under section 57(1): our system is an adversarial one and, save where the court is exercising a supervisory jurisdiction, it will be concerned about the grant of relief absent satisfaction that it has heard all proper argument against relief being sought from it.
48. This has been referred to in the context of section 57(1) applications in a number of the authorities. In *NBPF Pension Trustees v Warnock-Smith* op cit at [14] (albeit that there the s. 57(1) issue was just one subsidiary matter) Floyd J described it as "*necessary to have parties before it who can present the Court with a critical analysis of the proposals, and who can present any arguments for saying that the proposals are wholly or partially invalid*".
49. In an application such as the present one, this may, with respect, be overstating the position somewhat. Nonetheless, it certainly is the case, as Mummery LJ noted in *Southgate v Sutton* op cit, where all parties supported the application, that:
- "[8] The court must decide, on the particular facts of each case, on which side of the line the application falls. That may be difficult, especially when, as is the case here, the application is not opposed. The court is nervous about the fundamental matter of jurisdiction if it is asked to act without the benefit of adversarial argument that normally disciplines its decision-making processes.*
- [9] In those circumstances counsel for the concurring parties bear a special responsibility. It is their duty to give the court all the help that it requires to reach the right decision. It must be established to the satisfaction of the court (a) that it has jurisdiction to entertain the application and (b) that it can properly exercise its discretion to do what is being asked of it."*
50. In the present case, the application, if made, will plainly present quite complex legal issues as to the correct approach to the section 57 jurisdiction, which are, moreover, so far as I can ascertain, also novel, at least to some extent. Given that, as discussed previously with my Instructing Solicitors, it would be desirable to locate some suitable person to be joined to the application and to appear at its hearing to present such arguments as ought to be put to

the Court which run contrary to the grant of the relief sought. (Notwithstanding that it is envisaged that this Opinion will also be before the Court.)

51. It may be that some policy holders within the class of beneficiaries will wish to appear on the application. And I understand that any application will be sent to all of the beneficiaries for whom the trustees have what they believe to be correct addresses (some 730 out of the 831 beneficiaries, including the 18 Overlapping Beneficiaries still, to the best of their knowledge, in existence). It may well also be, however, that none will in fact wish to take part in such a court process and, in the context of the insolvency process as a whole, there is no real reason why they should regard themselves as expected to intervene in proceedings. The context is, obviously, very different to a family or private trust. Because of that, and in order to ensure that the contrary position is put properly, I understand that the trustees and my Instructing Solicitors have established contact with the ILU and its solicitors and ascertained that it is willing to assist by arranging the instruction of an advocate to present appropriate argument to the Court as a representative party for the Overlapping Beneficiaries, subject, obviously, to its costs of so doing being met. In my opinion, the ILU's Involvement in this way would be desirable and appropriate:

(1) It was the effective settlor of the Trust and was party to the Trust Instrument: the funds which flowed into the Trust from Group and Holdings were in essence the consideration extracted by the ILU for the release of the guarantees given to it which it held for the benefit of and on trust for the relevant policy holders. (The Trust Instrument recites at clause 1.2.1 that "*the ILU declared that it held the benefit of such obligation [of Group and Holdings to make payments under the guarantees] on trust for such persons ... as were entitled to such sums*".) When it comes to the exercise of the Court's discretion, as indicated by Morgan J in *Alexander v Alexander* referred to at paragraph 31 above, it may also be that the Court would take succour from an indication from the ILU that it supported the application overall (subject to its articulation of such points as ought to be put on behalf of the Overlapping Beneficiaries).

(2) Whilst, moreover, the ILU itself has no personal interest, of course, in the trust fund, it was instrumental in its establishment and it has acted historically following EAIC's insolvency in the interests of all policy-holders of policies issued through it such that it has sought directly to intervene to protect their interests. It is, therefore, probably more informed about the hinterland of any application than any other person would be,

including any individual policy holder. This may be of assistance to the advocate instructed by it.

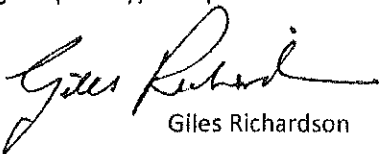
(3) Its involvement will be limited to, in essence, instructing appropriate counsel or advocates to appear on the application to address the legal arguments before the Court. It will not be necessary for it to put in any evidence to do that and its lack of personal interest in the outcome will not affect the ability of the counsel or advocate instructed by it to give the court the assistance it ought to have in relation to the legal issues raised by the application.

(4) Given the above, if the Court is concerned that some alternative representation be present at the hearing of the application and if none of the Overlapping Beneficiaries indicate any interest in appearing themselves, it is likely, in my opinion, to consider the ILU to be a suitable and appropriate person to represent the Beneficiaries' interests, in particular those of the Overlapping Beneficiaries, and would accordingly make an order under CPR Part 19.7(2)(d) appointing it to represent them.

Conclusion

52. In my opinion, it is the case that, whilst the outcome of an application is not certain and the Court will certainly be concerned to ensure that all the somewhat complex and technical issues are fully addressed to and considered by it, the Court is likely ultimately to conclude that this is a case in which it can and should exercise its jurisdiction under section 57(1) to assist the trustees and beneficiaries overcome the real practical issue they face and the real prejudice that a failure to address it would cause policy holders.

53. This is perhaps especially so where those policy holders have already been kept out of monies to which they are entitled for many years as a result of EAIC's, Holdings' and Group's insolvencies and the trust itself is intended simply to be part and parcel of the mechanism by which they obtain what is due to them as efficiently (including as speedily) as is possible.


Giles Richardson

Serle Court

13 March 2013