UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 93-42685(JMP)

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In the Matter of:

ENGLISH & AMERICAN INSURANCE COMPANY LIMITED,

Debtor in Foreign Proceedings.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

November 23, 2010

10:20 AM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

HEARING re Motion Pursuant to Sections 105 and 304 of the Bankruptcy Code to Modify Permanent Injunction Order

Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

THE COURT: Now English & American Insurance Company.

(Pause)

MR. COLEMAN: Good morning, Your Honor.

THE COURT: Good morning, Mr. Coleman. How are you?

MR. COLEMAN: Ken Coleman, Allen & Overy, on behalf of the petitioner. With me from my office are Stephen Doody and Jonathan Cho. And in the courtroom today, we have Mr. Toby Wooldridge of PRO Insurance Solutions. And PRO is the petitioner in these cases. And Mr. Wooldridge is --

THE COURT: He should feel free to sit in a more comfortable chair if he wishes.

MR. COLEMAN: Come up.

THE COURT: Mr. Tucker, do you have business here or are you just interested in the proceedings?

MR. COLEMAN: Your Honor, I wanted to make sure we had enough time to point out a few things to you about this case. And I know you expressed an interest in the COMI analysis which we want to talk about. And there are a couple of things in the order that I noticed that I want to make sure we bring to your attention.

THE COURT: Fine.

MR. COLEMAN: I'll give you a little bit of background 'cause there's a number of companies involved here, a number of moving parts.

I think the easiest way to start is to talk about English & American Insurance Company which started in a proceeding in this Court back in 1993 in a Section 304 case before Judge Abram. English & American went through a scheme arrangement which was known as a reserving scheme, which I think Your Honor is familiar with the concept of that, and went through an amended scheme in 2000. And under that scheme, as is customary in a number of schemes, there's a provision that says when the scheme administrators decide that the administration has gone far enough such that it is no longer economical to keep the estate open and that it is better to impose an estimation process on the remaining liabilities, there will be another amended scheme where that process will be proposed to creditors and voted on. That point has arrived. And it became apparent to the scheme administrators several years ago that they were at that juncture in the administration of the case.

The complicating factor was the existence of these pools. And a pooling arrangement in the insurance context -- and Your Honor is familiar with this one, a Willis Faber case that you dealt with a year or two ago. You know, it's essentially a group of insurance companies writing specific classes of business and they share premiums and losses and specified percentages. English & American Insurance Company comprise roughly seventy percent or so of the liabilities in

these pools. And therefore, the closure of English & American required the closure of the pools. And there was a process over several years, I think approximately three years, to make sure there was an integrated approach to bringing an end to the pool liability at the same time.

Roughly speaking, total liabilities of the pools is about 1.3 billion dollars, U.S. dollars. The English & American component of that is a billion, billion one.

This business -- the business of the pools really dates back to approximately 1954, wrote business up until about 1992 and has been in runoff since then.

All of the companies except for three are solvent. The three insolvents are English & American; a company called ICS, which is the subject of a separate scheme of arrangement administered by PwC in the U.K. -- and that scheme has been amended to conform to these schemes; and the Home Insurance Company which is a U.S. domestic insurer in a liquidation proceeding in the state of New Hampshire. That company, of course, due to eligibility issues, under Section 109, is not part of this proceeding. The schemes are set up such that the result of the claims resolution process administered by PRO will be exported to the Home case and paid in accordance with Home's priority scheme in the New Hampshire proceeding. So it is still an integrated approach to the pool liability albeit Home is in a separate proceeding in New Hampshire.

So the purpose now is to, in effect, estimate the remaining contingent and unliquidated claims, the incurred but not reported losses. And as is the case with estimation and crystallization schemes, there is a methodology set out in the scheme document pursuant to which an actuary will estimate these liabilities in the event that the policy holders and reinsurers and the companies cannot agree. By and large, and I think Mr. Wooldridge would substantiate this, by and large, this is a consensual process. Many of these claims have already been resolved. Once the claims start coming in at or around the bar date, we would expect that, by and large, these claims will be resolved consensually and relatively few would be subjected to the adjudication process.

There are two other companies that are outside of this process altogether: Ace and Swiss Re Europe. They comprise less than three percent of liabilities. They are not proposing schemes of arrangement. Their share of this pool liability will be dealt with through a voluntary commutation program. And their portion will, in effect, be paid through that process outside of the scheme. There are a variety of reasons for that. Among them are indenture issues for those companies which -- issues raised by simply filing the petition in this court or another court seeking some form of creditor protection which raised more concerns than this three percent was really worth.

In terms of the procedure and the process here, the process for these schemes was commenced in the U.K. in November of last year, November 26, 2009. There was an application made to the High Court for authorization to convene meetings of creditors. The order authorizing that was issued on November 30, 2009. That order also appointed PRO as the foreign representative for purposes of these proceedings. The creditors' meetings were held on April 30 of this year and the schemes were overwhelmingly approved by creditors. The results of those meetings were filed -- we filed them in this proceeding last week together with Mr. Wooldridge's declaration. The ranges across all the companies in terms of numerosity were from seventy-two percent to a hundred percent. And in terms of value, from eighty-two percent to a hundred percent. In each case, towards the higher end of that range. And, of course, under English law, the value -- the value hurdle, if you will, is seventy-five percent rather than our two-thirds. So they passed the voting thresholds. The schemes were sanctioned by the High Court on October 6. They were filed with the registrar of companies on October 12 and thereby became effective which, among other things, started the clock on the 180-day bar date. So claims are due 180 days from October 12th.

These proceedings were commenced on October 14 of this year through the filing of Chapter 15 petition and a

motion to amend the permanent injunction under Section 304 with respect to the old English & American case. Your Honor approved notice provisions and that notification was carried out.

I would like to just mention notice specifically for the record because it was extensive. And the practice for solvent schemes and schemes in general in the U.K. have evolved to the point where the notification is rather fulsome. And in this case, notice started in January of 2009 through what is known as a pre-practice statement. It's sort of best practices in the U.K. where a letter is sent to the top 500 policyholders informing them that this is going to happen. It gives people a chance to gather their records, gather their data and start thinking about their claims. Then there was a further letter sent, and this is required by the FSA, in October of 2009 and that letter was sent to all known creditors regarding the company's intention to propose schemes.

Notice of the scheme meetings, of course, were sent to all known creditors and that was done in February. And there were publications in various newspapers and insurance journals. Notice of the sanction hearing itself was mailed. It was contained in a letter by the meetings' chairman and mailed to each creditor who voted on the scheme. Creditors who did not vote would have been informed by the previous letters that they should consult the website maintained by PRO.

Notice of the effective date of the scheme and the commencement of these cases and the motion to -- including the motion to amend the permanent injunction were served on all known creditors. There was publication pursuant to Your Honor's order in the Wall Street Journal and in Business Insurance. PRO, as is customary in their business, in their practice in these cases, maintained telephone help lines and a website. So, Your Honor, on the basis of this, the notification has been ample and sufficient.

In terms of the claim process pursuant to the scheme, as I mentioned, there's a bar date 180 days after October 12. Claims will be reviewed. It is expected that most of them will be resolved consensually. Disputes as to estimates will be referred to an actuary for valuation. And any further disputes will be referred to a scheme adjudicator. A scheme adjudicator is appointed pursuant to the scheme and, by the terms of the scheme, that adjudicator's determination is final and nonappealable.

Now, in terms of the merits of the case in this court, we believe the requirements of Section 1517 are met. This is a collective process. It is a process to which all affected creditors are invited to participate. It is a process which affects the pool liability. And this is an interesting point, at least to me. And again, Your Honor is familiar with this from the Willis Faber case. English law allows companies

to enter into proceedings, restructuring and bankruptcy proceedings, to deal with part of their balance sheet, parts of their liabilities, not full companies. So these companies that are on this caption are not subjecting the entirety of their businesses to the scheme process or to this proceeding. It's just these pool liabilities which is going to be an important part of our analysis on COMI as I think Your Honor is indicating by your body language. And we believe that there's a good case to be made in that respect.

THE COURT: I'm interested in hearing it.

MR. COLEMAN: So all creditors, all relevant creditors, with respect to that business have an opportunity to participate. The scheme, of course, affects all of those liabilities and, therefore, we think clearly is a collective process within the meaning of the Bankruptcy Code. It is undoubtedly a judicial process. It is initiated by an application to the court. It is supervised by a Court. It is concluded by a Court order which is the sanction order which is, for all intents and purposes, the equivalent of an order of this Court confirming the plan of reorganization.

It envisions the adjustment of debtor/creditor relationships. Certainly, in the case of a solvent scheme which estimates liability, it involves contract rights in a very material way. So we believe on that basis, it satisfies the adjustment of debt -- portion of the definition of foreign

proceedings.

This case was commenced by a designated -- a duly appointed foreign representative. And the documentation required by Section 1515 has been filed. And for the COMI analysis, again, I think the sort of departure point for that is the fact that we're dealing with a portion of liabilities here not the entirety of liabilities. Now this only matters for a few of the companies. All of the companies, save for a few, have their registered offices in the U.K. So the presumption favors a finding of a foreign main proceeding with respect to those entities. The companies that are sort of on the bubble here are Baloise, Polygon, Swiss Re and Tower who are registered and incorporated in various other jurisdictions.

Now, we filed last week the declaration of Mr. Wooldridge who is here in court today and available to testify and available to answer any questions Your Honor may have, available for cross-examination if there was somebody that was interested in doing so. This pool business has been managed by PRO in the United Kingdom for approximately seventeen years. PRO, of course, continued to manage the business pursuant to the scheme post the effective date. All of the administrative functions with regard to these liabilities have been handled by PRO through its employees located in the United Kingdom. As is pointed out in the declaration, there are certain matters over a particular value threshold which are referred back to the

companies. Those are very rare instances. I think the estimate was around five percent of the time. But in all other cases, there's a delegation of authority to PRO and that is conducted in England.

All claims are paid out of bank accounts located in the U.K. With respect to these companies, Baloise, Swiss Re and Tower, the accounts are funded out of other accounts that are established in the U.K. And all of the funds flow occurs in the U.K.

Importantly, all the creditors over this period of time, these seventeen years, have looked to the U.K. as the place for the handling of claims and for the conduct of business of the pools.

THE COURT: How do we know that?

MR. COLEMAN: Well, Mr. Wooldridge can testify that since his involvement -- and Mr. Wooldridge's involvement with English & American dates back to the late 1980s and to PRO since I think the commencement of PRO's insolvency proceedings in 1993 and has administered the run-off since 1993. So for the past seventeen years, claims of policyholders of the companies participating in the pool business have been submitted to PRO's offices and paid and administered by PRO employees from assets in the U.K.

THE COURT: So if I'm a policyholder with one of the companies not headquartered in the U.K. and I have a claim, how

do I know that I'm supposed to deal exclusively with PRO? How do I know that?

MR. COLEMAN: If I just may have a moment --

THE COURT: Sure.

(Pause)

MR. COLEMAN: Your Honor, the way this business is run is through brokers. And the business -- the policyholder would place the business initially in the London market which is, I think, a concept Your Honor is familiar with. And the business is placed through brokers in London. And claims from policyholders are remitted through their brokers. And then the brokers remit to PRO. That's how the London market works.

THE COURT: All right.

MR. COLEMAN: And this was thought of and conducted as London market business.

THE COURT: Is it your position that a foreign insurance company that is engaged in the insurance business in the London market by virtue of that participation effectively becomes domiciled in the U.K. for purposes of that business?

MR. COLEMAN: No. It's really more than that. There's another component to it. And I think the important component is the fact that English law allows for a proceeding to affect just that portion of a company's liabilities. And English law will have jurisdiction over a company with respect to just that portion of its business. It can affect just that

portion of its business. So I think it's really those two components. I think it's the legal regime that allows for that. And then the factual reality of where the business was conducted.

THE COURT: So -- I don't want to get ahead of your argument on COMI, but is it your position that center of main interest for these purposes applies not to the corporate enterprise but to the business that happens to be written within the London market as part of the scheme?

MR. COLEMAN: That's essentially correct, Your Honor. That is essentially correct.

THE COURT: Is there any precedent that I can look to that would support that?

MR. COLEMAN: There is a bit of precedent to support that, a bit of precedent. And I think Judge Lifland had a decision in an insurance case, In re Lloyd which we can provide unless Your Honor's familiar with it.

THE COURT: I'm not familiar with that case.

MR. COLEMAN: Which we can provide a citation for, which Mr. Cho provided a citation for, at 2005 Bankr. Lexis 2794, a decision of December 7, 2005. Judge Lifland granted recognition of a proceeding involving an account of a French insurance company as a foreign main proceeding. Now the issue there, Your Honor, when you look at that case, the issue there is whether or not that's analogous to a separate sale company.

We think it supports our position but when Your Honor looks at that, Your Honor is aware of jurisdictions, including Delaware for example, that has legislation authorizing the creation of sales within a company that are treated as separate entities for certain purposes. So obviously, be aware of that angle. But we believe that this approach to an account supports this position.

COMI is a function mostly of how creditors reacted and inter-reacted with the company and with respect to this business which the U.K. allows to be treated, for all intents and purposes, as a separate entity. It's not. But legally, for purposes of a scheme and dealing with the liabilities and really segregating them legally, the U.K. allows for this. And since creditors would have dealt with that portion of the book as being in the U.K., we don't think it's that much of a leap to say that COMI, in these unique circumstances, should be considered to be in the United Kingdom and therefore susceptible to being recognized as a foreign main proceeding.

THE COURT: Could you explain to me a little more fully the principles of English law that create what amounts to this virtual separate enterprise that relates to the business in the London market. Is it insurance related only or is it related more generally to operations that might be identified as belonging to the U.K. even though the businesses are headquartered elsewhere?

MR. COLEMAN: It is not unique to insurance companies. This is part of the Companies Act which allows -- Mr. Doody is trying to find some language in the scheme document that might be relevant to this. But my understanding of the Companies Act is that it allows a company to reach an arrangement with its creditors or any group of creditors with respect to its liabilities or any portion of its liabilities. So it's not something that's just an insurance concept. It's in any company. And it's not just --

THE COURT: Well, here's what I'm struggling with.

MR. COLEMAN: Yes.

THE COURT: I recognize that the law permits -- I'll call it a reorganization or a restructuring or a scheme in respect of a portion of liabilities instead of all liabilities of a particular business. But how does that right to parse the liabilities translate into a separate legal status for the business that's being parsed?

MR. COLEMAN: I am overstating it when I -- if I am suggesting to Your Honor that, in fact, there is a sep -- when Your Honor said "virtual" separate status, that is more in line with what I'm suggesting to the Court. It's really not creating a separate entity. It is treating it -- it is treating it as virtually separate in the sense that it's just these liabilities. The Court in London does not have jurisdiction over other aspects and other liabilities of the

company. It's just the assets and liabilities that have been subjected -- that the company chooses to subject to the process.

I take it that this is not satisfying Your Honor's question, though. And I wonder if we need to submit something on English law that does that.

THE COURT: Well, I'm not saying to do anything yet. I'm just trying to understand -- and I may be jumping ahead in your argument -- the predicate that gives you the ability consistent with the definitions of center of main interest to assert that here the foreign insurance companies that are not incorporated in the U.K. are nonetheless entitled to have their foreign proceedings recognized as foreign main proceedings as opposed to foreign non-main proceedings. One part of your argument may be that because for the last approximately seventeen years, if that's the right number of years, PRO has, for all practical purposes, managed exclusively all aspects of the joint liabilities that are here pooled that, in practical terms, that exercise of dominion and control over the shared liabilities constitutes the same kind of management that would be exercised by an enterprise at its headquarters in effecting its principal place of business so that the principal place of business for purposes of the scheme becomes PRO's offices regardless of where the insurance companies may be incorporated or may conduct their other business.

MR. COLEMAN: And I think that's what we've got here. I think that's exactly what we've got here. And so, in my sort of simple way of thinking about it, we have a foreign proceeding and -- where was the business conducted that is relevant to that proceeding? Clearly, in the U.K., solely in the U.K. So that is our argument on COMI.

THE COURT: Let me ask you this because your recognition or request is in the alternative.

MR. COLEMAN: It is indeed, yes.

THE COURT: Does it matter, for purposes of the administration of these cases as Chapter 15 cases that they all be recognized as foreign main proceedings or is this more of an academic exercise?

MR. COLEMAN: Well, Your Honor, in a way it does. At the end of the day, Your Honor has the discretion of whether it's main or non-main to give us the relief we need to make these schemes work. So if Your Honor is inclined to give us that relief then we can make this work. But I was involved in a proceeding in another court where there was a raging debate about whether a proceeding -- in effect, in the U.K., we have a single proceeding with respect to these -- I mean, technically, they are separate schemes but there's a proceeding. And there was a similar construct in another case where someone took the position that, well, one proceeding can't be at the same time main and non-main. So we could run into a problem where

someone says, but no one's here to say that, some of these cases -- clearly, it's a main proceeding. It's registered in the U.K. and the business of the pool is conducted in the U.K., not controversial. But if you've got a Swiss company registered in Switzerland, the pool business was done in the U.K. At least there's an establishment there for non-main purposes so it could be non-main. But how do you then have a proceeding that is simultaneously main and non-main? So there is that technical issue. So it's more than just an academic issue. As interesting as it is, it's more than just an academic issue. But at the end of the day, we think if Your Honor is uncomfortable going there --

THE COURT: Well, I'm just trying to get comfortable with what it is that you're asking me to do consistent with my understanding of existing law relating to the recognition of foreign proceedings as either main proceedings or non-main proceedings. And what I'm hearing you articulate is the concept that you're not really recognizing a proceeding with respect to business enterprises that have a presence in the U.K. for all purposes as much as we are recognizing the pooled business of those insurance companies as if it were a separate enterprise. Do I understand that correctly?

MR. COLEMAN: That's correct, Your Honor. It's virtually a separate enterprise in part because of the way the business was conducted, in part because of the way the relevant

creditors view that business and, in part, because of the way English law allows you to handle that under the relevant legislation.

THE COURT: So -- and here's my precedent question again. And I'd appreciate the citation to the 2009 decision from Judge Lifland.

MR. COLEMAN: 2005. We'll make sure your chambers has the --

THE COURT: 2005?

MR. COLEMAN: Yeah. We'll make sure your chambers has the exact --

THE COURT: All right.

MR. COLEMAN: -- citation.

THE COURT: To your knowledge, has any United States court ever recognized a pool such as the pool we're now talking about as the proceeding that is being recognized as a foreign main or non-main proceeding? Or is this, in a sense, a matter of first impression?

MR. COLEMAN: We think this -- these facts present Your Honor with a matter of first impression.

THE COURT: I was afraid you were going to say that.

MR. COLEMAN: We are not aware -- aside from Judge Lifland's decision which we think supports it but it's not it. We think there's a difference between a proceeding and an entity. And the pool is not an entity. We thought long and

hard about whether a pool could be an entity, some sort of unincorporated association of something and it's not.

THE COURT: Yours is a foreign proceeding that affects the rights of participants in and claimants against a particular pool.

MR. COLEMAN: A particular highly defined and circumscribed business conducted in the London market and understood as a well defined book of business by the relevant creditors. Virtually but not quite an entity. That's what I've got, Judge. That's all I've got.

THE COURT: Okay.

MR. COLEMAN: All right?

THE COURT: Well, it's an interesting question.

MR. COLEMAN: And from a -- just from a -- looking at COMI from a user point of view -- and, in my mind, that's not a difficult thing to do here. I mean, how did creditors react to this? Where did they interact with this? And it was in the London market. So -- and I think that's the purpose of COMI. Where do creditors perceive this thing to be? Where do the relevant creditors perceive this thing to be?

THE COURT: Okay. I think it's useful that you have your declarant here. I don't think we need to be very formal about this. But to the extent that there's a record of facts that you wish to develop, either by virtue of the declaration that you already have or as you might embellish by virtue of

the colloquy we've had with your witness present, it seems to me that it may be worth doing that.

MR. COLEMAN: Yeah. Just give me a moment?

THE COURT: What I think we might do is take a five minute break.

MR. COLEMAN: Fine.

THE COURT: Give you a chance to confer a little bit. And then I think we should move into the record portion of this in terms of the facts. I'm going to accept as a proffer everything that you've said to me that's in the nature of the facts of the situation as opposed to legal argument. But you may want your witness to verify or modify to the extent necessary what you've said so that I have an absolutely correct record.

MR. COLEMAN: Thank you, Your Honor. We'll do that.

THE COURT: We'll take a five minute break.

(Recess from 10:57 a.m. until 11:10 a.m.)

THE CLERK: All rise.

THE COURT: Be seated, please.

MR. COLEMAN: Your Honor, we'd like to proceed with Mr. Toby Wooldridge as our witness.

THE COURT: Fine. Is he --

MR. COLEMAN: Oh, no, I'm sorry.

THE COURT: Are you going to have him --

MR. COLEMAN: You get to sit next to the judge.

THE COURT: Fine. Very good. Good morning. Would you raise your right hand, please? I'm going to ask you to take an oath if that's all right with you?

THE WITNESS: Absolutely.

(Witness sworn)

THE COURT: Be seated, please, and please speak up into the microphone.

DIRECT EXAMINATION

BY MR. COLEMAN:

Q. Mr. Wooldridge, can you just explain to the judge your involvement in this case?

A. Yes, Your Honor. I was employed with English American Insurance Company from 1987 through to 1993 when the group became insolvent. That's the point when PRO was created and I've been employed by PRO since that point up till now.

Q. Are you familiar with how this insurance business that is the subject of these proceedings -- how this insurance business would have been initiated?

A. Yes. I was employed originally in the underwriting itself in the non-marine account as an assistant underwriter. Typically speaking, the policyholders would approach a local broker if they were overseas, so for looking at U.S. assureds, they approached their local broker who would then, in turn, approach a London market broker. That London market broker would work the market, visit the insurance companies assessing

the policy and explain the terms and gain percentages of claimant. So the underwriters would assess the risk, determine the premium and decide which percentage they would like to take, typically, a percentage rather than the whole.

Q. During your time with English & American and involvement in E&A's underwriting function, did you specifically have involvement with the English & American pool?

A. Yes. I was working on the English American non-marine pool. This is a, typically speaking, a stamp arrangement with the pool where a stamp goes down by the underwriter which lists out a number of insurance companies on the stamp all sharing in that risk.

Q. Help --

THE COURT: I don't understand the term "stamp".

Q. Please tell --

A. A stamp is literally a rubber stamp they stamp the policy documentation with. It's evidence of their acceptance of the risk. They initial it and put down the percentage they would like to take. For example, they might say of a twenty million limit policy, they might take ten percent, for example. And that stamp, in turn, would then identify the members of the pool and their share of that ten percent accepted by the underwriter.

Q. This is important. I want to make sure that we all understand how this happens. So how would a policyholder -- by

that, I mean the policyholder, his local broker and then the London market broker, just sort of collapsing them as to one. How would they come to the pool? How does that happen?

A. Inasmuch as they come to the pool for --

Q. For insurance.

A. -- acceptance of the risk, the policyholder would be, in the first instance, liaisoning with his local broker to identify the policy terms and conditions they require for the coming year. The local broker would then take that information that lays with a London market broker that tended to have connections with people like Willis or Barings. And that broker would then prepare a slip which is a shortened version of policy wording. And the slip, which is literally a slip of paper, would be taken around the underwriting rooms in the London market for the underwriter to assess and determine whether they wish to take a share. And that's when they would apply their stamp to the slip. The broker then would -- the London market broker would, on gaining, say, a hundred percent placement with a variety of London market companies including the pools that were operating at the time and return to his offices to prepare the policy details and return those to the local broker in the United States, for example, who would then, in turn, pass whatever information they deemed appropriate to the policyholder. Now, clearly, this can vary from broker to broker. So in some cases, the policyholder would only receive

information that his insured -- his insurer was English & American. It wouldn't necessarily identify the component part of the pool. But it was sufficient information for them to be able to accept that the risk had been placed and they had cover for the coming year.

Q. Can you tell us about how the funds were handled, both the premium and then the submission of claims?

A. Certainly.

Q. And the payment of claims. And how that process worked and who was involved.

A. Certainly. So having placed the policy, the policyholder would pay the premium directly to their local intermediary broker. The intermediary broker would then pass those funds across to the London market broker. Typically speaking, in the London market at the time -- we're talking about in the eighties and early nineties -- a lot of the business was done through the London Market Bureau which is essentially a clearing house for funds, an efficiency method. So, as opposed to passing out individual checks, they would -- it would be a central point for the clearance of funds. So on receipt of the funds by the London market broker, that would be then transferred to the Bureau. And there would be a weekly settlement to all the insurance companies including the pools. So English American pools would be in receipt of the premium funds for their share of the policies underwritten on a weekly

basis as and when these transactions took place.
Q. Now based on your long history with the London market and your involvement with English & American, do you have an understanding of who the policyholders would have understood their insurer to be?
A. Yes. Now this will vary depending on the information they've been provided by the London market broker and, in turn, the intermediary broker. But they would at least know that it would have been via the English pools. In many cases that I'm aware of, they are only aware that it is placed with English & American. Now that may not mean English & American Insurance Company has all the risk. Typically speaking, it would be English American Insurance Company and the other pool members. But the policyholder may not be aware of the breakdown of that pool and the ultimate security behind the scenes.
Q. Would it be fair to characterize English & American Insurance Company as the lead underwriter in these circumstances?
A. Absolutely. English American Insurance Company almost always took the lion's share of the stamp. So where I say they took a ten percent share of the total on the stamp itself, it may show that EAIC took fifty percent of the ten percent with the remaining pool companies taking smaller shares.
Q. English & American Insurance Company -- do you know where its registered office is?

A. Its registered offices are in the U.K.
Q. Also based on your experience in the market and your experience with policyholders, do you have an understanding of how policyholders would have recorded this insurance on their own books?
A. We're certainly aware in the commutation conversations with policyholders that they are not aware of the breakdown of the security. So we always have an issue with reconciling our books with theirs inasmuch as they hold the values quite often as English & American whereas we hold the information at a principal level so we are aware of EAIC and the others on the pool stamp.
Q. Mr. Wooldridge, let me ask you this. What would have happened, in your opinion, if a -- and based on your experience in the market if a policyholder submitted a claim to, say, Baloise directly and did not follow the path that you've described by submitting the claim to the broker who then submitted the claim to the pool and then the payments came in the reverse way and, for one reason or another, understood Baloise to have a share of the risk and decided to submit a claim to Baloise in Switzerland. How would that have played out?
A. This is entirely feasible. The claim that would have been against Baloise directly would not have been recognized by the Baloise claims management team inasmuch as they would not have

the records for that policy or that policyholder. So whilst they might be receiving documentation through the post or some other means, they would not have any of their own records with which to reconcile or adjust that claim. There would, I would imagine, be a degree of liaison between Baloise, in this example, and the policyholder or their broker to ascertain the whereabouts of the original policy. And if they were to be produced by the broker then it would be quite clear from the face of the policy that it was an English & American underwriting pool's policy not at Baloise underwriting directly for their own right. On the ascertainment of that information, Baloise's typical reaction would be to refer the policyholder and their broker directly to PRO on the basis that PRO are holding all the records for pools.

Q. The bank accounts into which premium was paid and claims were paid, where were those accounts maintained?

A. The accounts were maintained by PRO in the U.K. bank accounts we hold. I think we specified there were twelve working accounts, as I would refer to them, and a number of additional accounts which were held directly for a number of the scheme companies. We refer to these as trust accounts inasmuch as the money in that account would be directly theirs and could not be tied up with any insolvency within PRO. It's obviously a security measure that we have to operate under FSA rules in the U.K. Premiums would all have been paid into those

accounts. At any point in time, we would assess the level of funds in those twelve working accounts. And where the funds were deemed to be in excess of working requirements, we would then repatriate those monies to the trust accounts. Claims clear this money going in the reverse direction so as and when claims are presented, again, presented by the broker to PRO's adjusters in London, PRO would carry out the adjusting function, ascertain whether the claim was legitimate or not based on the policy information that we had on hand. And assuming that that was acceptable, the claim would be agreed, payment would then be made -- again, made out of those working accounts directly to the London market broker who would, in turn, pass those monies on to the intermediary broker who would turn them on, in turn, to the policyholder.

Q. So the risk was, if you will, placed in London by the London brokers --

A. That's correct.

Q. -- underwritten in London by you and your colleagues.

A. That's correct.

Q. Claims were handled in London by you and your colleagues with respect to pools.

A. Correct.

Q. And in your declaration of November 18, you refer to instances where PRO -- and again, I'm talking about the period prior to the scheme. PRO would have referred certain matters

back to the home office, if you will. Can you just describe those instances?

A. Yes. PRO operated a number of levels if you like of claims agreement authority with the scheme companies or the pool companies. The major companies had relatively high levels of authority. 200,000 dollars would be not untypical whereby any claim for their share, if it was under that value then PRO would have authority to adjust and pay without any referral. It was only if it exceeded that value that we would refer to the scheme companies. This is typically an advice mechanism with our recommendation either to pay or to make an alternative offer. And generally speaking, that's advice that we gave would be followed.

MR. COLEMAN: Your Honor, I don't have any further questions.

(Pause)

MR. COLEMAN: Your Honor, we have no further questions.

THE COURT: I'd just like a clarification and maybe I can ask you to ask this question or to delve into the subject. My understanding is that as insurance is being underwritten on a particular risk that English & American Insurance Company, in effect, acts as the lead insurer for purposes of assembling members of the syndicate or pool that will take shares of a particular risk. And as the witness has described it, the

acknowledgment of being on the risk is recognized by means of a stamp in which a piece of paper is literally rubber stamped presumably with the name of the carrier and perhaps a notation as to the percentage of risk that's being assumed.

What I'm trying to understand is whether the pool of insurance companies reflected on the caption of the proceedings that are presently before me represent a fixed number and identity of a particular identifiable syndicate or pool or whether or not this particular pool came into existence by circumstance, that these just happen to be those insurance carriers that ended up with a particular set of risks that were in run-off.

MR. COLEMAN: I would refer to Mr. Doody on that question.

MR. DOODY: Yeah. Thank you, Your Honor. Stephen Doody for Allen & Overy and the witness. Mr. Wooldridge may actually sharpen my comments but it should have been a pool that was conceived and -- in whole rather than coming together by circumstance as you might have suggested earlier. It should have been that these companies agreed to participate in underwritings together although a comment that not all companies would pick up a piece of each risk. They would decide in their daily business whether they would take a part of the risk. But it is the -- right -- an enclosed group of companies that had agreed to act as the E&A pool going forward.

THE COURT: Does this pool or syndicate have an identifiable name?

MR. DOODY: It's generally referred to as the English & American pool or the EAUA pool. And so that's why we were asking before -- or we were speaking before about how it might be reflected on a financial statement. You might find a policyholder who simply put on its statement the EAUA pool as opposed to saying I have the underlying risk takers beyond it. Those who have stamped the slip are AIG, NatWest plus Baloise, Tower, East West. They wouldn't break down Baloise, Tower, East West. They would simply have EAUA pool on it.

THE COURT: Is there a document subscribed to by the insurance companies that commits the companies to be part of this pool or is this pool something that exists by custom and usage and handshake?

MR. DOODY: In this particular case, I don't have an answer for Your Honor. I've certainly seen pools that have constituent documents. Perhaps the witness could answer it better.

THE WITNESS: Yes?

THE COURT: Is there a written document that --

THE WITNESS: There is.

THE COURT: -- that unites the pool.

MR. COLEMAN: Correct, there is. There would be a participants' agreement on the instigation of the pool which I

believe might have been resigned every year as companies came and went or wished to alter their percentage uptake of the risks and offer. So we certainly have written agreements to participate in the English American underwriting agency pools.

THE COURT: I'm confused in this respect. I understand that there are different percentages of the risk that are assumed by each participating insurance carrier. Are you saying that that percentage is fixed by agreement, say, at the beginning of each year and that it would apply to each risk that's accepted by English & American as the principal underwriter for the pool? Or is the percentage one that varies permissibly from risk to risk such that individual insurance companies in their discretion can elect either to participate or not participate in a particular risk?

THE WITNESS: It's an interesting question. And it has a couple of levels. I'm just -- need to talk you through the two levels as I see it. On the stamp itself, the physical stamp that goes onto the policy document, that stamp can vary. There were a number of different stamps for each year where the participations varied. And the underwriter would decide which stamp to use based on the business being offered. So, for example, you may have instruction from a stamp company that they do not wish to participate on the face of the stamp, for example, European business. So any business that's offered to us that is European based, that stamp would exclude that stamp

company. So there were a number of stamps, a finite number of stamps, that operated on any one year. Behind the scenes, however, each stamp company took up an agreed set percentage of all the risks written regardless of type in that particular pool for that particular year. Now the EAUA pools were three discrete and distinct pools: an aviation pool, a marine pool and a nonmarine pool. If I take the Baloise as an example, they signed up, I believe, in 1991 and '92. So they arrived fairly late in the history of the EAUA pools. And they underwrote only in the marine pool and only on certain stamps. But they did share an agreed fixed percentage of all the risks written in the marine pool for the years in which they participated.

THE COURT: Okay. Are there any insurance carriers that are not part of the present request for recognition that are not included on the caption that have, over this period of time that we're talking about, participated in the same risks but are not part of this pool?

MR. COLEMAN: I'm sorry, Your Honor. Not part of the pool? There are companies that are part of the pool but not part of the proceedings.

THE COURT: That's what I want to understand.

MR. COLEMAN: Okay. And those are Ace -- Mr. Wooldridge can probably save me the trouble of finding -- Ace --

THE WITNESS: Ace Crusader and Swiss Re Europe are the two pool companies.

THE COURT: Well, those are the ones you mentioned that, for reasons --

MR. COLEMAN: Three percent --

THE COURT: -- relating to indentures and the small percentage -

MR. COLEMAN: Correct.

THE COURT: -- are not part of the proceeding.

MR. COLEMAN: And they're going to do voluntary commutations that essentially mirror the scheme.

THE COURT: I was actually exploring another question which is whether there are other insurers besides the ones that we have identified to this point that picked up on a periodic basis some of the risk. For example -- and I'm not trying to complicate this but I'm just trying to understand how this enterprise actually functioned. You mentioned that for certain risks, say, a marine risk, Baloise may say at the beginning of the year I don't want any part of that. And as to a particular risk -- maybe it's a very large tanker, I have no idea what we're talking about -- English & American may say, you know what, I don't want to take my full ten percent or whatever the percent is and I'd like to find another participant for this particular risk. Did that happen?

MR. COLEMAN: In other words, go outside of this --

THE COURT: Outside the pool.

MR. COLEMAN: -- defined group of companies and go to, say, Munich Re, just to randomly pick a name. Would that have happened?

THE WITNESS: I --

MR. COLEMAN: Maybe I could ask --

THE WITNESS: Certainly reinsurance were purchased by the pools on behalf of the pool companies. I don't think that's what you're referring to, Your Honor.

THE COURT: No. I'm not referring to -- I'm really talking about --

THE WITNESS: So I think the answer would be no. Sorry. I think the answer would be no.

MR. COLEMAN: Just to keep this -- just to try to keep this --

THE COURT: I just want to explain my question. I'm really talking about whether or not there was an ability for insurance companies to enter the pool for particular risks but not to be truly identified as pool members but to pick up particular portions of particular risks.

THE WITNESS: I think the answer to that is no. If English American Insurance Company wrote, for example -- in your example, the tanker, which Baloise had, at the beginning of the year, said, for example, we do not wish to have any part of tanker business, then if English American put down their ten

percent line on their stamp which would clearly exclude Baloise based on Baloise's instruction then it would be for English American's share only on the front of the stamp. Behind the scenes, Baloise would still pick up their prescribed share. But I think what Your Honor's looking at is did E&A -- EAIC give an element of that to another company outside of the pools?

THE COURT: Yes.

THE WITNESS: And the answer is no.

THE COURT: Okay.

MR. DOODY: Maybe it's a point of clarification. I may be overegging this but in terms of the stamp, and Mr. Wooldridge will again sharpen my remarks, but E&A didn't necessarily have a take of the same portion of the stamp. You're filling in the stamp. E&A is only taking a portion of the slip, I should say. With its stamp, E&A stamp is only taking a portion of the slip and it could take varying portions. And also, I think what Mr. Wooldridge is referring to is that -- and again, I don't know the constituent documents in this particular pool, but some pools provide that if one of the pool participants pulls out, the others will cover over so it is still the same percentage. And maybe that's something you can elaborate on.

THE WITNESS: Yes. That's correct. In the rare occasions, that might have happened. I can't envision any at

this point in time.

THE COURT: All right. Thank you.

MR. COLEMAN: Crystal clear?

THE COURT: No. But clear enough. I think what I'm understanding -- and you may be excused. Thank you very much.

What I'm understanding from this record is that there was a business managed by English & American as a collective enterprise of a number of willing insurance carriers to participate in the London market together that the insurance companies that are together on the caption of the current Chapter 15 cases all represented by PRO Insurance Solutions together, on an annual basis, chose to underwrite various risks in the aviation, marine and nonmarine insurance arena in varying percentages depending upon which business line we're talking about and that these insurance companies are together involved in the same scheme of arrangement which has been sanctioned by the High Court. Do I have that correct?

MR. COLEMAN: That is correct. That is correct, Your Honor.

THE COURT: And it is the position of the movants here that each of these separate debtors in a foreign proceeding should be viewed as conjoined by virtue of the pool arrangement described by the witness as if they were, in effect, a partnership with their respective percentages of contribution identified by the stamp arrangements as described.

And I understand that there is some subtlety to this and that the particular sharing of a particular risk may vary depending upon whether or not that risk is in the aviation, marine or nonmarine lines of business. And that in effect what I'm being asked to do is to recognize this as a partnership or pool of foreign insurance companies that are together involved in the same proceeding, each of which company is being effectively managed by PRO Insurance Solutions for purposes of this scheme.

MR. COLEMAN: That is correct, Your Honor. We're asking you to give effect -- what you just articulated is exactly what we're asking for. And it gives effect, in our view, to the economic reality of how this business was conducted from its inception.

THE COURT: By virtue of the record that has been presented, I am prepared to recognize all of these cases as foreign main proceedings. But in so doing, I am simply determining that under the particular facts and circumstances presented, these companies have a center of main interest in London solely in respect of their pooled business. And I am recognizing these cases as foreign main proceedings based upon the representations made that, for all practical purposes, it is the pool rather than the individual insurance company that is the business that is being conducted under the auspices of PRO Insurance Solutions.

MR. COLEMAN: Thank you, Your Honor. May I say a few

words about provisions in the order? And I think this -- Your Honor may wish us to clarify the order to reflect your comments in this particular respect.

THE COURT: I may also at some point wish to write something more than just what's in the order on this subject.

MR. COLEMAN: That's fine, Your Honor. We want to make sure that this is as clear as it can be. And Your Honor's commentary just now, I think, reflects exactly our intention in proposing these as foreign main proceedings.

THE COURT: It might be helpful to obtain a transcript of what I just articulated. I'm not sure that it's in perfect English but it may be close -- and attempt to use that as something which you can either specifically reference in the order or actually attached to the order.

MR. COLEMAN: Fine, Your Honor. And perhaps have specific findings of fact so that we're clear about what this order does and doesn't do.

THE COURT: Yes.

MR. COLEMAN: Okay. We'll do that.

I'd also like to just take a moment and point out a couple of other things to Your Honor that are in the order. This order, this form of order, has been with us for a very long time. It has been with me for the better part of twenty years. And it gets tweaked here and there and life goes on and you don't read it closely.

THE COURT: Are there some things in it you'd like to change now?

MR. COLEMAN: Well, there are some things in it that probably need some changing. They're particularly with respect to a fairly recent decision that Your Honor made --

THE COURT: The Kozak (ph.) Bank decision.

MR. COLEMAN: That would be the one -- with respect to the extraterritorial reach of this Court. For the longest time, we've taken the position, as others have, that as long as the Court has jurisdiction over the person, it can control the action of that person wherever that may take place, the concept that Your Honor dealt with at length in that decision.

This order, I think, can be read in ways consistent with that and can be read in some ways inconsistent with Your Honor's decision in that case. And I apologize but it didn't occur to me until I was looking at it earlier this morning. And I think there is a fix that can be made there with the words "United States" moved to different parts of various parts of decretal paragraphs. And we'd like to do that and then present a revised version to Your Honor so that we --

THE COURT: That's fine.

MR. COLEMAN: Okay? There's another provision that I think bears specific mention here. And it is also very much consistent with the way this business was run as we heard -- as we saw from the materials and as we heard from the witness,

very much an integrated business, the pool business. There is a provision in the scheme. It's clause 2.8.4 and it's referenced in paragraph 38 of our petition -- which says that these are integrated schemes and that a scheme creditor that is bound by one scheme is bound to observe the provisions of the other sanctioned schemes. So that is part of the order we will be presenting to Your Honor as well. That is part of what the High Court has sanctioned and that is embedded in the scheme, again, of necessity given the way -- given the integrated nature of the business, if you are bound by one scheme, you cannot go -- even if you voted against another scheme, as long as that other scheme has been duly approved by creditors -- and again, they don't have cramdown in the U.K. so if the vote was carried and the Court sanctioned that other scheme, you are bound by that other scheme as well. This order would do that.

THE COURT: Well, that's consistent with what the High Court did. Let me just ask if there are any dissenting creditors that are challenging in the U.K. the integrated nature of the schemes as just described.

MR. COLEMAN: There were no challenges in the U.K. All -- this was, for all intents and purposes, consensual in the U.K. There was sufficient time allowed to resolve all differences before it was presented to the High Court. So there were no objections in the High Court. And, of course, there were no objections in the High Court and, of course,

there were no objections filed here --

THE COURT: Right.

MR. COLEMAN: -- to this or any other provision.

THE COURT: But I know that there were certain creditors that didn't accept the schemes in the --

MR. COLEMAN: There were --

THE COURT: -- the separate schemes in the U.K.

MR. COLEMAN: There were no votes, to be sure, but there were no challenges to that provision or any other provision.

THE COURT: All right.

MR. COLEMAN: Those were the -- just give me one moment.

(Pause)

MR. COLEMAN: One last point, Your Honor, I think, in terms of notice of entry of orders as a cost-saving mechanism. We would propose to serve notice of the order on creditors who appeared in the proceeding --

MR. DOODY: Or who had objected, Your Honor. This would be consistent with your form and manner of order that you had given us prior to this hearing.

MR. COLEMAN: One more moment.

(Pause)

MR. COLEMAN: Your Honor, we'll propose some sensible notice provision in the order and we'll submit it to chambers.

THE COURT: Sensible would be good.

MR. COLEMAN: Yes. Your Honor, thank you very much.

THE COURT: All right.

MR. COLEMAN: We appreciate your time and attention on this.

THE COURT: A very interesting matter. Have a good holiday.

MR. COLEMAN: Thank you very much.

(Whereupon these proceedings were concluded at 11:49 a.m.)

I N D E X

T E S T I M O N Y

WITNESS	EXAM BY	PAGE	LINE
Toby Wooldridge	Mr. Coleman	24	8

R U L I N G S

DESCRIPTION	PAGE	LINE
Request to recognize, under the facts and circumstances presented, each separate debtor in foreign proceeding (with its center of main interest in London by virtue of their pooled business) as conjoined by virtue of the pool arrangement and, as foreign main proceedings based on the representations that the pool is the business being conducted under the auspices of PRO Insurance Solutions - granted	41	16

C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

Lisa Bar-Leib
Digitally signed by Lisa Bar-Leib
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LISA BAR-LEIB

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Date: December 1, 2010