Lloyd's of London: The Curious Case of the "Wilson Notice"

Written by:
Richard J. Astor
Barrister; London
richardastor@astorlaw.com

Author's Note: *The author's own technical terms (including references to the RRC series of "Reconstruction and Renewal" documents) are defined in the Master Glossary downloadable from www.astorlaw.com. This article deals only with English law, in which "bankrupt" and "bankruptcy" are not generic terms but relate solely to the specific statutory[1] insolvency process known as "bankruptcy", which bears only on natural[2] debtors,[3] never corporate ones. The present article addresses the peculiar position of the natural[4] SYA participant having (as he always will) a relatively insignificant total gross liability to each of his assureds−at−Lloyd's. The reader should note the considerable legal complexity of the Lloyd's enterprise and the "Equitas" construct, of which the present article conveys only an indication.[5] The term "insolvency guardian" is to be construed solely in the context of English law.*

What Is a Wilson Notice?

The following appeared in a 2003 edition of the monthly magazine Business Insurance:

> NOTICE OF BANKRUPTCY OF LLOYD'S NAMES—On Jan. 30, 2003, Aubrey Linn Wilson Sr. and Joan Burch Wilson, former Names at Lloyd's, filed a chapter 7 bankruptcy, case #03−50512−C, in the U.S. Bankruptcy Court for the Western District of Texas, San Antonio Division. Policyholders and other beneficiaries of policies insured or reinsured by those syndicates listed below who may have claims against Mr. or Mrs. Wilson should consult an attorney. Mr. Wilson, Lloyd's #016949K, participated during the years of account, 1977−93 in syndicates 126,127,190,122, 203, 206, 207, 209, 288, 428, 210, 212, 293, 925, 950, 960, 998, 546, 561, 718, 662, 317, 418, 437, 51, 861, 799, 1173, 1232, 1215, 1066, 1067 [and] 1068. Mrs. Wilson, Lloyd's #029S65X, participated during the years of account 1982−92 in syndicates 206, 209, 288, 428, 662, 210, 122, 546, 598, 960, 925, 866, 330, 204, 204, 212, 219, 700, 701, 661, 1028, 503 and 37. The court has set a deadline of June 17, 2003, for the filing of proofs of claim. Failure to file a timely claim may lead to the claim being disallowed and to the discharge of any liability of the claim. Complaints to determine dischargeability of certain debts must be filed on or before May 13."[6]

From this thought−provoking[7] advert originates the author's term "Wilson notice", *viz.*, any public advertisement placed by a SYA participant or his personal representative (including his insolvency guardian) soliciting a direct relationship or connection with an assured−at−Lloyd's privy to an insurance contract liable[8] to be performed by the SYA participant. Members of Lloyd's have been going bankrupt in the back office at Lloyd's for generations[9]—some, recently, on the corporation's own application[10]—yet their relevance to the assured−at−Lloyd's in the front office[11] appears barely to have been explored, largely because it almost never arises as a practical front−office issue, though Equitas Re (by whom both Wilsons are reinsured[12]) notoriously seeks to make it one in settlement negotiations.[13]

Article's Scope

This article considers a few selected aspects of posting and responding to a Wilson notice. It summarily explores the extent to which Wilson notice dynamics are consistent with (1) the SYA participant's back−office obligations to relevant components of the Lloyd's enterprise and (2) the assured's−at−Lloyd's front−office rights against relevant claims payment securitisation trust and other funds available to pay his claim in full

regardless of any SYA participant's personal inclinations or financial circumstances. It notes in general[14] terms a limited number of the author's present views and does not contain legal advice in relation to any particular transaction including the original Wilson notice itself.

The SYA Participant's Back−office Obligations

In the back office at Lloyd's, the member enters into a private membership contract with the Corporation to or of which no assured−at−Lloyd's is a party or an express third−party beneficiary. In the case of both Wilsons, the particular contract was (or became) the General Undertaking (expressly governed by English law), parts of which were extensively litigated in U.S. federal court in the 1990s. Those forms of General Undertaking in which the Member contracts 'on behalf of himself and his legal and personal representatives and successors'[15] appear to that extent to be binding on the signatory member's insolvency guardian personally.

In recent forms of General Undertaking, the member binds himself to comply not[16] with specific listed already−promulgated bylaws but with all and any bylaws[17] that happen to be in force from time to time during[18] the currency of his membership. Pivotal bylaws have been those promulgating compulsory standard forms of (among other numerous other instruments) contract (governed by English law) between the member in his capacity of SYA participant and the professional agents to whom he exclusively entrusts the conduct of his insurance business at Lloyd's. In those contracts, the member similarly contracts on behalf of himself and his insolvency guardian.[19] Those back−office contracts, as well as a variety of back−office trust deeds, govern the conduct of insurance business at member and SYA−participant levels,[20] and help to ensure that the Lloyd's enterprise is left alone to handle, and put in funds to pay, valid claims regardless of the wishes and financial condition of any member or SYA participant.

Taking the most recent such contract between the SYA participant and a managing agency, SUA 1, the SYA participant cannot, must not and does not conduct any day−to−day aspect of his own insurance business at Lloyd's, including handling, adjusting and paying claims. The solus is not and can never be relevant to any assured−at−Lloyd's at any stage of any insurance transaction, especially including (for example) placing,[21] subscribing,[22] claims notification,[23] claims broking,[24] claims handling,[25] coverage dispute resolution[26] and collection.[27] Imagine if every claim were subjected to handling by each of a multitude of liable secretaries, dentists, upper−class, farmers, 'businessmen', housewives, the idle rich, pensioners, military types and/or the various other "underwriters at Lloyd's"—either as principals or through different[28] managing agencies—or their respective insolvency guardians, "each for his own part and not one for another," in a variety of jurisdictions, each having his own view about the insurance contract!

Insolvency does not of itself break these back−office contractual restraints designed to avoid such a fiasco. The managing agency is empowered to terminate SUA 1 on the SYA participant's insolvency.[29] If the agency does not exercise the power, the contract subsists, with his insolvency guardian personally sewn into the exclusive underwriting and claims handling relationship with the managing agency in place of the SYA participant. The insolvency guardian may be able to sunder those bonds by disclaiming[30] SUA 1 (and all relevant trust deeds, and agency and other contracts), but to thus usurp to himself (among many other things) the managing agency's exclusive express contractual claims−handling (and all other relevant) functions then requires him to set up and maintain, at considerable initial and continuing cost to the estate, a potentially extensive business embracing not only handling of all inward claims but also of all outward reinsurance claims and all other ancillary matters.

The Wilsons' insolvency guardian appears to be not only willing but prepared to set up such a business, for he invites relevant assureds−at−Lloyd's to "consult an attorney." This is multiply absurd. A Main Street USA attorney may know absolutely nothing useful, and may know a lot that is useless, of the Lloyd's enterprise's abstruse intricacies, pandemically misunderstood even by self−averred specialist U.S. insurance lawyers. And there is no reason for any assured−at−Lloyd's to consult one in the first place. The attorney may charge for

saying, "I don't know anything about it. You may as well file a claim just to be safe, don't you think?" The only certainty will then be the estate's dissipation on fees and expenses incurred by the insolvency guardian in processing resulting claims

Front−office Relations with the Assured−at−Lloyd's

In the front office, the SYA participant's managing agency enters on his behalf into insurance contracts with assureds−at−Lloyd's.[31] All such contracts are always discharged by the managing agency on the relevant SYA participant's behalf. The Lloyd's enterprise could not function were any SYA participant, or (if insolvent) his insolvency guardian, to be allowed to take any executive part in his own insurance business.[32]

It goes further. The assured−at−Lloyd's is insulated from each and every relevant[33] SYA participant throughout the discharge of every aspect of the insurance contract, including claims broking (done by the Lloyd's broker to managing agencies and their delegates, never to any SYA participant as such personally); claims handling (done by managing agencies and their delegates), dispute resolution (ditto), and marshalling and disbursement of claimium.

In particular, in what may be called the Enterprise−Level Recourse Principle,[34] operational since at least 1927,[35] the assured−at−Lloyd's is fully securitised at Lloyd's regardless of the personal financial condition of any relevant SYA participant. Not only does no assured−at−Lloyd's bargain for having to deal with each SYA participant solus, but—even if he did and even if the solus himself wanted to be—no solus is, as the Lloyd's enterprise itself knows better than anyone, capable of being of the slightest front−office relevance to any assured−at−Lloyd's.

Regardless of the impression given by the Lloyd's enterprise to the assured−at−Lloyd's by the Lloyd's policy boilerplate "each for his own part and not one for another," the assured's−at−Lloyd's recourse is not against the SYA participant solus, solvent or insolvent, but against relevant claims payment securitisation trust and other funds. The Lloyd's enterprise has its own well−established back−office procedures to muster back−office funds from whatever sources it can, including (but obviously not limited to) each actual liable available individual SYA participant.

What relevance to the assured−at−Lloyd's does the SYA participant personally have, ordinarily? His principal front−office function—including when successfully sued in a coverage action—is as a conduit to those securitisation funds, never as front−office recourse. Indeed, no SYA participant ever directly pays a claim.[36] When a SYA participant does become insolvent, life in the front office continues as if nothing had happened. The back−office consequences are different (and outside the present article's scope). When buying insurance at Lloyd's rather than from a conventional insurance company, the assured−at−Lloyd's buys not into the personal unknown, unpredictable assets of Ebenezer Snodgrass at 22 Hillcrest Terrace or any of his ilk.

A fancifully called "chain of security"—so fulsomely blandished by self−regulators−at−Lloyd's in the front office[37] and reiterated in the back office[38]—comprising (not quite in the form conjured in 'chain of security' propaganda) a variety of expressly and arguably available claims payment securitisation trust and other funds and mechanisms, is available (and usually mandated by external insurance regulators in various jurisdictions) to pay qualifying claims in full[39] regardless[40] of (the financial condition of) any solus, rendering every latter irrelevant for all front−office recourse purposes.[41]

There is no legal, commercial, practical, procedural, substantive, administrative or other advantage to the assured−at−Lloyd's recoursing to, or otherwise treating directly with, one, any, each or all of a positive multitude (as discussed below) of relevant SYA participants, however insolvent each may happen to be—indeed, the more insolvent, the less advantage—and (as a general rule) no assured−at−Lloyd's ever does so, because the properly informed assured−at−Lloyd's knows that, in BBSN circumstances, his valid claim

will be paid in full regardless of the insolvency of any SYA participant. The assured's−at−Lloyd's Lloyd's broker should keep him properly advised of the correct way to claim at Lloyd's.

In these circumstances, is the Wilson insolvency guardian—obliged to advertise for and obtain discharges from creditors under various express general insolvency law oblivious to front− or back−office weirdness at Lloyd's—correct in considering an assured−at−Lloyd's a creditor in the first place and put the SYA participant and the assured−at−Lloyd's in positions wholly inconsistent with their true positions at Lloyd's?

But What about My Insurance Contract with Snodgrass?

Just how deep does an assured−at−Lloyds need to drill down when analysing his insurance at Lloyd's? Traditionally, insurance is bought at Lloyd's by one assured−at−Lloyd's on the one hand from, on the other, a multitude of natural 'names' congregating in SYAs. One particular slip may have been subscribed by scores of SYA stamps,[42] each comprising scores of SYA participants. The number of insurers became so large per slip that Lloyd's Policy Signing Office has long since stopped scheduling every individual subscribing SYA participant to the policy, but, instead, has traditionally promised to make a list available to the assured−at−Lloyd's on request. It was a problem even in 1871.[43]

Historically, neither the assured−at−Lloyd's nor any insurer−at−Lloyd's needed to dissect the minute insurance contractual dynamics—especially the number of insurance contracts per Lloyd's policy (if such a policy was ever issued)—because: (1) the individual natural SYA participant's insolvency was too insignificant (and therefore too administratively irritating) to ever justify practicably becoming, and it never did become, a front−office issue. However insolvent the individual SYA participant, some component of the Lloyd's enterprise always marshalled money (from a variety of appropriate available back−office sources) to the front office to pay claims, never disclosing any liable SYA participant's personal financial condition to any claimant (because as a front−office matter it was completely irrelevant and would only have confused actual and potential assureds−at−Lloyd's).

Take one hypothetical insurance transaction at Lloyd's on the traditional model. The Lloyd's broker has gone around the room and obtained 100 percent subscription to the slip from 20 SYA stamps (colloquially and erroneously, 'syndicates'[44]), each comprising 30 SYA participants (colloquially and inappropriately, "names"[45]). LPSO eventually issues one Lloyd's policy evidencing the insurance contracts, with each SYA stamp scheduled at the back.

How many (separate, discrete, autonomous, independent) insurance contracts are there in this one insurance transaction? Arguably, 20 x 35 = 700. There is (terminologically and conceptually confused) English judicial authority[46] to that effect. The far better view—indeed, the only one that takes reality into account—is that there are 20 insurance contracts, *viz.*, one between the assured−at−Lloyd's on the one hand and, on the other, each subscribing SYA stamp. There are various front− and or back−office agency, disclosure, placing, subscribing, broking, leading, adjusting and collecting reasons why this is so, outside the present article's scope.[47] In the front office (and notwithstanding various curious U.S. federal jurisprudence on diversity jurisdiction), no SYA participant is, needs to be or is permitted to be contractually, financially, administratively, procedurally, substantively or practically autonomous. Indeed, no insurance contract is capable of being performed, in the front office, at SYA−participant level. The deepest contract performance level is SYA stamp, never SYA participant. There is definitely a multiplicity of poly−stamp−level contracting insurers, but for all front−office purposes they are always contractually collectivised into SYA stamps.

Pursuing the Wilson approach to its logical conclusion, consider the practical difficulties caused by mere numbers. Whatever the mechanics and merits of posting, responding to, and then following through on a Wilson notice, Mr. and Mrs. Wilson's insolvency guardian, if he intends to be taken seriously by invitees, should have the following expectations:

1. He has specified up to 561[48] separate insurance businesses for Mr. Wilson, and up to 242[49] for Mrs. Wilson: a maximum potential total of 803 SYAs, each one a separate and distinct business with its own financial profile and results. Assuming each of the 803 SYA stamps,[50] in the course of its first year of operation, subscribed to 500 direct insurance policies—let's say for argument that each insurance contract is 'occurrence'[51] (*cf.* 'claims made')—and that each such contract remains capable of giving rise today[52] to at least one valid claim, that makes (at least in principle) a total of 401,500 currently live insurance contracts. Let's say (again, just for the purposes of discussion—it is very unlikely to be so in practice) that the assured−at−Lloyd's under each such contract is a U.S. corporation covered for liability for injury to third parties, and has 10 workers genuinely injured in a manner covered by the insurance. That means a potential total of 4,015,000 claims against one or other (and in some cases perhaps both[53]) of the Wilsons.

Applying the above hypothetical numbers to each of those 803 SYA stamps' (say) 49 other participants, that means 39,347 separate insurance businesses—assuming 50 percent commonality of participation, that means around 20,000 insolvency guardians and 20,000 Wilson notices—and a potential total of 19,673,500 separate insurance contracts (some of which will be identical to each other in most material respects). Assuming 10 claims under each contract, that means 196,735,000 separate SYA−level[54] claims. Of course, we still have to allow for each SYA participant's facultative and treaty outward reinsurance contracts and, conceivably, his conventional outward reinsurance−to−close contracts.[55]

In the United States, there are thousands of EquitasRe−reinsured SYA participants like the Wilsons, *viz.*, members of Lloyd's who entered—or refused to enter—in September 1996 into the Reconstruction & Renewal settlement agreement ('RRC 1' in the Astor Catalog System) and are now considering, or in the future may consider, bankruptcy as a way to protect their solvent estates from come−back from the pinstriped chaps in Lime Street. Some of them are, or may become, genuinely insolvent. There could in due course be a deluge of Wilson notices. Each claim could then give rise to litigation or arbitration.

In addition, the assured−at−Lloyd's must still claim (or commute) in the ordinary way in relation to (assuming Mr. and Mrs. Wilson succeed in settling with any assured−at−Lloyd's in the first place) the remaining multitude of subscribers.[56] Imagine if a sizeable number of SYA participants were to go bankrupt and their insolvency guardians to post Wilson notices! It would create havoc among the generality of assureds−at−Lloyd's and chaos in the back office at Lloyd's, and turn each of their insolvency guardians into a full−time run−off company, in relation to individual claims that will never be valuable enough individually to justify handling on a SYA−participant level in the first place[57]—the principal historic reason why they have been handled collectively in the back office at Lloyd's and why no assured−at−Lloyd's is ever concerned about the personal financial condition of any solus. The insolvency guardian should expect to set up a full−service claims handling operation in parallel with that operated by each SYA stamp's managing agency at Lloyd's (or he could farm out the claims handling to a specialist agent, or back to the managing agency[58]).

2. Some of the respondents will be conventional reinsurance companies who have their own trading relationship with the SYA stamp. Set−off arises at solus level, which would be wholly impractical.

3. Some of the invitees will be other SYA stamps who have bought outward reinsurance, and or personal stop−loss insurance, from the Wilsons.

4. Whoever the invitees happen to be, some will not respond at all. In fact, they may be legally advised not to respond so as to not jeopardise the customary course of business at Lloyd's whereby the financial condition of the solus is utterly irrelevant to the assured's−at−Lloyd's rights of recourse (at least for as long as the Lloyd's enterprise itself remains solvent). Does that failure prejudice BO recourse to the solus, on some waiver argument? Definitely not!

Bankruptcy Law and the Back Office at Lloyd's

There can be expected to be two competing schools of thought (neither, interestingly, emanating from general insurance insolvency law) as to the general legal framework applicable to an insolvency of a SYA participant in BBSN circumstances when an insolvency guardian is required or minded to post a Wilson notice. The first is that no mere private contractual regime, such as governs the Lloyd's enterprise, is capable of overriding general bankruptcy law of a relevant jurisdiction. Such a regime's provisions attempting to dragoon an insolvency guardian into (among other things) funding the (so far as presently material, unsecured) Lloyd's enterprise in preference to the generality of creditors are repugnant to insolvency law, as are the open−ended claims handling discretion he gives to the managing agency. At the very least, the insolvency guardian must disclaim[59] all relevant back−office "Lloyd's"−side contracts—and maybe all front−office insurance contracts too—so as to be free to rationally identify and properly advertise to all relevant creditors, distribute the estate equally among all relevant provers and eliminate multiple liability for the same debt (*viz.*, front−office liability (under the insurance contract) to the assured−at−Lloyd's, and back−office liability (under relevant back−office contracts and trust deeds) to relevant components of the Lloyd's enterprise).

An alternative argument is that no properly informed judge should allow general bankruptcy law to disrupt smooth, rational, commercial, predictable, established, notorious contractual and trust mechanisms, apparently unobjectionable under the governing law of the club (English law), on which the smooth discharge of insurance claims has long depended and continues—including under external insurance regulation—to depend, especially in relation to merely two wayward members of the contractual community for whom the club's insolvency−relevant rules, there specifically to protect third parties from cranks, should already be crystal clear. Moreover, such rules enable the assured−at−Lloyd's to recourse to ample claims payment securitisation funds regardless of the insurance contract's governing law, the law of the SYA participant's residence, domicile or business, and general English insolvency law.

The second seems to be the better argument, and it avoids the self−evident procedural, substantive, administrative, practical and financial absurdity of each SYA participant's insolvency guardian handling insurance business arising under thousands of insurance, outward reinsurance and other contracts. The second argument, at least under English law, still allows the insolvency guardian to extricate himself completely from all club rules, contracts and trust deeds by exercising his statutory power to disclaim back−office contracts, thus limiting the damage to the back office and avoiding the need to do anything—like post a Wilson notice—that could disrupt established customs and procedures and cause gratuitous confusion among assureds−at−Lloyd's in the front office.

Bottom Line: Forget It

The author's present general view is that, regardless of local insolvency law requiring the insolvency guardian to notify creditors, any posting (with or without court directions) of a Wilson notice would be disingenuous and pernicious. No insolvency guardian genuinely versed in how the Lloyd's enterprise actually works would consider it appropriate. For example, a properly informed, responsible insolvency guardian, knowing the SYA participant's front−office irrelevance and back−office relevance (at least in BBSN circumstances) would:

1. always seek the court's directions on that law's applicability to inward insurance debts incurred, and outward reinsurance bought, specifically at Lloyd's, particularly explaining to the court the utter irrelevance of the SYA participant solus, and the sheer number of potential inward and outward claims liable to consume the estate were the notice to attract serious response. The judge may well find it odd how each and every assured−at−Lloyd's is in fact not a relevant front−office creditor of the bankrupt insurer, and look askance at relevant premiums trust deeds as possibly creating an unlawful preference in favour of the relevant "Lloyd's" counterparty. If he thought such an application worthy of substantive consideration in the first place,[60] he would then consider which of the two schools of thought discussed above should properly apply to the case.

The judge would hear extensive expert fact and law evidence as to how the Lloyd's enterprise actually works, and learn the recourse and inward−claims and outward−claims handling irrelevance of a SYA participant solus, and the existence and functioning of well−established recourse, claims broking and claims handling procedures at Lloyd's (and Equitas Re), which in the front office make the solus utterly irrelevant administratively, procedurally and financially to each of his assureds−at−Lloyd's and each of his outward reinsurers. He would then be unlikely to indulge an insolvency guardian dissipating the estate by posting, and equipping himself to respond to, and actually responding to, responses to, such a notice by creating a front office in parallel, and in conflict, with the established front office at Lloyd's (and Equitas Re). An insolvency court properly so directed should not only relieve the insolvency guardian from having to attract and then pay off every individual assured−at−Lloyd's in relation to the SYA participant's trivial participation, but should positively prohibit him soliciting a direct relationship with any assured−at−Lloyd's, a fortiori if the insolvency guardian were minded to disclaim relevant back−office contracts;

2. know that he was acting contrary to practice at Lloyd's (or Equitas Re), which as a front−office matter, bypasses each and every SYA participant solus. Bypassing that practice would lead to anarchy. Relevant authorities at Lloyd's (or Equitas Re), whom he would have to consult before embarking on any Wilson−style exercise, should certainly tell him not to get involved;

3. know that exercising any inward or outward[61] claims−handling function would be a breach of the contract(s), binding on him personally in the event of the SYA participant's insolvency, under which the SYA participant appointed, without express limit of time, exclusive claims handling agents at Lloyd's (or Equitas Re). The harm in the breach is not in actual damage to the counterparty managing agency personally—there will be none at all—but in the wholesale disruption of established inward and outward claims handling procedures—and of ancillary procedures such as net accounting—the threat of which can probably be the proper subject of an injunction, on the agent's application to the proper court;

4. not seriously expect a meaningful response to a Wilson notice, because he well knows that a properly advised assured−at−Lloyd's—including a sophisticated commercial cedant assured−at−Lloyd's—would not respond, however much Equitas Re may scaremonger to the contrary and however much the Council of Lloyd's may try to placate members by erecting *ultra vires* back−office ringfences.[62] A genuine expert will take 10 seconds to advise the assured−at−Lloyd's for free to go home and forget he ever saw the notice.

The only question the assured−at−Lloyd's need ask is, "am I entitled to get paid in full at Lloyd's if I ignore the notice?" The answer is "yes," because the claims−payment securitisation funds available to pay his claim in full are not contingent on the personal financial condition of any SYA participant—indeed, they are available precisely to circumvent any such considerations. It might even be a fraud on relevant assureds−at−Lloyd's for an insolvency guardian to seek to pay (especially in return for the usual release) a dividend of less than 100 percent—or even 100 percent—and thereby disrupt the assured's−at−Lloyd's plain simple straightforward recourse to relevant claims payment securitisation funds designed specifically to pay in full all valid claims on all relevant SYA participants regardless of their individuality and personal insolvency.

In particular, no properly advised assured−at−Lloyd's would seek to waste time circumventing well−established claims−broking and claims−handling procedures at Lloyd's (and Equitas Re) by responding to a Wilson notice, especially (for example) to: (a) value a merely contingent claim payable 100 percent at Lloyd's when it matured; (b) pursue an insolvency percentage of an already trivial liability; (c) be picked off in relation to only one of a multitude of subscribing SYA participants, against each[63] of whom he would still (have to) claim via Lloyd's (or Equitas Re) in the ordinary way when his claim matured, and in relation to a dividend from whom the assured−at−Lloyd's would then have to off−set as a credit against otherwise−gross[64] recoveries made in due course in the ordinary way at Lloyd's (or Equitas Re) from the remaining solvent SYA participant conduits; and (d) release the insolvent SYA participant where no such release was appropriate given full securitisation at Lloyd's.

5. not dissipate the estate by seeking to become (still less by actually becoming) a claims adjuster on the scale appropriate to responsibly handling—financially, administratively, procedurally and/or substantively—one or a few (still less thousands of) individually trivial[65] claims already being handled by relevant existing managing agencies and other claims handling agents. Indeed, the bankrupt SYA participant's general creditors should consider pursuing the insolvency guardian personally for wasted fees and costs if he were to turn the estate into a claims−handling business. Moreover, were he minded to delve into the SYA participant's outward reinsurance and conventional reinsurance−to−close, there may then be *prima facie* grounds for a claim against him for malpractice and possibly also for fraud, since no properly informed insolvency guardian would ever consider appropriating the estate for any such purpose;

6. not seek to contract out the claims handling function back to already exclusively empowered managing agencies (or Equitas Re as run−off agent[66]) because he would know he had already contractually divested himself of that function.

Relevance of Equitas Re

In relation to their pre−1993 non−life liabilities, the Wilsons will compulsorily[67] have bought whole−account outward reinsurance[68] from Equitas Re.[69] Does that purely back−office transaction—from which all EquitasRe−assureds−at−Lloyd's were expressly excluded as third−party beneficiaries[70]—change any relevant insurance contract dynamics such that any of the Wilsons' own assureds−at−Lloyd's need concern themselves with any Wilson solus? Not at all. The commercial impracticability underlying the SYA participant's front−office irrelevance is in no way diminished by their domestic outward reinsurance arrangements. If anything, Equitas Re reinsurance makes tracing the relevant transactions of an EquitasRe−reinsured SYA participant solus even more difficult than it ordinarily would be, since Equitas Re apparently does not keep relevant accounting records even at SYA stamp level. The Wilsons' insolvency guardian(s) will find it difficult, if not impossible, to obtain a SYA−participant−level accounting of their relevant assets and or their EquitasRe−reinsured liabilities. To that extent the presence of Equitas Re appears to make solus−level recourse even more inconvenient for the assured−at−Lloyd's than ordinarily.

Footnotes

[1] *See, generally,* Insolvency Act 1986, Part IX; Insolvency Rules 1986 (SI 1986/1925), Part 6. Return to article

[2] For some reason, English lawyers and statutory draftsmen seem to have difficulty using the word "natural" to describe a natural (cf. corporate) person, preferring the wholly inappropriate word "individual": *see, e.g.,* Bankruptcy Act 1986, Part VIII, etc.; the Lloyd's self−regulatory regime, passim, etc. How is one to speak of an individual corporate person? Return to article

[3] *See* Insolvency Act 1986, Part IX, etc. Return to article

[4] *Cf.* subscription to an insurance transaction at Lloyd's by a substantial corporate SYA participant, which may involve financial and administrative dynamics different from those applicable to a natural SYA participant. Return to article

[5] A detailed account of the Lloyd's enterprise is at *Astor's Law of Lloyd's,* 2nd Ed. (ISBN 1 873994 41 9). A detailed account of Equitas Re is at *Astor's Equitas Re Handbook* (ISBN 1 873994 26 5). A detailed account of insolvency at Lloyd's and Equitas Re is at *Astor's Insolvency at Lloyd's and Equitas Re* (ISBN 1 873994 76 1). Return to article

[6] The author thanks Marc Mayerson, partner, Spriggs & Hollingsworth, Washington D.C., for alerting him to the original Wilson notice. Return to article

[7] The original Wilson notice's use of "policyholder" is infelicitous and potentially misleading: Not every insurance contract made at Lloyd's will be evidenced by a policy. Return to article

[8] This embraces insurance contracts to which the SYA participant (1) was an original party and in relation to which he has not obtained a relevant form of reinsurance−to−close, or (2) is not an original party but which he is liable to perform (to the exclusion of each original−contracting SYA participant) because he is somewhere in the chain of conventional reinsurance−to−close. Reinsurance−to−close (outside this article's scope but relevant to its substance) is summarised at "'Equitas Under English Law': An English Lawyer Replies" (August 2003 at www.astorlaw.com), and discussed in detail at *Astor's Law of Lloyd's*, 2nd Ed. Return to article

[9] *See, e.g., Lloyd's v Harper* (1880) 16 Ch.D. 290 (CA). Indeed, English reinsurance law and English bankruptcy law are historically connected with the business insolvency specifically of natural insurers (who congregated principally at Lloyd's); *see respectively, e.g.,* (1) 19 Geo. II, c.37 (1746), s.IV: "[I]t shall not be lawful to make re−assurance, unless the assurer shall be insolvent, become a bankrupt or die; in either of which cases such assurer, his executors, administrators or assigns, may make re−assurance, to the amount of the sum before by him assured, provided it shall be expressed in the policy to be re−assurance"; (2) 19 Geo. II, s.II: where a natural insurer entered bankruptcy, his insurance creditors are entitled to a dividend, and the bankrupt to a discharge in relation to those creditors. The insolvency of natural insurers apparently precipitated 6 Geo. I c.18 (1719) (which empowered the Crown to charter two marine insurance corporations. The conduct of marine insurance at Edward Lloyd's coffeehouse in parallel with the two corporations is an interesting piece of insurance commercial history). Return to article

[10] *See, e.g., Garrow v Lloyd's* [1999] Lloyd's Rep. IR 482 (Jacob J); *Lloyd's v Bowman* [2003] EWCA Civ 1886, [2003] All ER (D) 393 (Dec) (CA); Everard v Lloyd's [2003] EWHC 1890 (Laddie J); *Re: A debtor Number* 544/SD/98 [2001] BCLC 103 (Jacob J); *Jones v Lloyd's*; *Standen v Lloyd's, The Times* 2 Feb. 2000 (Rattee J); *Re a debtor* (No 544/SD/98) [2000] 1 BCLC 103 (CA); *Lloyd's v Cook* (16 September 1999; unreported; Colman J); *Garrow v Lloyd's, The Times,* 18 June 1999; unreported; Jacob J); *McAllister v Lloyd's* [1999] Lloyd's Rep. IR 487 (Carnwath J), etc. No ensuing bankruptcy appears to have been accompanied by any Wilson notice mediated by, or by any other notification to any relevant assured−at−Lloyd's issued by, any component of the Lloyd's enterprise. Return to article

[11] *Cf.* to relevant creditors of the SYA participant in the back office, a totally different issue beyond this article's scope. Return to article

[12] *See* RRC 4, §3. Return to article

[13] Equitas Re is putting it about, as a negotiation ploy, that the EquitasRe−assured−at−Lloyd's will, as a last resort when Equitas Re goes insolvent (as, alleges Equitas Re, it inevitably will), be compelled to recourse to each individual SYA participant solus, which, given the potential numbers (discussed below) is an alarming prospect indeed. Return to article

[14] Many Wilson−notice−related issues are highly technical and outside the scope of this article. This article does not deal with (for example) (1) the assured's−at−Lloyd's recourse against back−office funds such as the Lloyd's deposit or other so−called (member− or SYA−participant level) "Funds at Lloyd's", (2) his recourse to arguably available claims payment securitisation funds such as the Central Fund, (3) the front−office relevance of back−office so−called "ringfences" purportedly intended by the Council of Lloyd's to protect members from insurance liabilities contracted at Lloyd's or (4) the particular provisions in relevant

back−office contracts and trust deeds—especially relevant versions of the PTD—binding on a SYA participant's insolvency guardian. Such matters are discussed in the above−mentioned books. To keep the article simple, it does not take up the original Wilson notice's challenge of discussing the insolvent SYA participant's relationship with cedants' own direct assureds. The author thanks David Graham QC for a valuable discussion on Wilson notice concepts. Return to article

[15] General Undertaking UA121289, parties. Return to article

[16] As in forms of General Undertaking apparently used before (it is believed) 1985 or thereabouts. Forms of General Undertaking introduced in the mid−1980s ironically reverted to the adhesion formula used in the alleged Aug. 30, 1811, deed of association. Return to article

[17] *See, generally,* Lloyd's Act 1982, s.6. Return to article

[18] Occasionally, the Council of Lloyd's behaves as if the General Undertaking binds the former member, as in (for example) the recent novation of PCW reinsurance−to−close contracts, and the compulsory empartying of former members—presumably a sizeable proportion of the class of "Closed Year Names" (as defined in RRC 4) to RRC 4. Return to article

[19] *See, e.g.,* the definition of "name" in SUA 1. Return to article

[20] The distinction between the member as member and as SYA participant is usually overlooked and almost never specifically articulated. A SYA participant's insolvency guardian will need to know what the member−level front− and back−office liabilities are as well as SYA−participant−level front− and back−office liabilities. Return to article

[21] For a solus to negotiate with a (necessarily misguided) placing broker would be a breach of various provisions in relevant agency agreements between the SYA participant and the managing agency. Return to article

[22] For a solus as such (cf. an active underwriter who happened, coincidentally, to be himself a relevant SYA participant) to smuggle himself into the room and purport to wield the underwriting pen in relation to his own insurance contracts would be (if such an absurd event ever happened) a breach of various provisions in relevant agency agreements between the SYA participant and the managing agency. Return to article

[23] A solus is never a proper notifiee of a claim on his own insurance contract. Return to article

[24] For a solus to permit a (necessarily misguided) claims broker to broke a claim to him would be a breach of various provisions in relevant agency agreements between the SYA participant and the managing agency. Return to article

[25] For a solus as such (cf. a managing agency functionary who happened, coincidentally, to be himself a relevant SYA participant) to manoeuvre himself into the position of adjusting a claim against himself would be (if such an absurd event ever happened) a breach of (nowadays) various provisions in relevant agency agreements between the SYA participant and the managing agency. Return to article

[26] A solus never participates executively in any litigation, arbitration, mediation, settlement or other dispute resolution proceeding involving an insurance contract to which he is a party. To do so would be a breach of (nowadays) various provisions in relevant agency agreements between the SYA participant and the managing agency. Return to article

[27] No assured−at−Lloyd's has apparently ever collected or ever needed to collect from any solus, or been in the slightest concerned with the personal financial or other circumstances of any solus. Return to article

[28] SYA−level collectivisation is one practical manifestation of the rule that each SYA stamp have only one managing agency at any one time. Return to article

[29] *See* SUA 1, §11.7. Return to article

[30] *See, e.g.,* Insolvency Act 1986, s.315 *et seq.* Return to article

[31] In the back office, the managing agency also contracts on the SYA participant's behalf with (for example, typically) outward reinsurers, sources of conventional and unconventional reinsurance−to−close, lawyers, auditors, claims adjusters, the Corporation, other third−party administrative processors and a variety of others necessary or appropriate to the conduct of an insurance business. To keep the present article simple these other relationships are not considered, but would need to be in a comprehensive discussion of the SYA participant's insolvency guardian's contractual and insolvency−law commitments were he to be allowed to disturb the course of insurance business a Lloyd's. Return to article

[32] The SYA−participant−level passivity rule prevents any such interference; see relevant passivity rule provisions in (for example) SMA 1, SMA 2, SUA 1, RRC 4, etc. *See, also, Daly v Lime Street Underwriting Agencies Ltd.* [1987] 2 FTLR 277 (Staughton J). Return to article

[33] *viz.,* the original subscribing SYA participant and the inward conventionally reinsuring−to−close SYA participant. Return to article

[34] A rough rule of thumb is that front−office recourse is at enterprise level; back−office recourse is at SYA−participant and member level. Return to article

[35] The Central Fund was created on May 18, 1927. Previously, litigation by an assured−at−Lloyd's against or in relation to a contracting solus was rare. The litigation apparently precipitating the 1927 creation of the Central Fund was not against a solus but against the Corporation: *Industrial Guarantee Corp. v Lloyd's* (1924) 19 Lloyd's List Law Reports 78, 83 (Bailhache J). Return to article

[36] The solus funds the enterprise through the back office, and never pays any claim in the front office. For example, he funds (among other funds, such as the Central Fund) relevant trust funds, the trustees of which disburse trust fund money for various permitted outgoings including (for example) claims, outward reinsurance premium return premium, managing agency permitted expenses, levies to claims payment securitisation funds, etc. The reader is directed to the governing instruments of each relevant trust and other fund. Return to article

[37] See, e.g., the "chain of security", "Security at Lloyd's" and other sales literature published by the Lloyd's enterprise. Some of it is in Corporation RAs. Some is at www.lloyds.com. It is of considerable vintage; see Industrial Guarantee Corp. v Lloyd's (1924) 19 Lloyd's List Law Reports 78 (Bailhache J). Return to article

[38] *See, e.g.,* SOD, p.123−4: "The Society has a number of contingent liabilities in respect of risks under policies allocated to 1992 or prior years of account. If Equitas is unable to pay the 1992 and prior liabilities in full, the Society will be liable to meet any shortfall arising in respect of these policies." Return to article

[39] A not irrelevant related principle is the Golden Rule, whereby every valid claim on an insurance contract made at Lloyd's is payable 100 percent at Lloyd's, not x percent at an outward reinsurer (such as Equitas Re) or at the home address of any individual (natural or corporate) SYA participant. Return to article

[40] Solus insolvency is never a ground for recourse to the funds in the first place: They are not solus insolvency recourse funds. Return to article

[41] The idea of doing due diligence on the solvency of any individual SYA participant is ludicrous, and the exercise is never performed. For example, no Lloyd's broker does it; the Lloyd's enterprise never provided any facilities to enable anyone to do it; the existing or supervening insolvency of a particular SYA participant is never notified by any component of the Lloyd's enterprise to, nor ever concerns, any assured−at−Lloyd's; that solvency is no part of pre−, peri− or post−contractual utmost−good−faith disclosure by any members' agency or managing agency because it is utterly immaterial: Even if every SYA participant subscribing to a particular slip becomes insolvent, no solus will ever be the proper subject of a collection suit. Credit rating at SYA, SYA stamp or SYA−participant level (some of which is currently fashionable) is completely pointless given the complete front−office irrelevance of any SYA participant's personal financial condition, given the way claims are securitised at enterprise level. The notion of doing credit−rating due diligence on every potential subscribing SYA participant before buying insurance at Lloyd's, and before and after every back−office conventional reinsurance−to−close at Lloyd's (of which the assured−at−Lloyd's is wholly uninformed and which is totally irrelevant to him), is ludicrous and does not happen. Credit rating within the Lloyd's enterprise gives rise to comprehensive confusion among potential and actual assureds−at−Lloyd's as to the front−office relevance of the substantial corporate SYA participant's financial condition. It appears to be a complete waste of time and money. Return to article

[42] "Stamp" designates the individuals who happen to participate on a particular SYA. Return to article

[43] *See* Lloyd's Act 1871, ninth unnumbered recital: "And whereas, by reason of the mode in which the business of insurance has always been carried on by members of the Society, the names of those who underwrite a particular policy cannot, when a considerable time has elapsed, be traced with certainty, if at all...." Return to article

[44] A syndicate properly so−called never sells insurance, never trades in any way and has no assets or liabilities. Mis−use of the word "syndicate" is a dead giveaway of poor understanding of how insurance works at Lloyd's. Syndicates are discussed in detail at *Astor's Law of Lloyd's,* 2nd Ed. For a summary, *see* (for example) (1) "Lloyd's 101" (ABA TIPS The Brief, Fall 2000, p.22); (2) "Lloyd's and Equitas: Some Myths Demolished and Some Mistakes Corrected," (American Bar Association, Tort and Insurance Practice Section, Committee News, Summer 2000, p.6; also in Coverage (ABA Section of Litigation, Committee on Insurance Coverage Litigation), vol. 9. no. 6 (November−December 1999), p.1). Return to article

[45] The term "name" is used at Lloyd's in a number of different senses and is best avoided. Return to article

[46] *See, e.g., Napier & Ettrick v R. F. Kershaw Ltd., Lloyd's v Woodard and Wilson* [1997] LRLR 1 (CA); *Insurance Company v Lloyd's Syndicate* [1995] 1 Lloyd's Law Rep. 272 (Colman J); *Barrington−Hume v AA Mutual International Insurance Co. Ltd.* [1996] LRLR 19 (Clarke J); *Touche Ross & Co. v Baker* [1992] 2 Lloyd's Law Rep. 207 (HL). Return to article

[47] All discussed at *Astor's Law of Lloyd's,* 2nd Ed. Return to article

[48] Assuming each of the 33 syndicates listed budded a YA in each of the 17 listed underwriting years (1977−93) and Mr Wilson was on each of them. The facts can easily be checked; time has not allowed the author to do so. Return to article

[49] Assuming each of the 22 syndicates listed budded a YA in each of the 11 listed underwriting years (1982−92) and Mrs Wilson was on each of them. Time has not allowed the author to do so. Return to article

[50] "Stamp" is the collectivity of all (sole−trader, several−liability) participants on one particular SYA. Return to article

[51] An "occurrence" insurance contract (please, not "policy:: Not every insurance contract made at Lloyd's will be evidenced by a policy) covers a loss whenever in the future it occurs provided that the damage giving rise to the eventual loss was sustained in the year of the cover. So (at its most simple), an "occurrence" worker's compensation insurance contract sold at Lloyd's in 1950 and covering the year 1950 will pay in 2006 for asbestosis manifesting for the first time in 2006 which the victim can prove was contracted in 1950 when he was working at the assured's−at−Lloyd's plant. Return to article

[52] Of course, in reality some of those insurance contracts will have already been discharged. Return to article

[53] Mr. and Mrs. Wilson's SYA participations may (in principle; it would need to be checked) overlap in relation to SYAs of syndicates 122, 206, 209, 210, 212, 288, 428, 546, 662, 925 and 960 (the syndicates common to their lists) budding in UYs 1982−1992 (the UYs in which their underwriting at Lloyd's coincided). Of course, a negligence claim may arise in principle against their members' agencies for putting them on the same SYAs in the first place: The genuine−net (cf. contrived−net) trading results would have to be checked. The Wilsons presumably settled all relevant actual and or potential negligence claims by entering into RRC 1, or else they are "refuseniks", in which event their then members' agencies have long since gone insolvent and the Wilsons will have to pursue the former directors personally if they appropriately can. Return to article

[54] *Cf.* member level. Return to article

[55] Conventional reinsurance−to−close is summarised at Astor, Richard J., "'Equitas Under English Law': An English Lawyer Replies," at www.astorlaw.com (August 2003). Return to article

[56] Assuming each of the 814 SYA stamps comprises a remainder of 49 SYA participants, that leaves 39,886 soluses for the assured−at−Lloyd's to deal with. Return to article

[57] Assume the Wilson premium income limit (one type of so−called "line") deployed on each of the 561 SYAs was £10,000 (it will not do to assume this as an average amount; each Wilson line must be calculated accurately, which means discretely and not averaged out), and that the premium income limit ("capacity") of each of the 561 SYA stamps was £1m (again, it cannot be averaged out; each SYA has its own discrete mathematical character). Assume each of the potential 407,000 valued claims (obviously insurance is predicated on not every insurance contract maturing into a claim, but you never know) totals £50,000 (gross of outward reinsurance recoveries), and that each of the 561 SYAs was merely one of 20 SYA stamps subscribing to the slip, each SYA stamp taking a 5 percent participation (another type of "line"). The Wilsons' participation (the word "share" is wrong because the Wilsons run their own discrete insurance businesses—561 of them—rather than participate in a joint venture capable of giving rise to shares) in each of those £50,000 claims is 1 percent (£10,000 Ö £1m) (their SYA−level participations) x 5 percent (their slip−level participation) = £25. The Wilsons' total exposure is £25 x 407,000 contracts = £10,175,000, which does justify a dedicated claims−handling business by their insolvency guardian. In practice, of course, only a small fraction of these 407,000 insurance contracts will result in procedurally and/or substantively valid claims. The Wilsons' various managing agencies will hopefully have bought outward reinsurance, and the Wilsons' members' agencies will hopefully have advised them to buy personal stop−loss insurance. If neither, and in any event, one or both Wilsons may have claims for a variety of actionable misconduct against one or more of their respective members' and/or managing agencies at Lloyd's, and may be able to recoup some of their gross and/or net losses in that way. These are yet more issues for the insolvency guardian concerned to fully, conscientiously and expertly get in estate assets, a task requiring the highest degree of specialist knowledge of how the Lloyd's enterprise actually works. The whole situation is somewhat complicated by the fact that the Wilsons bought 100 percent whole−account reinsurance from Equitas Re (see previous articles by

the author in the present ABI Journal series) in relation to their entire exposure on each of their 814 separate businesses. English law relating to Equitas Re is set out at Astor's Equitas Re Handbook (ISBN 1 873994 26 5). Return to article

[58] Of course, this is the crux of the whole problem. The managing agency is best placed to handle claims, and will sort out the money as a purely back−office matter. This is dealt with elsewhere in the article. Return to article

[59] *See, e.g.,* (English law) Insolvency Act 1986, s.315 *et seq.* Return to article

[60] Which arguably he should not; the insolvency guardian would be better advised to ask for a summary order without a hearing. Who knows how much expense the insolvency guardian will be put to obtaining genuine expert advice on how the Lloyd's enterprise works, and how much court time will be consumed conveying it all to a judge knowing nothing about the subject, only for the judge to grant what the insolvency guardian arguably should ask for in the first place, which is to be relieved of any obligation to post a Wilson notice. Return to article

[61] *viz.,* on outward reinsurance. Return to article

[62] The ringfences in New Central Fund Byelaw (No. 23 of 1996), as amended, §§8(3)(b) and 8(4)(b) are arguably ultra vires the Council's Lloyd's Act 1982, s.6(1) and (2) self−regulatory powers The Council has no power to delegate to members in Corporation EGM the decision whether or not to use the Central Fund to pay claims, a fortiori, if the only basis (and there is no express other basis) on which the member in that meeting (if it ever came to it) were personal financial interest rather than insurance regulation. It should not be forgotten that the Council's Lloyd's Act 1982 s.6 powers to self−regulate the Lloyd's enterprise were intended as the "Lloyd's"−peculiar equivalent of the Department of Trade's Insurance Companies Act 1982 external insurance regulatory functions, and that the Council of Lloyd's spent the years 1982−91 pleading legislators to give self−regulation—of which Central Fund self−regulation for the protection of the assured−at−Lloyd's, not the protection of any member was a key part—"more time to work"; see the various self−congratulations around the time of Patrick Neill, Regulatory Arrangements at Lloyd's—Report of the Committee of Inquiry, Presented to Parliament by the Secretary of State for Trade and Industry, January 1987 (Cm 59; HMSO); Lloyd's: A Route Forward—Report of the Task Force January 1992 (Lloyd's, January 1992; the so−called "Rowland Report"). By the time of the Financial Services Regulation: Self−Regulation at Lloyd's of London, House of Commons, Session 1994−95, Treasury and Civil Service Committee, Fifth Report (HMSO, May 17, 1995), self−regulation at Lloyd's had proved disastrous for members. Between 1995 and the enactment of Financial Services and Markets Act 2000, Part XIX, which gives the Financial Services Authority supervisory powers over the Lloyd's enterprise, the Council of Lloyd's effected or supervised the various transactions of "Reconstruction and Renewal" and promulgated the New Central Fund Byelaw with its purported ringfences. The FSA has not yet exercised its FSMA 2000, s.314(1)(a) power to review those ringfences. Other purported back−office ringfences, such as various relevant Council undertakings to corporate members, are outside the present article's scope. Return to article

[63] *See* Lloyd's Act 1982, s.8(1). If any of the other SYA participants fails (for insolvency or any other reason) to provide sufficient back−office funds to pay his own discrete participation, the difference is made up by recoursing to relevant claims payment securitisation common−use funds such as (for example) the Central Fund. Return to article

[64] *viz.,* if it was too administratively cumbersome for drawers at Lloyd's (or Equitas Re) to make a deduction for the insolvency dividend. Maybe the assured's−at−Lloyd's Lloyd's broker will make the deduction and remit the difference to each side. Return to article

[65] *See* Lloyd's Act 1982, s.8(1), which necessarily overlays the discharge of every insurance contract made at Lloyd's regardless of any conflicting other governing law of the contract: "An underwriting member shall be a party to a contract of insurance underwritten at Lloyd's only if it is underwritten with several liability, each underwriting member for his own part and not one for another, and if the liability of each underwriting member is accepted solely for his own account." Return to article

[66] *See* RRC 4, §9. Return to article

[67] Through managing agency AUA 9; the story is told in Astor's *Equitas Re Handbook*. Return to article

[68] *See* RCC 4, §3, etc. Return to article

[69] *See, generally, Astor's Equitas Re Handbook*. Return to article

[70] *See* RCC 4, §3.7; *also see, similarly*, RCC 5, §2.6. Return to article